

EXHIBIT E

W. 35th Street: Neighborhood
Stakeholder and Property Owner
Comments

DiGiuseppe, Paul

From: DiGiuseppe, Paul
Sent: Monday, December 07, 2009 2:02 PM
To: 'DBarcinski@aol.com'; 'Michael Curry'; 'JBASCIANO@austin.rr.com'; 'Michael R. Cannatti'; 'Blake Tollett'; 'August W. Harris III'; 'susan pascoe'; 'Jerry Balaka'; 'mwstockerdds@gmx.net'; 'wjmwm@austin.rr.com'; 'Joaniejoy1@aol.com'; 'rayzvonek@capitalcdc.com'
Cc: Guernsey, Greg; Shaw, Chad; Hockmuller, Mike; Patterson, Clark; Haywood, Carol
Subject: RE: 35th Street

Attachments: Compatibility Scan.pdf



Compatibility
Scan.pdf (68 KB)...

Dear All:

I am writing this e-mail in response to both Derek and Michael's e-mails. I am also copying all of the property owners so that all parties are getting this information. We want a fair and transparent process that hopefully resolves issues.

The three main focus points are on the similarities and differences between Limited Office (LO) and Limited Office-Mixed Use (LO-MU) zoning, potential restrictions that could be considered as part of a conditional overlay, and the conformance status of the properties. The properties in question are located at 1717, 1721, 1801, 1803, & 1805 W.35th Street.

I. Current Conditions

There are five subject properties with a total of 36 residential units on 1.322 acres. This averages to about 27 units per acre. I have not been able to determine the amount of office development. Based on the review of an aerial photograph, it is not clear the number of parking spaces due to trees blocking the view and un-striped parking. While I cannot determine the exact amount of impervious cover, the aerials show very little permeable land (possibly approaching over 95% impervious cover). The aerials also show that most of the buildings are built close to the rear property line.

II. Similarities and Differences between LO and LO-MU Zoning

Please note that the following refers to new development or redevelopment of property based on the current standards of these zoning options. Should no new development, remodeling or redevelopment occur, the property owners are not required to meet the current development standards under either zoning option. You will want to pay close attention to the last section of the e-mail dealing with conformance status as it effects development, redevelopment, and remodeling potential.

A) Development Standards

With the exception of parking requirements, the development standards are the same between the two categories (LO-MU site standards are based on LO). Thus, height (40 ft or 3 stories maximum), impervious cover (70% maximum), maximum building coverage (50% maximum), floor to area ratio (0.7:1 maximum), and building setbacks (front: 25 feet; interior side: 5 feet; and rear yard: 5 feet) are the same between both categories. This means that there is no difference between the two options in the amount of allowable square footage that could be built or building design. Parking standards are based on the type of use proposed during the site plan stage which occurs after a property is rezoned.

B) Allowable Uses

Under LO, uses are limited to general office uses such as administrative, medical, and professional office as well as group homes, private educational services, and club or lodge. LO-MU allows all of the uses under LO as well as residential including single-family, duplexes, apartments, and condominiums. LO-MU allows for a development to be all

office, all residential, or a mix of office and residential. LO-MU allows the following range of dwelling units per acre (dua):

Efficiency: 27 dua; One bedroom: 21 dua; Two bedroom: 18 dua ; Average: 20 dua

The current amount of dwelling units is at the upper end of LO-MU density range. Any redevelopment could not exceed 27 units per acre. This equates to about 35 units for the entire 1.322 acres (all five properties).

C) Compatibility Standards

Compatibility standards protect single family homes by mandating the reduction in maximum height of multi-family, retail, or office uses that are adjacent to single family zoning. It also increases a setback so that the non-single family use is moved further away from the single family property. Under compatibility standards, no structure can be built within 25 feet of the building setback line. Within 25 to 50 feet of the building setback line, a structure cannot exceed 30 feet or two stories. Within 50 to 100 feet, a structure can go to 40 feet or 3 stories which happens to be the height limit of LO and LO-MU. LO and LO-MU are treated the same way in terms of compatibility with the exception that LO-MU allows single-family houses which are not subject to compatibility. Please see the attachment regarding compatibility.

D) Commercial Design Standards

As 35th Street is designated a Core Transit Corridor, commercial design standards must be met. While there are a number of objectives that these standards try to achieve, below are some that more closely relate to this area of 35th Street.

- 1) To protect and enhance residential neighborhoods, commercial districts, and other areas by encouraging physical development that is of high quality and is compatible with the character, scale, and function of its surrounding area;
- 2) To encourage developments that relate well to adjoining public streets, open spaces, and neighborhoods; and
- 3) To provide for and encourage development and redevelopment that contains a compatible mix of residential and nonresidential uses within close proximity to each other, rather than separating uses.

In order to achieve the intent, the development standards regulate:

- a) Relationship of buildings to streets and walkways;
- b) Parking reductions which can be achieved if trees are protected, a car-sharing program is utilized, showers and lockers are added to offices to promote cycling and walking, or adjacent on-street parking is provided;
- c) Exterior lighting;
- d) Screening of equipment and utilities; and
- e) Private common open space and pedestrian amenities.

While these standards cover many different development standards, I want to point out that 75% of a building must front the sidewalk, essentially moving a building toward 35th Street. As there is an extensive amount of standards, please go to http://www.ci.austin.tx.us/planning/downloads/subchapter_e_design_standards.pdf for more details.

These requirements apply to both LO and LO-MU.

F) Possible Development Scenarios

Based on the fact that there are many allowable uses; that dwelling units per acre are based on number of bedrooms (which is only determined at site plan stage); and that a large number of site layouts are possible; it is not possible to predict all the possible outcomes. Due to the number of possible outcomes, such an exercise does not provide a

straightforward illustration of what could happen; the range is too great. Such an exercise is time consuming, costly, and beyond the scope of neighborhood planning or zoning processes. This type of work is conducted at the site planning level.

It is likely that whatever could get approved under LO or LO-MU would be roughly the same amount of square footage that is currently on the ground. Also, the maximum number of residential units would be about the same as currently built. In addition, as LO and LO-MU have the same development standards, the buildable square footage and development standards are the same. As the number of parking spaces is dependent on the uses, it is not possible to predict the number of parking spaces.

III) Possible Conditional Overlays

Some neighborhood stakeholders have provided their vision for what they would like these properties to be or, conversely, not be. Some of these values can be met through the code requirements identified above. Others might be achieved through a conditional overlay. A conditional overlay is a tool by which the City can place additional restrictions on uses (i.e. prohibiting auto sales) and development standards (i.e. reducing height from 60 feet to 40 feet) normally allowed under a zoning category.

Affordable Housing

One of the goals provided by the neighborhood was the provision for affordable housing. Texas law prohibits local governments from mandating affordable housing. Thus, we are prohibited from placing such a condition.

Garage Placement

It was asked that we prohibit the placement of a parking garage along the back of the property. City staff is open to seeing whether the parties are willing to agree to this condition. Keep in mind that compatibility will move any such structure further away and reduce the height. Also, due to the high cost, parking garages are typically associated with large-scale development. In this case, it's probably unlikely that a parking garage would be built due to the smaller-scaled nature of LO or LO-MU. Also, parking garage locations are usually determined at the site plan stage where factors such as building configuration, use, and adjacent uses are considered.

Mix of Uses

There was concern over the properties becoming all residential, primarily apartments. The neighborhood has asked for a requirement to mandate a mixture of uses (office and residential). City staff is open to seeing whether the parties are willing to agree to this condition.

Five Small Scaled Developments

The neighborhood raised a concern that all five properties could be merged into one large development. Their preference is to keep the properties separate with small development as is currently the case. While LO and LO-MU results in small scale development, the City cannot prohibit the sale of private land such that the parcels must remain separate. This would be a violation of private property rights. In addition, the City cannot mandate that these properties be developed separately. In addition, assembling of lots to form one parcel rather than five can occur under the current zoning as well as LO-MU.

Building Height

The neighborhood requested that the height be limited, with some suggesting two stories. City staff is open to seeing whether the parties are willing to agree to this condition. Keep in mind that SF-3 zoning allows up to 32 feet while LO and LO-MU allows 3 stories or 40 feet which is a difference of eight feet which is not even one full story. While most of the homes along 34th Street are one story, current zoning allows for them to increase height. Also, 40 feet is appropriate on 35th Street, a big arterial street that is also a core transit corridor. As described under Compatibility Standards, compatibility standards reduce the height along the rear yard of the subject parcels to 30 feet which is 2 feet less than SF-3 maximum building height.

IV) Conformance status

The properties contain residential uses that are not allowed under the Limited Office zoning. Conformance simply means whether a use of land is allowed under the zoning. The conformance status is important because it affects how property can develop or redevelop. There are four possible types of conformance:

- 1) Legal: The current use is allowed under the current zoning
- 2) Illegal: The current use was/is not allowed under a previous or current zoning code
- 3) Non-conforming: The current use is not allowed under current zoning but was allowed under zoning when the use was established
- 4) Section 25-2-942 which states that if a use conformed with zoning regulations in effect on March 1, 1984, the use is still a conforming use notwithstanding the requirements of Article 7: Nonconforming Uses (previously Section 13-3-331). The subject properties appear to meet this type because they were built prior to 1984. 25-2-942 was added as part of a major zoning code change in 1984. The City subsequently made another change to the zoning code in 1986 and again in the 1990s (which is the current zoning code).

Under this type of conformance, the property owner could build back to what is on the ground if a structure suffers extensive damage. Second, the property owner also has the ability to renovate their property as long as they stay within the current footprint. Third, the residential use cannot expand beyond the current footprint such as by adding another story or porch. Fourth, if a property owner wishes to tear down and redevelop their property (note: I am not referring to redevelopment due to damage), the property owner has the option of rebuilding the use in its current configuration. They also have the option of building under today's code and would have to meet the requirements of LO zoning.

By changing the zoning to LO-MU and making the use legal, a structure could be rebuilt in any way that meets the LO-MU development standards should any of the structures suffer extensive damage. Second, the properties can also be renovated in their existing footprint. Third, the properties would have the ability to expand the existing residential use assuming code requirements are met. Fourth, the property owner could not tear down and rebuild the current configuration but would have to meet today's code including compatibility standards, impervious cover, and the commercial design standards. This would result in a building that is further away from the single family homes when compared to existing buildings, less impervious concrete than what is currently on the ground, and the enforcement of compatibility standards and commercial design standards.

City staff's goal is to make the current uses legal by having a zoning option that matches the current uses.

V) Next Steps

I ask that all of the property owners and representatives of the neighborhood stakeholders review this document and provide me with any feedback by 12/14/09. Based on the feedback, I will create a process by which the parties will try to resolve any remaining issues, as needed.

Sincerely,

Paul

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From: DBarcinski@aol.com

Sent: Wednesday, November 25, 2009 11:05 AM

To: DiGiuseppe, Paul

Cc: mcmediate@msn.com; JBASCIANO@austin.rr.com; mcannatti@hamiltonerrile.com; blake.tollett@earthlink.net; harris@cfs-texas.com; spascoe@grandecom.net; jerry_balaka@hotmail.com; Hockmuller, Mike; Guernsey, Greg; Haywood, Carol; Stoll, Garner

Subject: Re: Central West Austin Neighborhood meeting Monday 23 November

Paul:

Thanks for the reply.

Few questions on redevelopment:

1. If new zoning is adopted for those properties, will the new zoning classification determine allowable impervious cover or will there be grandfathering of existing coverage in place prior to 1984 ?
2. Same question - grandfather of setbacks.
3. Two projects are under construction in BrykerWoods currently and do not seem to follow the Commercial Design Standards you mention. How does this sort of thing happen ??
4. Compatability will certainly apply but a parking garage against a historic single family neighborhood is a bad fit from both design and planning point of view. Is there language in the Commercial Design Standards or the Compatibility Standards that address this condition that mega zoning five properties would create. Do you have suggested Conditional Provision language to avoid this.

Derek

In a message dated 11/25/2009 10:50:24 A.M. Central Standard Time, Paul.DiGiuseppe@ci.austin.tx.us writes:

Hi Derek:

First, I should have also addressed you on the e-mail I sent to Michael because you have some overlapping issues. Sorry about that.

I appreciate you providing a vision for what you would like to see. Your vision and concern was also stated by others in the room during the meetings regarding these properties. I will be checking with zoning staff to see about the conditional overlay and will include those conditions that you mention in your e-mail. Once I find what we can offer, I will have to determine the best way to coordinate with neighborhood stakeholders and property owners. My hope is that a compromise can be reached between staff, neighborhood stakeholders and property owners.

Please keep in mind there are some requirements in place that must be addressed should there be any redevelopment. Compatibility requirements will cause a lowering of heights at the back of the property. The current development standards such including setbacks and impervious cover must be met. Commercial Design Standards (35th Street is a Core Transit Corridor) has a series of requirements including pushing more of the building toward 35th Street, articulation, wide sidewalks, trees, etc. Information on commercial design standards are found here: <http://www.ci.austin.tx.us/planning/designstandards.htm> . Please note that the State of Texas prohibits local governments from mandating affordable housing so we cannot legally include that provision in the conditional overlay. However, I will check with zoning staff to see if other options exist for affordable housing.

I hope you have a Happy Thanksgiving.

Paul

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From: DBarcinski@aol.com [mailto:DBarcinski@aol.com <mailto:DBarcinski@aol.com>]

Sent: Tuesday, November 24, 2009 8:47 AM

To: DiGiuseppe, Paul

Cc: JBASCIANO@austin.rr.com

Subject: Central West Austin Neighborhood meeting Monday 23 November

Paul:

I am sorry that things became so adversarial last night. Re-zoning within a functioning neighborhood obviously brings out great passion amongst the stakeholders. You are a planner with years invested in this plan and we live here. The decisions we make together will shape this neighborhood for years.

Forums such as last night should be a place for dialogue and compromise and I was upset feeling that both sides might have left feeling more entrenched.

Is there a compromise where the parcels on 35th Street are zoned according to proper planning guidelines and the goals of neighbors are protected.

Obviously, the existing zoning allows the existing use to remain. The existing use is compliant with existing zoning law and is something the neighborhood is comfortable with.

What we are really discussing are the redevelopment possibilities allowable under different zoning scenarios. The things the neighbors like about the current conditions should be enforcibly protected under the neighborhood plan: a true mix of uses, five small scale developments, low building height, iconic historic street presences and affordable housing.

What the neighbors and myself fear: a combining of lots into mega-block apartment complex, a singular residential use, a loss of retail along 35th, a parking garage against the historic residential neighborhood, greater height / lesser setback, and loss of privacy by having residences that look into backyards.

Can we get LO-MU zoning with conditional protections that meet the goals of all parties ??

If we were not in the Neighborhood Planning Process and one of these owners came to BWNA asked for re-zoning, we would be asking about the same matters. Re-zoning five parcels at once does not feel very natural and is not a minor neighborhood event. This neighborhood planning process should not limit or polarize the discussion of re-zoning but should rather facilitate dialogue and compromise.

Derek Barcinski

From: Michael Curry [mcmediate@msn.com]

Sent: Wednesday, November 25, 2009 2:45 PM

To: DiGiuseppe, Paul

Cc: 'Joyce Basciano'; 'Michael R. Cannatti'; 'Blake Tollett'; 'August W. Harris III'; 'susan pascoe'; 'Jerry Balaka'; Hockmuller, Mike; Guernsey, Greg; Haywood, Carol; Stoll, Garner; DBarcinski@aol.com

Subject: CWANPA -- Nov. 23 2009 meeting

Paul, thanks.

I apologize for this rejoinder but I do think - if you are carrying our thoughts forward - that you and the others listed above need to clearly know our position.

Regarding your third paragraph, the policy of the City, during my involvement over the last few decades, has always been that use must align with zoning, not that zoning must align with use. When the City revises land regulations it will grant property owners the right to continue the existing use under one of several theories, such as "grandfathering" or "legal but non-conforming." In the case of these properties, the City went further and included provisions providing that the properties were conforming uses and conforming structures. See, LDC Sections 25-2-942 and 25-2-962. But permitting a continued use is simply as a matter of fairness to the landowner. The policy of the City, as expressed in the change in the Code, is that the use should ultimately transition to the new parameters of the zoning category. So in this case to say that the existing land use dictates a change in zoning is exactly backwards. It especially makes no sense when that change in zoning (a) does not require a continuation of the use that exists on the ground and (b) permits uses and structures that are different from those that exist today. These proposed zoning changes do not "implement the future land use map recommendations" of the community. Rather, the City is taking the planning out of the community's hands by proposing its own Future Land Use Map that does not align with either the zoning on the ground or the wishes of the community and then pushing a blanket rezoning of four commercial properties to implement the City's FLUM. And, unlike other proposed re-zonings you referred to in your fifth paragraph, what the City proposes here is an up-zoning against the wishes of the community and it contravention of the FLUM adopted by consensus during the City's process. As I'm sure you gathered from the meeting the other night, the community considers this to be a very serious breach of the covenant between the City and the community that underlies the neighborhood planning process.

Regarding your fourth paragraph, I do not know whether or not LO-MU allows "roughly" the same number of residential units that currently exist. That would require an analysis far more detailed than either the City or the neighborhood has conducted and, frankly, beyond my capabilities. But, as you well know, the impact of a development is measured by much more than the number of units and it is best measured in the context of a real life project the likes of which we do not have here. This much is beyond dispute: when zoning is granted in a vacuum and especially when it is granted on-the-fly as is being proposed here, the input of neighbors on future project is reduced to zero because the developer already has the zoning. I can provide you with case studies from our neighborhood and the planning area to prove that proposition if you need it.

Continuing with your fourth paragraph, I take great exception, and I know my neighbors would take great offense, at the suggestion that LO-MU zoning "best matches what the neighborhood has said they would like to keep." We have stated that we are fine with the current use as it exists on the ground - which is, to a limited extent, a horizontal combination of uses on some of the properties. We have been unequivocal that we are opposed to MU zoning because it permits a vertical combination of uses -- something that does not exist today and, therefore something that is not there for us to "keep." Maintaining the current zoning will permit the current uses to continue. While we can live

with the current use on the ground, we expressly voted as a group that the future use we want on this block is Neighborhood Commercial. It is impossible to interpret that decision as support for the City's position and it is inaccurate to suggest that the City's position implements what the community wants. It does not.

Continuing with your fourth paragraph, and as I stated above, I am unaware of any other up-zonings against the wishes of the community and in contravention of the FLUM adopted by the community in this process. If it has occurred, it was wrong. Finally, the fact that the site development standards for LO and LO-MU have the same height limits, does not account for the fact that MU zoning encourages - in today's market - multi-story structures, with different use patterns, and different impacts on adjoining properties than does LO zoning. The current offices uses on the properties in question are all one story.

To your last paragraph, we appreciate your pledge to consider conditional overlays on the City's proposal. If the City will not append a conditional overlay on its zoning request that, at the very least, limits any new development to two stories - what is currently on the ground, and therefore, consistent with the City's rationale for rezoning-- then that is a further indication that rezoning properties pursuant to the neighborhood planning process, in general, and this re-zoning, in particular, is inappropriate.

Thank you again for your detailed response and for your hard work and professionalism throughout the planning process. Best wishes for a great Thanksgiving to you and the entire planning staff.

Sincerely,

Michael

From: DiGiuseppe, Paul [mailto:Paul.DiGiuseppe@ci.austin.tx.us
<mailto:Paul.DiGiuseppe@ci.austin.tx.us>]

Sent: Wednesday, November 25, 2009 10:16 AM

To: Michael Curry

Cc: Joyce Basciano; Michael R. Cannatti; Blake Tollett; August W. Harris III; susan pascoe; Jerry Balaka; Hockmuller, Mike; Guernsey, Greg; Haywood, Carol; Stoll, Garner

Subject: RE: CWANPA -- Nov. 23 2009 meeting

Hi Michael:

Thank you for your e-mail. It is an excellent summation of the points stated by the neighborhood stakeholders in attendance. We have to respectfully disagree with your request to withdraw the recommendation for Neighborhood Mixed Use. I will outline our reasons below.

I understand the perspective of those neighborhood stakeholders who have attended the meetings regarding the 35th Street properties. It is my intent to fairly present both options, including the concerns presented by the stakeholders in attendance, when the plan is presented to Planning Commission and City Council. Thanks to your e-mail, you have given me points that I will include during this presentation. As you know, Planning Commission and City Council hold public meetings where the public can express their concerns. Ultimately, the zoning decision will be made by City Council after consideration of many factors including input provided by neighborhood stakeholders, property owners, and staff.

Historically, this Department has always rezoned properties as a regular part of the neighborhood planning process with a focus on those properties where the use does not align with the zoning as well as rezoning properties to implement future land use map recommendations.

In the case of the properties on 35th Street, it is our contention that LO-MU best represents the existing uses (residential and office) and allows roughly the same number of residential units that currently exist. Second, as the neighborhood stakeholders in attendance have stated they like the current mix of residential and office uses, we believe that LO-MU best matches what the neighborhood has said they would like to keep. Third, our recommendation is consistent with other Central West Austin Neighborhood Plan zoning recommendations where zoning is proposed to change in order to align with current uses. Fourth, the building heights are the same for LO and LO-MU.

Just to put the Central West Austin Neighborhood Plan in perspective, some neighborhood plans have resulted in thousands of properties being rezoned. Central West Austin will only have about a dozen rezoning proposals which, as far as I know, is the lowest of any neighborhood plan. In most cases, we actually are proposing a downzoning to a category that best fits the use on the ground such as proposing the rezoning of single family homes on Bonnie and Robinhood from CS to SF-3 or rezoning a portion of Westenfield Park from MF-2 to P. When factoring all of the rezoning of the entire planning area, the end result is a net reduction in development rights which, as far as I know, is a first for any neighborhood plan.

Regarding your e-mail over the conformance provisions, I have not had a chance to speak with Greg or Chad but will try to do so next week. I will also inquire about the request for height restrictions and the mixed use requirement.

I hope you and your family have a Happy Thanksgiving.

Paul

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From: Michael Curry [mailto:mcmediate@msn.com <mailto:mcmediate@msn.com>]

Sent: Tuesday, November 24, 2009 1:54 AM

To: DiGiuseppe, Paul; Hockmuller, Mike

Cc: 'Joyce Basciano'; 'Michael R. Cannatti'; 'Blake Tollett'; 'August W. Harris III'; 'susan pascoe'; 'Michael Curry'; 'Jerry Balaka'

Subject: CWANPA -- Nov. 23 2009 meeting

Paul and Mike,

That was a difficult meeting for everyone - especially the guys at the front of the room. Thank you for conducting yourselves in a professional way and for giving us an opportunity to express our views. I hope you know that it is not you, it is the message you are communicating on behalf of the City, that folks were upset with.

Folks are really frustrated, confused and angry that the City is pushing a substantial rezoning of four contiguous properties as part of a planning - not zoning - process on behalf of commercial property owners who had never sought rezoning on their own, that is outside of the normal zoning process where there is a proposal on the table, that leaves adjoining single family property owners vulnerable to new uses that could impair their use and enjoyment of their property, that is inconsistent with the unanimous decisions of the Planning Commission and City Council - before whom the property owners in question had an opportunity to make their case - rejecting vertical mixed use, and, most importantly, that goes against what the stakeholders have decided in this process. The City's action raises the prospect that despite our years of work, the neighborhood will actually be more vulnerable to inappropriate land uses and have less certainty as to its future than before it had a City-sponsored neighborhood plan.

As you well know, the Neighborhood Planning process provides virtually no opportunities for a neighborhood to improve its land use situation. If there is inappropriate zoning on a particular parcel because the neighborhood was not vigilant enough or powerful enough or smart enough to get the city leaders to make the correct zoning decision, there is no relief for the neighborhood in this process. The City's policy is firm: they will not entertain a roll-back of zoning. We accepted that rule. We never envisioned, however, that the City would champion improving private commercial landowners' situation at the expense of, and against the wishes of, adjoining single family homes and the community in general. The question folks at the meeting were asking was this: why are you asking us what we want if you are going to ignore, or even worse, attempt to contravene our view?

What is particularly ironic and upsetting to folks in my neighborhood is that shortly before this process kicked off we looked for areas where we could accommodate the City's desire for more density and more residential development. We agreed to substantial vertical mixed use re-zoning in the planning area - as part of the VMU process -- in places where, we hope anyway, such a use will not, regardless of its exact configuration, adversely affect the neighborhood. As you know, one particularly painful decision in this regard was the Randall's on W. 35th St. The implicit trade-off with the City - blessed by the Council - was that this type of multi-story mixed use would not be permitted adjoining single family homes. We were held to our part of the bargain in this process: property zoned VMU was given a MU FLUM designation and retained its VMU zoning. Now, the City is, in effect, saying to the neighborhood: "thanks for your good faith VMU zoning decisions, now we want mixed use zoning next to single family homes" which can, of course, be constructed vertically.

Local Office zoning is appropriate for West 35th St. The current uses on those properties are acceptable to the community. The commercial property owners have not been disadvantaged by this process and retain all of their rights. By introducing a new zoning category for this block of properties you are facilitating a change away from the affordable rental housing and local retail uses that currently exist. You are putting adjoining single family property owners at risk by promoting a zoning change next to their homes. And, you are in this instance ignoring the community's desire, expressed continuously throughout this process, to retain input into the redevelopment of property, especially when it adjoins single family homes. You asked what future land uses the community wanted for this block. The community answered: neighborhood commercial. Now, you are asking the Council to repudiate that decision.

On behalf of my neighbors I am respectfully requesting that you reconsider your decision and not carry forward your "Option B" to the Council. The commercial property owners are, of course, free to make whatever request they desire, on their own behalf. If you insist on promoting a position at odds with the consensus of the stakeholders and in favor of four commercial property owners, please do it in a way that at least mitigates the potential harm to adjoining single family homes by conditioning your Option B with an overlay that restricts the height of the structures to two stories, requires the mix of uses in the same ratio that exists there today, and provides for significant setbacks in the rear. This is not a substitute for the type of consideration that would be given in a zoning case and it does not justify a zoning change, but it might mitigate the potential harm to the adjoining homes should the Council reject the community's vision and adopt the City's view instead.

Thank you for your hard work throughout this long planning process. I know I speak for others when I say that we hope you will reconsider your position in this regard.

Best regards,

Michael Curry

From: Michael Curry [mcmediate@msn.com]

Sent: Tuesday, November 24, 2009 3:28 PM

To: DiGiuseppe, Paul; Hockmuller, Mike

Cc: Shaw, Chad; 'Michael Curry'

Subject: Conforming Uses

Dear Paul and Mike,

I want to make sure that we are on the same page on the issue of conforming/non conforming uses since that is your stated motivation for pushing rezoning of the LO property on W. 35th St.

My understanding, and I invite Chad to indicate if he disagrees with what I'm about to say, is that according to the Land Development Code, the LO properties on W. 35th St. are both conforming uses and conforming structures pursuant to Sections 25-2-942 and 25-2-962 assuming they were conforming on March 1, 1984.

There is nothing in the Land Development Code preventing a continuation of the current uses, there is nothing in the Code preventing the owners from maintaining the structures and there is nothing in the Code preventing the owner from rebuilding the structures if they burn down assuming they act prudently and responsibly. The most that can be said - if one is looking for limitations on the use - is that there is an argument that the structures cannot be expanded. The counter argument would be that there is nothing in the Code that expressly says that and it is hard to argue that conforming structures, such as these, have less rights than non-conforming structures for which modifications are permitted. In any event, the argument is likely moot on three and probably all four of the properties because if you look at them, they are completely built out and there is no land left for them to expand, assuming any of them would even want to do so.

These landowners actually have more rights than the average LO landowner because they get to continue a residential use on property that is zoned commercial while retaining the right to develop other uses consistent with their zoning. And, there is nothing in the neighborhood planning process that has taken away any of their rights or impaired their use in any way.

This then is the thin reed on which the City is pushing rezoning in the neighborhood planning process. Again, we hope you will reconsider your position.

Best regards and best wishes for a great Thanksgiving. You certainly have our thanks for your hard work.

Michael

P.S. And thank you Chad for taking the time to speak with me again today.

Bryker Woods Neighborhood Association Austin, Texas

1907 West 34th Street
Austin, Texas 78703
May 22, 2010

Dave Sullivan, Chair
Danette Chimenti
Jay Reddy

Mandy Dealey
Benjamin De Leon
Clint Small

Dave Anderson
Saundra Kirk
Kathryne Tovo

Re: C14-2010-0051: 1717, 1721 1801, 1803 and 1805 W. 35th Street.
Windsor Road Planning Area/Central West Austin Neighborhood Plan

Dear Commissioners,

We write on behalf of the Board of the Bryker Woods Neighborhood Association and as participating stakeholders in the CWANPA planning process. This letter will focus on a very specific but extremely important issue involved in the Plan: the Staff's application to rezone the above-referenced properties on West 35th St. from LO to LO-MU-NP. We urge you to recommend DENIAL of this application and vote to maintain the current zoning.

1. Background. These are five tracts representing four properties, two of which are multi-family residential and two of which are a combination of multi-family and small office uses. They are part of a block the Plan describes as a "building by building, horizontal collection of small neighborhood-serving businesses, stores, and apartments" L.2.7. They were developed before 1984 when multi-family use could be legally built on LO zoning. Notwithstanding their LO zoning, these properties are by Code conforming uses and conforming structures. See LDC §§ 25-2-942 and 25-2-962¹. These legal conforming uses adjoin single family homes and the two have coexisted for decades.

¹ § 25-2-942. USES CONFORMING ON MARCH 1, 1984. The use of a building, structure, or property that conformed with the zoning regulations in effect on March 1, 1984 is a conforming use notwithstanding the requirements of this chapter.

§ 25-2-962 STRUCTURES COMPLYING ON MARCH 1, 1984. (A) A structure that complied with the site development regulations in effect on March 1, 1984, is a complying structure notwithstanding the requirements of this chapter.

2. The Community Opposes the Application. The community consensus, voiced during the planning process, was to adopt the Neighborhood Commercial FLUM designation for these properties. That designation conforms to their existing zoning and both permits and encourages their continued use as "a horizontal collection of small neighborhood-serving businesses, stores, and apartments." The community expressed overwhelming opposition during the planning meetings to Staff's proposed FLUM designations and to its proposed zoning changes. The community is joined in its opposition by the Bryker Woods Neighborhood Association, the West Austin Neighborhood Group and the Pemberton Heights Neighborhood Association. Most importantly, the Staff's proposed FLUM and zoning changes are strongly opposed by the adjoining single family homeowners – the parties who will be most directly affected by a zoning decision. A valid petition in opposition has been filed and confirmed for each property under consideration. To grant the zoning changes under these circumstances would take the neighborhood out of "neighborhood planning" and would essentially mean that the public's participation was meaningless.

3. Affordable Housing is at Stake. The Plan calls for the preservation of "the existing multi-family residential uses" on W. 35th St. (L.2.1.). These properties are among the most affordable housing, if not the most affordable housing, in the Windsor Road planning area. They do not reflect the current high land values and new construction costs. Granting the application and changing the zoning to "mixed use" (LO-MU) would only serve to promote redevelopment of the properties into new mixed use projects, thereby eliminating the existing affordable housing and replacing it with new more expensive – and therefore less affordable -- units. In order to preserve this affordable housing that does exist in the planning area the Staff's zoning application for the W. 35th St. properties should be denied.

It is important to recall in this regard that during the Windsor Road Vertical Mixed Use process the Bryker Woods neighborhood recommended that 22.82 out of the 27.46 acres in the VMU Overlay District be confirmed as VMU zoned properties and that only 17% of the proposed district be "opted-out." The opted-out properties were largely made up of these W. 35th St. tracts, which provide more affordable housing than a VMU development. To promote affordability for a percentage of the confirmed VMU developments, the neighborhood recommended the 60% of MFI affordability option – the most affordable level offered. The Planning Commission and City Council both unanimously adopted these recommendations. The Staff's application is inconsistent with these prior decisions of the Planning Commission and City Council and with the will of the community reflected in those determinations.

4. Our Neighbors Should Have a Voice. If this application is granted and the properties are rezoned as part of the neighborhood planning process, the adjoining single family neighbors and the neighborhood as a whole will lose any voice whatsoever concerning a future mixed use

development project. They will have no forum to make objections or request improvements, modifications or adjustments to the project. What Staff is proposing is a blanket rezoning of four properties (five lots) across the fence from single family homes. There are no development proposals. The Staff is the applicant. No one can say what any future mixed use projects on these properties will look like or what their impact, singularly or collectively, will be on the adjoining neighbors. Comparing site development standards among zoning districts is no substitute for input into a real project, subjected to public scrutiny. As a matter of simple fairness, the adjoining homeowners should have a chance to voice their opinion as to the appropriateness of any mixed use development that will overlook their back yards for the next 50 years. They should not lose that chance through the neighborhood planning process.

It should be noted that the text of the Plan provides that "[i]f these properties redevelop, encourage a similar scale and the preservation of affordable rental housing, which contributes to the diversity of the neighborhood." (L.2.1) Granting the zoning application as part of the Plan would remove any means or opportunity for the neighborhood to implement this provision. Rezoning these properties in this process silences our neighbors' voices and ties their hands.

5. Conclusion. The Staff's zoning application is unwarranted. There is no "non-conforming use" to "correct." Regardless, the Staff's rationale, were it fact-based, could not be used to justify a zoning change to the detriment of the community. There is overwhelming opposition to this application. It jeopardizes the existing affordable housing and leaves the adjoining homeowners and the neighborhood – and for that matter the Planning Commission and City Council – with no say in any future mixed use development. Granting this application would be very bad policy and would reflect a failure of the neighborhood planning process.

We urge the Commission to adopt the community's Neighborhood Commercial FLUM recommendation and deny the Staff's application for rezoning. Thank you for all of your work on behalf of the citizens of Austin.

Sincerely,

Joyce Basciano, President
Bryker Woods Neighborhood Association

Michael Curry, Chair
BWNA Neighborhood Plan
Subcommittee

From: Ray Zvonek [mailto:rayzvonek@att.net]
Sent: Wednesday, April 08, 2009 2:35 PM
To: Craig, Victoria
Subject: 1803 and 1805 W. 35th-NEIGHBORHOOD MIXED USE

Victoria,

Please let this email serve as my recommendation that my properties at 1803 W. 35th and 1805 W. 35th have a land use of NEIGHBORHOOD MIXED USE.

Thank you,

Ray Zvonek

RAY A. ZVONEK
512-615-0365

From: Joan J. Culver [mailto:joan@culver.com]
Sent: Wednesday, April 08, 2009 5:08 PM
To: Craig, Victoria
Subject: RE: 1801 W. 35th Street, Neighborhood Mixed Use

Dear Ms. Craig, I would like to go on record as requesting that our property at 1801 W. 35th Street, Austin, Texas, be designated as land use of Neighborhood Mixed Use. I would greatly appreciate it if you would make certain that my request is duly noted. Thank you, Mrs. Joseph (Joan J.) Culver

From: wjm [mailto:wjm@markwaugh.com]
Sent: Tuesday, April 14, 2009 1:02 PM
To: Craig, Victoria
Subject: zoning

Victoria,

Please let this email serve as my recommendation that my property at 1717 W. 35th St. have a land use of NEIGHBORHOOD MIXED USE.

Thank you,
J. Mark Waugh
Owner
512-451-0988

C 5

DiGiuseppe, Paul

From: wjm
Sent: Monday, December 14, 2009 11:38 AM
To: DiGiuseppe, Paul
Subject: Re: 35th Street

Dear Paul,

Thanks to you and your staff for all the effort you have put into regarding the zoning of our property and our neighbors. Having rental property in various areas of the city, I am well aware of the hesitation and downright harrasing resentment that neighborhood associations can create. While I know they may mean well, I sometimes wonder if they realize that we also have rights to properly maintain a profitable business/property. As we all know, they are not making any more land and we all need to develop it in a manner to facilitate the increasing number of people.

I wish to re-emphasize that I do not wish to change my original position of supporting the proposal being submitted by the City Planners in reference to the zoning of my property located at 1717 West 35th Street.

Once again, thank you.

Mark Waugh
512-451-0988

----- Original Message -----

From: "DiGiuseppe, Paul" <Paul.DiGiuseppe@ci.austin.tx.us>
To: <DBarcinski@aol.com>; "Michael Curry" <mcmmediate@msn.com>; <JBASCIANO@austin.rr.com>; "Michael R. Cannatti" <mcannatti@hamiltonterrire.com>; "Blake Tollett" <blake.tollett@earthlink.net>; "August W. Harris III" <harris@cfs-texas.com>; "susan pascoe" <spascoe@grandecom.net>; "Jerry Balaka" <jerry_balaka@hotmail.com>; <mwstockerdds@gmx.net>; <wjmwjm@austin.rr.com>; <Joaniejoyl@aol.com>; <rayzvonek@capitalcdc.com>
Cc: "Guernsey, Greg" <greg.guernsey@ci.austin.tx.us>; "Shaw, Chad" <Chad.Shaw@ci.austin.tx.us>; "Hockmuller, Mike" <Mike.Hockmuller@ci.austin.tx.us>; "Patterson, Clark" <clark.patterson@ci.austin.tx.us>; "Haywood, Carol" <Carol.Haywood@ci.austin.tx.us>
Sent: Monday, December 07, 2009 2:02 PM
Subject: RE: 35th Street

Dear All:

I am writing this e-mail in response to both Derek and Michael's e-mails. I am also copying all of the property owners so that all parties are getting this information. We want a fair and transparent process that hopefully resolves issues.

The three main focus points are on the similarities and differences between Limited Office (LO) and Limited Office-Mixed Use (LO-MU) zoning, potential restrictions that could be considered as part of a conditional overlay, and the conformance status of the properties. The properties in question are located at 1717, 1721, 1801, 1803, & 1805 W.35th Street.

I. Current Conditions

There are five subject properties with a total of 36 residential units on 1.322 acres. This averages to about 27 units per acre. I have not been able to determine the amount of office development. Based on the review of an aerial photograph, it is not clear the number of parking spaces due to trees blocking the view and un-striped parking. While I cannot determine the exact amount of impervious cover, the aerials show very little permeable land (possibly approaching over 95% impervious cover). The aerials also show

DiGiuseppe, Paul

From: Ray Zvonek
Sent: Monday, December 14, 2009 9:33 AM
To: DiGiuseppe, Paul
Subject: RE: 35th Street

Hi Paul,

Hope you are doing well this morning. I just wanted to let you know that my vote regarding my properties at 1803 and 1805 W. 35th is to not put any restrictions on the LO-MU zoning. Let me know if you have any questions.
Thanks,
Ray

RAY A. ZVONEK

512-615-0365

-----Original Message-----

From: DiGiuseppe, Paul [mailto:Paul.DiGiuseppe@ci.austin.tx.us]
Sent: Monday, December 07, 2009 2:02 PM
To: DBarcinski@aol.com; Michael Curry; JBASCIANO@austin.rr.com; Michael R. Cannatti; Blake Tollett; August W. Harris III; susan pascoe; Jerry Balaka; mwstockerdds@gmx.net; wjmwmj@austin.rr.com; Joaniejoyl@aol.com; Ray Zvonek
Cc: Guernsey, Greg; Shaw, Chad; Hockmuller, Mike; Patterson, Clark; Haywood, Carol
Subject: RE: 35th Street

Dear All:

I am writing this e-mail in response to both Derek and Michael's e-mails. I am also copying all of the property owners so that all parties are getting this information. We want a fair and transparent process that hopefully resolves issues.

The three main focus points are on the similarities and differences between Limited Office (LO) and Limited Office-Mixed Use (LO-MU) zoning, potential restrictions that could be considered as part of a conditional overlay, and the conformance status of the properties. The properties in question are located at 1717, 1721, 1801, 1803, & 1805 W.35th Street.

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There are five subject properties with a total of 36 residential units on 1.322 acres. This averages to about 27 units per acre. I have not been able to determine the amount of office development. Based on the review of an aerial photograph, it is not clear the number of parking spaces due to trees blocking the view and un-striped parking. While I cannot determine the exact amount of impervious cover, the aerials show very little permeable land (possibly approaching over 95% impervious cover). The aerials also show that most of the buildings are built close to the rear property line.

II. Similarities and Differences between LO and LO-MU Zoning

Please note that the following refers to new development or redevelopment of property based on the current standards of these zoning options. Should no new development, remodeling or redevelopment occur, the property owners are not required to meet the current development standards under either zoning option. You will want to pay close attention to the last section of the e-mail dealing with conformance status as it effects development, redevelopment, and remodeling potential.

A) Development Standards

With the exception of parking requirements, the development standards are the same between

PLANNING COMMISSION COMMENT FORM

File # C14-2010-0051
C14-2010-0052

Planning Commission Hearing Date: May 25, 2010

Comments: I object to the proposed change for Tract 1 under
zoning case #C14-2010-0051. I live on 34th St.
and feel the proposed changes would be detrimental
to our community.

You may also send your written comments to the Planning and Development Review Department, P. O. Box 1088, Austin, TX 78767-8835. Attn: Paul DiGiuseppe

Name (please print) Jeff Christner

Address 1704 W. 34th St.

- ☐ I am in favor
(Estoy de acuerdo)
☒ I object
(No estoy de acuerdo)

DiGiuseppe, Paul

From: [redacted]
Sent: Monday, December 14, 2009 9:50 AM
To: DiGiuseppe, Paul
Subject: Re: 35th Street

Dear Mr. DiGiuseppe, As a property owner on West 35th Street (1801), I STRONGLY vote that the restrictions stay as they are with no further restrictions (conditional overlay) placed on the five properties affected. Thank you for your work on this matter and for trying to insure that the people who own the five properties are not saddled with conditions that are unfair. I appreciate you staying in touch with all parties concerned as to what is happening with this issue. Thank you - Joan Culver

5/24/2010

DiGiuseppe, Paul

From: [REDACTED]
Sent: Thursday, November 12, 2009 1:57 AM
To: DiGiuseppe, Paul
Subject: Re: 1801 W. 35th Street

Thank you for your letter of clarification. I will not be able to attend the meeting but hope that the outcome is for office use-residential. We have no plans for any changes to our property but would certainly like to have the option to make changes in the future if we opted to do that. Again, thank you for writing. Joan Culver

PLANNING COMMISSION COMMENT FORM

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C14-2010-0052

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Name (please print) Jeff Christner

Address 1704 W. 34th St.

- ☐ I am in favor
(Estoy de acuerdo)
☒ I object
(No estoy de acuerdo)

PLANNING COMMISSION COMMENT FORM

File # C14-2010-0051
C14-2010-0052

Planning Commission Hearing Date: May 25, 2010

Comments: I OBJECT TO THE REZONING OF THE WINDSOR
ROOD NEIGHBORHOOD PLANNING AREA (545 ACRES) [FILE NUMBER C14-
2010-0051]. THE CURRENT ZONING SHOULD REMAIN IN PLACE.
I OBJECT TO REZONING THE SUBJECT PROPERTIES ON 35TH STREET.

You may also send your written comments to the Planning and Development Review Department, P. O. Box 1088, Austin, TX 78767-8835. Attn: Paul DiGiuseppe

Name (please print) ELIZABETH K. REED FORRISIER

☐ I am in favor
(Estoy de acuerdo)
☒ I object
(No estoy de acuerdo)

Address 1701 W 34TH ST., AUSTIN, TX 78703

.....

INFORMATION ON PUBLIC HEARINGS

The Planning and Development Review Department has filed an application for zoning/ rezoning to implement a neighborhood plan. This notice has been mailed to you because City Ordinance requires that all property owners, registered environmental or neighborhood organizations and utility service addresses located within 500 feet of a proposed development be notified that an application for development has been filed.

This request for zoning/rezoning will be reviewed and acted upon at two public hearings: First, before the Planning Commission and then before the City Council. After a public hearing, the Planning Commission reviews and evaluates City staff recommendation and public input and then sends its own recommendation on the zoning/rezoning request to the City Council. Meeting dates and locations are shown on this notice.

If you have any questions concerning this notice, please contact the City of Austin Planning and Development Review Department at the number shown on the first page. If you would like to express your support or opposition to this request, you may do so in several ways:

- ☐ by attending the Planning Commission hearing and conveying your concerns at that meeting
- ☒ by writing to the Planning Commission, using the form provided on the previous page
- ☐ by writing to the city contact, listed on the previous page

As a property owner or interested party within 500 feet, you are not required to attend these hearings, but if you do attend, you will be given an opportunity to speak FOR or AGAINST the change. Applicants and/or their agents are expected to attend.

You may also wish to contact any neighborhood or environmental organizations that have expressed an interest in cases affecting your neighborhood.

PLANNING COMMISSION COMMENT FORM

File # C14-2010-0051
C14-2010-0052

Planning Commission Hearing Date: May 25, 2010

Comments: I OBJECT TO THE REZONING OF THE WINDSOR ROAD
NEIGHBORHOOD PLANNING AREA (645 ACRES) [File Number
C14-2010-0051]. THE CURRENT ZONING SHOULD
REMAIN IN PLACE. I OBJECT TO REZONING THE SUBJECT
PROPERTIES ON 35TH STREET.

You may also send your written comments to the Planning and Development Review Department, P. O. Box 1088, Austin, TX 78767-8835. Attn: Paul DiGiuseppe

Name (please print) PHILLIP FORRESTER

Address 1701 WEST 34TH ST., AUSTIN, TX 78703

☐ I am in favor
(Estoy de acuerdo)
☒ I object
(No estoy de acuerdo)

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