

MINUTES
MANHATTAN URBAN AREA PLANNING BOARD
City Commission Room, City Hall
1101 Poyntz Avenue
December 6, 2010
7:00 p.m.

MEMBERS PRESENT: Nikki Miller, Chairperson; Bill Meredith, Vice-Chair; Jerry Reynard, Linda Morse; Mike Hill; and Stephanie Rolley.

MEMBERS ABSENT: Mike Kratochvil.

STAFF PRESENT: Eric Cattell, Assistant Director for Planning; Steve Zilkie, Senior Planner; Lance Evans, Senior Planner; Chad Bunger, Planner II; Rob Ott, City Engineer.

OPEN PUBLIC COMMENTS

No one spoke.

CONSENT AGENDA

APPROVE THE MINUTES OF THE NOVEMBER 15, 2010, MANHATTAN URBAN AREA PLANNING BOARD MEETING.

Reynard moved that the Board approve the Consent Agenda. Meredith seconded the motion, which passed on a vote of 5-0. Morse was not present at the time of the vote.

GENERAL AGENDA

A PUBLIC HEARING TO CONSIDER THE REZONING OF THE PROPOSED 2216 CLAFLIN RESIDENTIAL PLANNED UNIT DEVELOPMENT, GENERALLY LOCATED AT 2216 CLAFLIN ROAD, FROM R-1, SINGLE-FAMILY RESIDENTIAL DISTRICT, AND UO, UNIVERSITY OVERLAY DISTRICT, TO PUD, RESIDENTIAL PLANNED UNIT DEVELOPMENT DISTRICT. (APPLICANT: ELSEY PARTNERS/OWNERS: G. HAL ROSS AND MARY LOU ROSS)

Rolley moved to remove the item from the table. Reynard seconded the motion, which passed with a vote 6-0.

Bunger presented the staff report and recommended approval of the proposed rezoning with six conditions.

Morse asked about the restrictive covenant for the drainage easement and if neighboring properties were involved with it as the staff report stated. Bunger responded that the staff

report was in error and that the covenant is only between the City and the applicant/property owner.

Miller opened the public hearing.

Dixie West, President of the Riley County Historical Society, spoke against the proposed rezoning. She was concerned if there was adequate parking on the development site to ensure that tenants won't park across the street in the museum parking lot, and if Claflin Road needed to be widened in the future, is there room to do that on the north side of the street. Speaking as a private citizen, she indicated concerned that the proposed development would harm the neighborhood and its character because it does not maintain the grid pattern in the neighborhood.

Henrietta Fox, 1500 Pipher Lane, said she has lived at the property for over 30 years. She is opposed to the rezoning because of its impact on the neighborhood, the small size of the site, the density of the proposed development, its impact on the character of the area, and the effects on traffic and storm water drainage on the area.

Wanda McVey, 1419 Hartford Road, said she had lived there for 52 years and voiced her opposition to the proposed rezoning. She was concerned about the drainage and storm water runoff. She could not support the detention basin because it could breed mosquitoes. She questioned if the area's sanitary sewer was adequate in capacity because a neighbor in the area had recently had a sewer backup. She was concerned that there would not be enough parking on site and expressed concern with the proposed use in the neighborhood because it is not compatible with one-story homes. She thought that the property should be turned into public open space and suggested it should be built at the perimeter of the city. She then gave a history of the property and the development of the area.

Linda Glasgow, 2236 Snowbird Drive, spoke against the proposed rezoning. She stated that she has worked at the Riley County Historical Museum since 1978 and commented on the high amount of traffic on Claflin Road in recent years. She said that there had been a number of cars that have been parking in the museum's parking lot that were not associated with the museum. She was concerned that the proposed development would not have enough parking and that the overflow parking would be forced onto the museum's property. She explained that the original development of the Chase Manhattan apartment project to the west was required to do a number of improvements to comply with the recommendations of the Historic Resource Board and the State Historic Preservation Office. She felt that the Claflin PUD should also make similar changes. She commented that the detention basin would most likely be a breeding ground for mosquitos, similar to the basin in her area in the Snowbird Addition.

Rolley asked Glasgow what the revisions of the Chase Manhattan Development were. Glasgow said they were the height, mass and breaking up the façade of the buildings, creating shadow lines, landscaping, and the addition of the stone wall along the roadways.

Miller closed the public hearing.

Meredith asked if the PUD would be constructed before the City was done with the area's storm sewer system improvements.

Rob Ott, City Engineer, explained the proposed improvements to the storm sewer system in the area and that their timing would be impacted by the decision made by the City Commission to address the need for the Levee recertification. Ott said that the PUD development would most likely be complete before the storm sewer improvements were done.

Meredith asked about the comment that the drainage would be a nuisance if the City does not improve the area's storm sewer system.

Ott made a distinction that the proposed basin is for detention and not retention, whereas the situation in the Snowbird Addition is a wetland that retains storm water. Ott went on to explain that the PUD's detention basin is designed to handle a 100 year storm. A more intense storm would exceed the basin's capacity and run into Claflin Road, similar to what happens now.

Jeff Hancock, SMH Consulting representing the applicant, explained the current storm sewer conditions in the area and explained that the proposed detention basin for the development would release water coming off of the site at a rate similar to what is being drained from the site currently. He did say that the basin would overtop more frequently until the City can improve the area's system.

Ott explained the different storm intensities and Hancock explained his nuisance comment that the staff report quoted.

Morse said that 15 years ago homes along Hartford Road had flooded and asked if that was still the condition today.

Ott responded that it was still a possibility. He went on to explain the conditions that cause the flooding in the area and what the City's improvement projects would do to correct the condition.

Rolley asked if it was correct that the PUD would not contribute to the flooding in the area. Ott said that it would not contribute to the existing problem along Hartford Road.

Miller expressed her concern regarding the timing of the development, before the storm sewer improvements could be completed in the area.

Hancock offered to work with the Public Works Department to build a small portion of the storm sewer project along Claflin Road, to improve the drainage coming off of the development site and not impact the intersection of Hartford Road.

Morse asked for Hancock's statement to be clarified. Ott said that the City would award a portion of the construction project to the applicants so they could install the storm sewer inlets under Claflin Road. The development would connect to this new portion of system and divert the water south of the intersection of Claflin Road and Hartford Road so the storm water runoff would not collect at the intersection.

Morse asked if this proposal wouldn't worsen the situation downstream along Tecumseh Street.

Miller asked about the traffic impacts from the development. Ott provided details of the current traffic count along Claflin Road. He said that the total trips expected from the development would not negatively impact the area's transportation network. He stated that he has not evaluated if Claflin Road would need to be widened in this area in the future, or if there was adequate right-of-way for expansion of the road.

Miller said that they have approved a lot of projects along Claflin Road and asked what this PUD project would do to the cumulative effects on the road.

Ott said that the development is 6 blocks from the K-State campus and that most tenants would be more likely to walk to campus rather than drive, which would decrease the impact of the project on the road network.

Rolley asked about the timing of the storm water projects for the area. Ott explained that the Hartford Road project #3 is schedule to happen before the Tecumseh/Quivera project #2.

Morse asked if other phases of the storm sewer system were needed to correct the flooding problems in the area. Ott stated that these two projects would correct the problem.

Hancock said that the PUD will not increase the rate of runoff and that the end result after the PUD is built is the same as it is today. The storm water runoff will be directed to the southeast corner of PUD and bypass Hartford Road to the east.

Rolley stated that the proposed plan will not help the Tecumseh/Quivera area. Hancock said that that was correct, but it would not make it worse.

Morse said that the Planning Board has seen several projects in the area. The concern is about the funding of the Levee project versus funding the storm sewer system projects in the area. She commented that it may be appropriate to delay the PUD until the storm sewer system improvements can be addressed. She asked about the sanitary sewer backup issue.

Ott said that he was not aware of any problems and that the Utilities Department did not comment about any concerns in the area.

Rolley asked if the Planning Board had ever conditioned a PUD on the construction of infrastructure before the development can begin. City Staff gave several examples.

Hancock said that the examples that City Staff gave were focused on the transportation network, which was an immediately negative impact to the street system. However, the proposed PUD does not change the rate of runoff from the site compared to the current condition.

Brian Elsey, applicant, said they are planning an occupancy of the development in August 2011. Ott stated the best case scenario would be that the Hartford Road project #2 would begin in 2011 and the Tecumseh/Quivera project #3 in 2012.

Reynard moved that the Planning Board recommend approval of the proposed rezoning of 2216 Claflin Residential PUD, from R-1/UO, Single-Family Residential District and University Overlay District, to PUD, Planned Unit Development District based on the finding in the Staff Report with the six conditions recommended by City Administration.

The motion died for lack of a second.

Rolley moved that the Planning Board recommend approval of the proposed rezoning of 2216 Claflin Residential PUD, from R-1/UO, Single-Family Residential District and University Overlay District, to PUD, Planned Unit Development District based on the finding in the Staff Report with the six conditions recommended by City Administration and a seventh condition, The construction of the PUD is contingent upon initiation of construction of the Hartford Road project #3 and Tecumseh/Quivera project #2.

1. The Permitted Use shall be twenty-nine (29) single-family attached dwellings consisting of twenty-five (25) four-bedroom units and four (4) one-bedroom units.
2. Landscaping and irrigation shall be provided pursuant to a Landscaping Performance Agreement between the City and the owner, which shall be entered into prior to issuance of a building permit.
3. All landscaping and irrigation shall be maintained in good condition.
4. A six (6) foot tall, sight-obscuring screening fence shall be provided along the perimeter of the site. The fence shall not encroach into the twenty-nine (29) foot front-yard setback along Claflin Road as established by the proposed site plan.
5. A covenant between the City and owner(s) concerning maintenance of drainage easements, improvements and detention facilities shall be reviewed and approved by the City and filed with the Final Plat.
6. Exempt signage shall include signage described in Article VI, Section 6-104 (A)(1),(2),(4),(5), and (7); and, Section 6-104 (B) (2) and (5), of the Manhattan Zoning Regulations, as may be amended related political or campaign signs.
7. The construction of the PUD is contingent upon initiation of construction

of the Hartford Road project #3 and Tecumseh/Quivera project #2.

(Editor's note: See revised Condition 7 below.)

Bunger asked for clarification on the seventh condition and suggested that the condition could be based on the approval of the Final Development Plan.

The Planning Board and City staff discussed the wording of the proposed seventh condition.

Brian Elsey stated that the condition in effect sets a moratorium on development in the area because of the inadequate drainage in the area.

Rolley said that it was not moratorium on development. A property owner could build by following the conventional zoning district requirements; however the application was to change the zoning.

Elsey stated that the Storm Water Report shows that the conditions would not change after construction, compared to the current conditions.

Rolley said that the flooding concerns in the Tecumseh/Quivera area are substantial and need to be addressed.

Elsey asked if the Storm Water Report is wrong.

Morse asked if the item should be tabled, until the City Commission decides on how to handle the funding of the Levee certification improvements and other storm water projects in the area.

Rolley amended her motion to clarify the seventh condition as follows:

7. The approval of Final Development Plan shall be contingent upon awarding of the Hartford Road Drainage Improvements Project and Tecumseh/Quivera Drainage Improvements Project.

Morse seconded the motion.

Rolley address the neighborhood's concerns, saying that the PUD is appropriate for an infill project and while there will be a change in density, it is very similar to the Chase Manhattan PUD. The development follows the Comprehensive Plan.

Morse stated that the proposed PUD complies with the Comprehensive Plan's infill policies. The infill development utilizes existing infrastructure and the proposed rezoning meets the Comprehensive Plan's density requirements. She wished that the proposal was more sensitive to the historic property and was setback further. She is concerned with the storm water issues at Hartford Road and Tecumseh Road. She recommended that the

applicant's tell tenants not to park in the museum's parking lot. She felt that widening Claflin Road was a way off and should not be a problem.

Rolley commented that she understands that the Storm Water Report and that the proposal lessens the rate of storm water runoff, but the area of Tecumseh Road and Quivera Road is under severe stress.

Meredith agreed with the statements already made. The proposed PUD is an appropriate infill project, but he is concerned with the storm water issue.

Hill agreed with Rolley on the storm water issue and that it requires the Board to judge it in a different way.

Reynard agreed with Rolley on the storm water issue.

Miller also agreed with the statements already made.

Miller called for the vote. The motion passed 6-0.

A PUBLIC HEARING TO CONSIDER AN AMENDMENT OF THE FINAL DEVELOPMENT PLAN OF CHERRY HILL ESTATES PLANNED UNIT DEVELOPMENT, GENERALLY LOCATED AT 3010 CHERRY HILL ROAD; AND, CONSIDER REZONING ONE TRACT OF LAND: TRACT 1, GENERALLY LOCATED AT THE SOUTHERN END OF HARVARD PLACE CUL-DE-SAC, FROM R, SINGLE-FAMILY RESIDENTIAL DISTRICT, TO PUD, PLANNED UNIT DEVELOPMENT DISTRICT. (APPLICANT: JEFF HANCOCK – SMH CONSULTANTS AS AGENT FOR DARRELL M. HILLS AND MOLLY E. HILLS AND FREDERICK A. FREEMAN AND PATRICIA J. FREEMAN/OWNERS: DARRELL M. HILLS AND MOLLY E. HILLS, AND FREDERICK A. FREEMAN AND PATRICIA J. FREEMAN)

Zilkie presented an updated staff report, dated December 6, 2010, and recommended approval of the proposed amendment of the Final Development Plan of Cherry Hill Estate Planned Unit Development and rezoning of Tract 1 from R District to PUD, with one condition of approval.

Miller opened the public hearing.

Darrel Hills, applicant, provided information on why he is proposing to purchase the property and have it a part of his existing lot. He stated he is aware of the Cherry Hills Home Owner's Association (HOA) restrictive covenants and its requirements and rules.

Sandy Butler, 3030 Cherry Hill Road and President of the Cherry Hill Home Owners Association, stated that this is not about adding land to the Hills' property, but rather adding a building on the lot, which is not allowed by the HOA. Hills had constructed two

out buildings that did not conform to the restrictive covenants of the HOA. Butler was opposed to the proposed amendment. Butler stated she was speaking for herself and not for the HOA.

Chuck Reagan, 3022 Cherry Hill Road, provided a power point presentation and handouts to the Board. Reagan provided background to the Cherry Hill Estate PUD and why he was opposed to the proposed PUD amendment. He is opposed to the amendment because Hills is trying to use the land to construction a building that is not allowed by the HOA restrictive covenants and that adding the land to Hills lot would set a precedent to allow anyone in the PUD or other PUD's to expand a lot. He stated that the proposed amendment would affect the property values of adjacent properties. The 60 foot setback requirement from the front property line along Harvard Place would make things worse if Hills was to construct his garage.

Tom Holcomb, 3022 Cherry Hill Road, was opposed to the proposed amendment because it could allow the construction of a building that the covenants don't allow.

Randy McCracken, 3006 Cherry Hill Road, said they purchased the property six years ago because they liked the neighborhood and the fact that it was in a PUD and had covenants. He felt that the amendment would set a precedent to allow the building and could negatively impact property values in the area.

Brenda Bandy, 3005 Cherry Hill Road, opposed the request for the same reasons as previous statements. Specifically, she wasn't opposed to adding land to the lot, but was opposed to the intentions of the applicant to build an accessory structure.

Hills responded to the comments indicating that the out building on his property was an enclosure for the pool pump to keep noise down. He understood that any future buildings on the property would need approval by the HOA.

Morse asked if Hills owned the land being amended. He said that he did not, but the property owner was willing to sell the land.

Reagan stated that it is not as straight forward to enforce the covenants as one would think. The Board is placing the burden on the HOA to enforce the covenants.

Morse asked Zilkie if when a piece of a PUD is changed, is the entire PUD reviewed or does the piece become a new PUD. Zilkie responded that it does not become a new PUD; in this case, the original PUD is amended. He said the Final Plat would rename the lot, but it would be governed by the original PUD. He mentioned that the amendment is conditioned to ensure that the garage meets the minimum setback requirements for accessory structures because the applicant has proposed 25 foot accessory structure setback. If the 60-foot setback, as recommended, cannot be met, the owner can request an Exception of the setback for consideration by the Board of Zoning Appeals (BZA). Staff's reasoning for the 60-foot setback is because staff views the PUD, for zoning administration purposes for accessory structures, like any other single-family residential

neighborhood.

Morse asked if Dr. Freeman could build a garage on the area being amended by Mr. Hills. Zilkie said that it would require a BZA action because the garage would need to be set back 60 feet from the property line along Harvard Place. The garage could not be built on a separate lot.

Zilkie reminded the Board that if they are inclined to deny the proposed PUD amendment and rezoning, they should clarify the reason for denial and what standard they are relating it to.

Mike Hill asked for clarification that they are not approving the amendment to allow a garage on the lot. Zilkie confirmed that that was correct. Hill then asked that if a garage was to be proposed on the lot, they would need to amend the PUD again. Zilkie said that building designs have been administered privately through the HOA. The Planning Board or City Commission has never seen building designs, landscaping, etc. as the Board typically sees with a PUD.

Reagan said that this raises a new issue by further placing the burden on the HOA to approve or deny the construction as it applies to the covenants and restrictions.

Meredith asked that the Planning Board is typically not involved in matters of restrictive covenants. Zilkie responded that is correct and staff is not recommending the Board be involved with review of the proposed garage.

Reagan stated that the covenants were established with the PUD, and approved with the PUD.

Rolley asked about the condition which requires any accessory to follow the requirements of Article V. Why is there the condition if accessory structures are not allowed? Zilkie said that it is the determination of the HOA. It has been stated by the HOA that they could be allowed if they approved it and City Administration is not interfering with the ability of the HOA to enforce their covenants and restrictions.

Morse asked how much buildable space is available once the required setback is removed. Zilkie said that there is not much space to build and the garage location would most likely need to be approved by the BZA. Zilkie provided the Board with the standards to approve an Exception.

Reagan informed the Board that the BZA will hear an Exception request to reduce the rear yard setback from 25 feet to 6 feet on January 12th. He said that ends the discussion where the garage will be placed. Bunger clarified the BZA action for January 12th was to correct a problem with the Freeman's existing house and not the proposed PUD amendment.

Reagan repeated that he is opposed to allowing the existing lot to expand to the north

along Harvard Place.

Morse asked if the houses on Harvard Place are in a PUD with covenants and restrictions. Zilkie said that it was not zoned PUD and he was not aware of any covenants on the properties.

Rolley said that the proposed amendment would allow the lot access to Harvard Place that currently does not exist, however the McCracken's land has similar access to Harvard Place. She said Dr. Reagan had described the challenge of the HOA and covenants very well.

Mike Hill stated that his opinion is that the Board should not even consider the issue of whether a garage can or cannot be constructed because it deals with a private covenant. The Board should focus on the matter of rezoning the property and amending the PUD.

Meredith stated that the covenants should not be relevant to the zoning discussion. It is up to the HOA to enforce their rules.

Bandy pointed out that almost half of the property owners in the Cherry Hills neighborhood is opposed to the proposal.

Butler said that the HOA has a small budget. The intent is to build a garage and the HOA does not have the funds to litigate the illegal construction of a garage.

Mike Hill asked the applicant that if the Planning Board approves the request, is he aware that the existing garden shed would most likely need to be removed. Hills understood that.

Morse asked Hills if he intends to build a garage. Hills said he does not plan on building a garage or fighting the neighbors.

Miller closed the public hearing.

Morse said that she has learned a great deal about the HOA and has changed her opinion that HOA's would be able to enforce covenants for future developments.

Reynard moved to recommend denial of the proposed amendment of the Final Development Plan of Lot 3, Cherry Hill Estates PUD, and Ordinance No. 4163 ; and the rezoning of Tract 1 from R, Single-family residential district, to PUD, Planned Unit Development District, based on the existing covenants. He viewed the covenants as hallowed and not to be interfered with.

The motion died for a lack of a second.

Meredith moved that the Planning Board recommend approval of the proposed amendment of the Final Development Plan of Lot 3, Cherry Hill Estates PUD, and

Ordinance No. 4163; and rezoning of Tract 1 from R, Single-family Residential District, to PUD, Planned Unit Development District, based on the findings in the Staff Report dated December 6, 2010, with the following condition of approval:

1. Any future accessory structure or accessory use shall be subject to the requirements of Article V, Accessory Uses, Temporary Uses, Home Occupations, Part 1, Accessory Uses.

Mike Hill seconded the motion and said that if the applicant wants a garage it would need to be approved or denied in a public hearing, so the neighbors would be able to comment then.

Rolley stated she would vote in favor of the request because we have standards to be considered for rezoning of land and the proposal meets those standards. She mentioned there is a precedent already with the PUD because a lot fronts on Harvard Place.

Mike Hill said that the Planning Board cannot govern the covenants for the neighborhood.

Morse said that communication is taking place. The applicant has stated his intent for the garage. The zoning standards were met and the covenants are not one of those standards.

Mike Hill commented that he is confident that all parties will make the right decisions. If the neighborhood does not want a garage on the land, then the applicant will not build it.

The motion passed on a vote of 5-1, with Reynard voting in opposition to the motion.

REPORTS AND COMMENTS BY BOARD MEMBERS

Rolley asked staff about the condition added to the City Commission memo regarding the rezoning of Independence Place Apartments. Zilkie provided the clarification of that condition.

Respectfully submitted,
Chad Bunger, AICP, CFM, Planner II