

2-4

M E M O R A N D U M

TO: Betty Baker, Chair and Members of the Zoning and Platting Commission

FROM: Dora Anguiano, Zoning and Platting Commission Coordinator
Neighborhood Planning and Zoning Department

DATE: November 4, 2003

SUBJECT: Zoning and Platting Commission Summary

Attached is a Zoning and Platting Commission summary, which will be forwarded to the City Council.

CASE # C14-03-0120

6. C14-03-0120 – BALCONES CENTRUM LTD. (Gerald Kucera), By: Crocker Consultants (Sarah Crocker), 3413 North Hills Drive, 6415 Hart Lane, 6426 Mopac Expressway North. (Shoal Creek). **FROM LO-CO and GO-CO TO CS-MU-CO. AMENDED TO GR-MU-CO. ALTERNATE RECOMMENDATION: LO-CO; GO-CO. City Staff: Glenn Rhoades, 974-2775. POSTPONED FROM 11-4 (STAFF).**

SUMMARY

Glenn Rhoades, staff – “The applicant is requesting a zoning change from LO-CO and GO-CO to GR-MU-CO; the applicant is requesting the change in order to develop the site with an office and a drive-thru bank. Staff’s alternate recommendation is LO-CO and GO-CO; basically, the zoning would remain the same. The reason for staff’s alternate recommendation is that land uses and zoning on the surrounding tracts have not changed since the existing zoning was granted by Council in May of 2000. The property on this portion of Mopac, there is generally residential and medical office; and staff believes that the current zoning is more consistent and compatible with this area. There is a T.I.A that has been performed with this case and staff requests that the recommendations that were put forth in the T.I.A be incorporated into the ordinance, should this commission and Council decide to recommend the applicant’s request”.

Sarah Crocker, applicant – “This piece of property has a long history, it had a zoning site plan in 1984 for office. We came in and rezoned the property in 1999; the zoning was finalized in 2000; and again the use was office. At that time we obtained GO footprint zoning for some of the buildings and left the balance of the tract, zoned LO. That was a compromise situation between myself and the neighborhood. Members of the neighborhood are here again this evening. We do have an approved site plan on this particular project; we obtained an approved site plan. We have an office building that’s 5-stories in height; we also have a parking garage; the total square footage for the project is 222,177 square feet. There is a total of 46 surface parking spaces and 479 spaces in the parking garage for a total of 525 spaces. The site plan is approved and we could start construction tomorrow if we chose to. My client has been approached by a man named Scott Taylor, there has been a number of different proposals put forth for this particular piece of property, in the last couple of years. The proposals that were on the table this summer, there was one company that wanted to come in and do convenient storage, which would have required CS zoning; and there was Mr. Taylor’s proposal which was to medical office and condominiums in separate buildings and a drive-thru bank. When I fought for the zoning case, we had done a T.I.A and the convenient storage proposal was still on the table, shortly after I filed for the zoning, that proposal was dropped and it was decided to go with Mr. Taylor’s proposal, which is why we’re here to discuss tonight. We did amend the zoning down to GR, we will be will to drop the zoning down to LR. What Mr. Taylor is proposing is basically three separate buildings, which will not be over 3-stories in height; there’s no structured parking. The buildings are pulled forward to the frontage road and off of the back property line. Our current site plan calls for the office building to be about 15 to 20-feet off of the center property line, with the parking garage being less than 10-feet off of the other property line. The buildings that Mr. Taylor is

proposing will be approximately 56-feet off of the back property line. They are greatly reduced to mass density and they're proximity to the condominium units that are directly behind this project. We are willing to amend our zoning to LR for the entire tract with the only permitted LR use to be that of financial services; we would be willing to limit all of our other uses to those that are contained within the zoning ordinance now. All other conditions that are in the zoning ordinance that relate to height and other issues, we would also like to stay in place. We would like to develop under the GO site development regulations, because of the impervious cover issue. We are willing to reduce the amount of medical square footage that was in the T.I.A; we don't need 107,000 square feet of medical space; we would be willing to limit that to 60,000 square feet, which would reduce the overall trip generation by 2000 trips per day".

Commissioner Baker – "The height for LO is what?"

Mr. Rhoades – "It is 40-feet".

Commissioner Baker – "And GO?"

Mr. Rhoades – "60-feet".

Commissioner Baker – "And LR?"

Mr. Rhoades – "40-feet".

Commissioner Baker – "So basically, right now she can build 40-feet on this right now?"

Mr. Rhoades – "That's correct; however, we're looking at this case from a land use prospective and as one commissioner once said, zoning last longer than most marriages; therefore, we weren't looking the zoning and what would be allowed in that zoning; so that's why we came in with that recommendation".

Commissioner Baker – "But the height is less now, with the LO than the portion of the GO that she has".

Mr. Rhoades – "Correct".

Commissioner Baker – "There's one additional use that would not already be permitted? And the staff would still not recommend it?"

Mr. Rhoades – "We heard this tonight; if we would have received it earlier..."

Commissioner Baker – "Would you like to go back and meditate?"

Mr. Rhoades – "Well, I could take it back to our weekly zoning meeting and"

Commissioner Baker – "That's alright; we'll save you some meditation. Thank you".

Commissioner Jackson – “In our back-up we have the original ordinance that limits the height to 795-feet above sea level; do you know what that means?”

Mr. Rhoades – “I’m going to take my best guess here; this was done several years ago; I believe that whenever you’re looking at height, that would allow more of an absolute height as oppose to the two slopes. You have a slope then you have a height that you have to measure from the highest and lowest point”.

Commissioner Jackson – “We don’t know exactly...”

Mr. Rhoades – “It looks like at least 50-feet; it looks like it could have been 50-feet. Ms. Crocker is pointing out that there are different height limitation on a different tract, which is true”.

FAVOR

No Speakers.

OPPOSITION

Bill Bradley, President of the Northwest Austin Civil Association – Spoke in opposition.

Commissioner Baker – “Do you realize that you’re basically are trading a 60-foot height building for something that can be no greater than 40-feet?”

Mr. Bradley – “No”.

Commissioner Baker – “You didn’t realize that you were changing from a height of 60-feet to 40-feet?”

Mr. Bradley – “I can answer that in my own words; we spoke with Sarah about that and Sarah is not willing to let go of the 60-foot restriction; she wants LR with GO building codes. So she expects to be able to build at this point; to 60-feet on that center tract; and she’s not really willing to allow the 40-feet”.

Commissioner Baker – “I can’t speak for Ms. Crocker, but I can speak for myself, LR only permits 40-feet; it doesn’t really matter what Ms. Crocker is willing”.

Mr. Bradley – “Okay, thank you”.

Commissioner Whaley – “In looking at the site plan and the proposal for the three smaller buildings and the non structured parking, is that not a desirable replacement?”

Mr. Bradley – “I haven’t addressed that exact question; but it’s my understanding that it’s a bigger building, but I also understand that it’s about 2000 trips, with this increased

zoning that increases it to a couple of thousand more; it increases the traffic with the new zoning”.

Commissioner Hammond – “Would your neighborhood association be willing to continue discussions with the applicant to try to clear up some of the questions that you all might have that seem to be up in the air; as well as try to get a better understanding?”

Mr. Bradley – “We have scheduled a meeting for December 6; and try to get the staff involved and everyone in one room and hopefully we can address some of these issues”.

Commissioner Hammond – “I think that’s the best thing you can do”.

William Doyle – Spoke in opposition.

Commissioner Baker – “Ms. Terry; LR zoning is more permissive than GO, but GO has more permissive development regulations as far as height; in the applicant’s request for LR, can we allow the GO development regulations?”

Ms. Terry, City Attorney – “I’m not really sure what the applicant is asking with the LR; what I’m hearing tonight is the first time as well; and it is something that I will have to go back and take a look at to see if it could be done. If LR has an absolute height limitation of 40-feet, as opposed to GO, which has a height limitation of 60-feet, if you’re going to zone this LR, no conditional overlay can loosen the LR height restriction. So I’m not really sure what the applicant is requesting and how she’s looking at that. I would have to sit down and listen to a lot more detail; but a conditional overlay tightens an ordinance up, it doesn’t loosen it”.

Commissioner Baker – “Thank you”.

Ms. Terry – “Remember, you may have to ask these questions to Sarah. Maybe what is going on is there are different portions of this property that’s zoned differently, so I’m not sure if that plays into it as well”.

Commissioner Hammond – “It sounds like city staff doesn’t have all the facts and the neighborhood still has a lot of questions...”

Commissioner Baker – “We still have a lot more people who want to speak, do you want to continue the public hearing or do you want to close it and make a motion?”

Commissioner Hammond – “No mame”.

Commissioner Baker – “Because if you’d like to make a motion to continue, we may go home a lot earlier”.

Commissioner Hammond – “I’d like to make a motion to continue and leave the public hearing open”.

Commissioner Baker – “Is there a second?”

Ms. Terry – “Make sure that when we do continue this that we are leaving the public hearing open”.

Commissioner Cortez – “I’ll second”.

Sarah Crocker – “We have been postponed for almost two months because of notification problems and a number of other issues. I filed this case a long time ago and we’re coming up to the end of the year and I get put off much more, I’m not going to have a chance to get to Council in any way, shape or form, before the middle of December. I can certainly address the height issue and my request for GO. I would appreciate it if we could at least continue hearing the opposition and let me close up; and if you want to postpone after hearing from everybody, great. But, we have been waiting since July to try to get to a public hearing”.

Commissioner Baker – “Anyone going to call the question?”

[Silence; motion dropped]

Commissioner Baker – “Okay, the next person in opposition”.

Denise Mosley – Spoke in opposition.

Aaron Gray – Spoke in opposition.

Jane Carnes – Spoke in opposition.

Nick Murphy – Spoke in opposition.

REBUTAL

Sarah Crocker – “I filed this case in July and I met with the neighborhood in August; they had several meetings and I haven’t been invited to them. I was informed this afternoon that they oppose this case. I probably could have addressed these issues earlier, had I known what the issues were. Nothing about this particular zoning changes; I’m not looking for a higher zoning classification in particular. The reason that we filed for the CS initially was because of the convenient storage. We dropped that and went back to the GR. I’m not doing anything but trying to bring it down and trying to find a middle ground. With regard to height, when I said GO site development regulations, the primary thing that we’re looking for here is the impervious cover. That is LR and GO have the same impervious cover; the height is established within the previous zoning ordinance. All of the issues that we agreed to be prohibited in the previous ordinance, everything in that previous zoning ordinance should stay 100% intact; I don’t want to mess with

anything that was negotiated before that. What we're looking for here is the ability to be able to do the bank on the corner and to be able to do the other medical office uses that we wish across the tract; all the way down". "The height is established on the sea level, which means that nobody could put a structure above a certain level; because of the sloping topography of this site, that height is established to make sure that nobody could put anything in front of those condominiums. If you looking at the zoning map, you see PUD zoning; LR zoning; MF-3, it is commercial zoning. These are not single-family houses. I have no intentions of making any changes to the previous ordinance or any of the compromises that I agreed to".

Glenn Rhoades, staff – "I just wanted to clarify something after speaking with Ms. Terry; if I understand the request correctly; we're looking at LR with GO development regulations; and while LR is more permissive as far as use is concerned; LR is more restrictive when it comes to development regulations. Therefore, you could only have development regulations that would be more restrictive with the...."

Commissioner Baker – "I think we have agreed....Thank you for the clarification".

Commissioner Whaley – "The only change to the zoning ordinance that is in place, is financial services?"

Ms. Crocker – "That's the only additional use that we need and that was the reason that we agreed to LR; however, listening to Ms. Terry's interpretation, I have to live with the LR site development regulations".

Commissioner Whaley and Commissioner Gohil moved to close the public hearing.

Mr. Rhoades – "There was a T.I.A attached to this and I wanted to make extra sure to see that it was going to be attached or if you were going to put a 2000 trip limit".

Commissioner Baker – "We'll do something".

Ms. Terry – "Now that you've closed the public hearing, we will have to have a decision".

Commissioner Baker – "Thank you; that's what I said, is there a motion?"

[silence]

Commissioner Baker – "Mr. Martinez will you take the chair?"

Commissioner Martinez – "Is there a motion?"

Commissioner Baker – "I'm going to make a motion for LR zoning; with LR-MU-CO; the conditional overlay would limit the trips as set out in the T.I.A; it would allow financial services as the only permitted LR use and would prohibit food sales".

Commissioner Jackson – “I’ll second”.

Commissioner Baker – “This is changing only two things; first it’s permitting one use which this applicant could not have had, if we would have not taken this action; and that’s financial services. I suspect that many of you, who are opposing this zoning, would probably use the financial services. It is lowering the height of any development from a possibility of 60-feet to 40-feet. In the conditional overlay I excluded food sales which would avoid a convenient store. I can’t think of anything more restrictive when I look at Mopac and consider the thousand and thousands of cars on it each day; I wouldn’t want to live there. That’s the basis for my motion”.

Commissioner Whaley – “Would you consider a friendly amendment to whichever is more restrictive, in regards to the sea level height?”

Commissioner Baker – “No, I think the 40-feet is going to be the most restrictive”.

Commissioner Whaley – “With the topography there and the highest and lowest grades, it would at least give them a “not to exceed” on a height”.

Commissioner Baker – “Okay, I’ll agree to it”.

Commissioner Whaley – “Thank you”.

Ms. Terry – “There are two provisions that are relevance, a structure or a portion of a structure may not exceed a height of 795-feet above sea level; that was for tract A; and tract B, a structure or a portion of a structure may not exceed a height of 760-feet above sea level. One is 795 and one is 760”.

Commissioner Baker – “I said a sea level measurement that’s previously a part of it; or 40-feet, whichever is less”.

Ms. Terry – “That’s fine, I just wanted to make that we understood that there was two different ones because of the topography; and then there were some additional conditions that prohibited. Tract C was also a structure or a portion of a structure may not exceed a height of 765 above sea level”.

Motion carried.

**COMMISSION ACTION:
MOTION:**

**BAKER, JACKSON
APPROVED LR-MU-CO ZONING
WITH CONDITIONS:**

- **LIMIT TRIPS SET OUT IN THE T.I.A;**
- **ALLOW FINANCIAL SERVICES AS
THE ONLY PERMITTED LR USE;**
- **PROHIBIT FOOD SALES;**
- **MOST RESTRICTIVE HEIGHT
BETWEEN THE 795 AND 765 ON THE
TWO TRACTS; HEIGHT NOT TO
EXCEED 40-FEET OF THE MEDIAN
SEA LEVEL MEASUREMENTS,
WHICHEVER WERE LESS;**
- **PROHIBIT GUIDANCE SERVICES,
PERSONAL SERVICES OR
RESTAURANT LIMITED**

AYES:

**GOHIL, BAKER, JACKSON,
WHALEY, PINNELLI, CORTEZ,
DONISI, MARTINEZ, HAMMOND**

MOTION CARRIED WITH VOTE: 9-0.

Non-conforming issues related to 5220 Jim Hogg Avenue (Case #C14-03-0148)

- At the December 11, 2003 public hearing, the applicant's agent Mr. Jim Bennett stated that the existing MF-3 zoned parking lot was approved by City staff in association with a building permit issued in 1974.
- Staff confirmed building permit #143271 was issued by the City in 1974 for a retail greenhouse/nursery that included 19 off-street parking spaces.
- According to building permit records and field verification, the location of the 19 parking spaces appear to be located in the MF-3 zoned portion of the property. Staff has been unable to find building permits for the existing 550 sq. ft. building located south of the building permitted in 1974; nor the building additions added onto the north side of the building permitted in 1974. These post-1974 building improvements (without building permits) are illegal and would not qualify as legal non-conforming uses.
- In 1969, the City's Zoning Ordinance was amended to prohibit a "parking area, public" use as a permitted use in a "B" Residence (converted by Zoning Ordinance revision in 1984 to a MF-3 district). Both the 1969 and the 1974 zoning ordinances, defined "parking area, public" as:

" any open space other than a street, alley or place, used for the temporary parking of more than (4) self-propelled vehicles and available for public use as an accommodation for clients or customers. "
- Therefore, only incidental parking of customer and employee vehicles (*not activities associated with the principal use, such as plant sales, storage of potting soils or fertilizers*) would have been permitted in the "B" (multi-family) zoned portion of the property.
- The applicant's requested community commercial (GR) zoning is not necessary to allow the use of the existing parking lot (approved in error by Staff in 1974) in a manner that was allowed by zoning prior to 1969. The property owner could seek a lesser zoning district under the current Code and allow incidental customer and employee parking in a NO or LO office district, or the Staff recommended LR district.
- According to the 1969, 1974 and the zoning regulations of today, a plant nursery use and an auto repair (garage) use are not permitted in a multifamily ("B" or "MF-3") zoning district.
- According to the current Code, a plant nursery use is a permitted land use in the neighborhood commercial (LR) district.
- The applicant has filed a building permit application to change the building use from a plant nursery to an automotive repair use, re-roof the building and add a stone veneer.