

Upper Boggy Creek Neighborhood Planning Team
 Decision Record
 6/18/02
 6:30 PM to 8:00 PM
 Alamo Recreation Center

*Attendees:

| | |
|-------------------|----------------|
| Gerald Carter | Jay Velgos |
| Dorothy Wade | Bo McCarver |
| Matt Selasky | Kristi Shaw |
| Scot Friedman | Leslie Lawson |
| Ora Houston | Lex Owens |
| Matt Silaski | Mark Lind |
| W.C. Chambiliss | April Hardon |
| Michael McClendon | Jon Heining |
| Stephen Kreger | Roger Jennings |

*Based on sign-in sheet

City of Austin Staff: Mark Walters, Ricardo Soliz, Kathleen Welder, Steve Barney (Neighborhood Housing and Community Development, NHCD), and Paul Hilgers (NHCD)

The meeting formally began at 6:30 PM.

I. Decision Record 5-28-02

Decision: A motion was approved to adopt the Decision Record with three amendments: "Roger Jennings" was added to the attendance list, and Gerald Carter and Earl Burg's names were corrected where referenced in the record.

II. Tracts for Discussion

a. Tract 16: 2917 Cherrywood Road

Owner: Mr. Gerald Carter Use: Barber Shop/Hair Salon

Team's Recommendation to Planning Commission, 6-12-02

From: SF-2

To: SF-2

Planning Commission Recommendation, 6-12-02

From: SF-2

To: *LR-CO-MU-NP, with a conditional overlay limiting the neighborhood commercial uses to **personal services** and **professional office**, and with a City-backed **rollback provision** allowing neighbors to request a downzoning to SF if the beauty salon use was to cease operation for ninety (90) days or more.*

Revised Recommendation

voted by the meeting attendees, 6-18-02

From: SF-2

To: LR-CO-MU-NP, with the conditional overlay specified by PC above, BUT, with the change that a request for a rollback of the property's zoning be allowed only after six (6) months of a beauty salon ceasing operation.

Discussion: Ricardo Soliz, City of Austin staff, explained that although the Planning Commission recommendation included two categories of allowed businesses on the property, it intended that a rollback could be initiated if the beauty salon use ceased operation for ninety (90) days.

Points in support of converting Mr. Carter's property to LR, neighborhood commercial, zoning:

- Mr. Carter has been operating a business here for 22 years. He bought a property advertised as commercial and paid and outfitted it as such, although its zoning was residential.
- His property is located between two properties currently zoned for commercial uses, and the property on the south side is currently used commercially as an auto lot.
- The Conditional Overlay recommended by Planning Commission protects the neighborhood from offensive commercial uses, since only personal services and professional offices would be allowed.
- Although Mr. Carter has not been approached by the City for operating an illegal use on this property in the past, he would be now since this fact has directly been brought to the City's attention via the planning process. The City is now required to take action.
- The LR zoning with the conditional overlay is considered appropriate transitional zoning between CS uses (like the ones on Manor) and SF uses (the ones on Cherrywood). The proposal is also considered very restrictive.
- Mr. Carter stands to lose a significant sum if his property is set as residential when its been treated by himself and by the City as commercial for 22 years.
- Points in favor of keeping Mr. Carter's property zoned as SF-2:
 - The intended use of Cherrywood is a residential street- Mr. Carter's beauty salon is an anomaly.
 - Although Mr. Carter and his business are good neighbors, the neighborhood cannot predict the quality of a commercial use a new property owner might construct if Mr. Carter were to sell in the future.
 - Often times if a commercial use is located adjacent to and across the street from residential properties, it can devalue them. (This depends on the type and quality of the commercial use).
 - One of the main goals of the plan is to preserve established residential areas. Although the planning team wants to protect currently operating commercial uses as well, it may not be able to do that in this case with the satisfactory protection of the Cherrywood residences in the future. The City cannot give individuals special zoning- zoning is assigned to properties ONLY.

A question and a possible solution were proposed during the discussion:

- QUESTION: Could Mr. Carter claim a home occupation? ANSWER: No, his business has too many car trips.

- SUGGESTION: Steve Barney, City of Austin staff with Neighborhood Housing and Community Development, suggested that the use could be grandfathered if it the property was a certain residential category before the zoning conversion in 1984/1985. ANSWER: No, this would not work because the beauty salon would only be grandfathered if it was an accessory use to a primary use as the dwelling unit of the owner. Mr. Carter has never lived on this property. Its primary use has always been a beauty salon.

Two motions were made at the conclusion of the discussion.

Motion: A motion was made to put forth a new team recommendation of LR-MU-CO-NP that did not include a rollback provision, unlike the Planning Commission's recommendation. Like the Planning Commission's recommendation, the Conditional Overlay, CO, would limit uses to Personal Services and Professional Offices.

Decision: The motion failed 6 to 7.

Motion: A motion was made to put forth a new team recommendation of LR-MU-CO-NP that included a rollback provision allowing rollback after the beauty salon ceased operation for one year. The motion was amended to shorten this time to six months (which is still longer than Planning Commission's recommendation of 90 days.) The Conditional Overlay, CO, would limit uses to Personal Services and Professional Offices.

Decision: The motion passed, with its amendment, 9 to 5. At this point, the team recommendation forwarded to Council would be as written in the Motion above, in contrast to the team's previous recommendation to Planning Commission of SF-2 zoning.

A couple of points were made during these motions:

- Bo McCarver suggested that voting on these motions at this meeting might be unethical because there was comprehensive notification of all parties involved. Specifically, the residents on Cherrywood near Mr. Carter's property were not notified. Mark Walters, City of Austin staff, suggested that the team could proceed because all parties are surely notified of the City Council date where opposing sides can and will most likely plead their cases regardless of the result of the meeting's vote. City Council is the final decision maker, but in the meantime, the team must have something to present and therefore something to oppose in order to carry on the planning process.
- Mark Lind stated that he found it presumptuous that Mark Walters, a neighborhood planner assigned to Upper Boggy Creek, sometimes works against the interest of the team. Mark Walters noted that when the team's recommendations were not based on sound planning principles, that it was his professional obligation to offer alternatives.
- Scott Friedman stated that he voted against the first motion because no rollback provision was included in the recommendation. A motion with a rollback was subsequently provided.

Decision to Extend: A motion passed to extend the meeting from 8:00 PM to 9:00 PM.

b. Tract 17: 3001 Cherrywood Road
Current use: Vacated Single Family Home, purchased by Kristi Shaw who intends to use the lot for a commercial use. The property was zoned CS when she bought it in 2001.

Team's Recommendation to Planning Commission, 6-12-02
From: CS
To: SF-3-NP

Planning Commission's Recommendation, 6-12-02
From: CS
To: GR-MU-CO-NP WITH A CONDITIONAL OVERLAY PROHIBITING ALL COMMERCIAL USES EXCEPT ADMINISTRATIVE AND BUSINESS OFFICES, ART AND CRAFT STUDIO-LIMITED, GUIDANCE SERVICES, PERSONAL SERVICES, PERSONAL IMPROVEMENT, AND PROFESSIONAL OFFICE, AND WITH A LIMIT OF TWO RESIDENTIAL UNITS. DEVELOPMENT SUBJECT TO LR DEVELOPMENT STANDARDS. CONDITIONAL USE: MEDICAL OFFICES-UNDER 5,000 SQUARE FEET.

Team's Revised Recommendation, 6-18-02
SAME AS PLANNING COMMISSION'S ABOVE

Discussion:

Points in favor of maintaining a commercial zoning on 3001 Cherrywood:

- The property is currently CS. Ms. Shaw and Mr. Jennings purchased the property as CS. Downzoning it to residential would devalue it significantly. It would also constitute downzoning the property by more degrees of intensity than the City generally supports.
- Ms. Shaw stated that the two offensive uses most cited by nearby residents, restaurant and pet services, had been struck from the list of allowed uses by the Planning Commission.
- Ms. Shaw and Mr. Jennings were not notified that the team was recommending downzoning their property to SF-3 until May 2002 (the UBC Final Survey), just before Planning Commission. They did not have a chance to communicate their intentions and come up with a compromise with residents before Planning Commission.
- The corner of Cherrywood and Manor is a commercial node, including the property next door to 3001 Cherrywood, Mr. Carter's beauty salon at 2917 Cherrywood.
- Although Ms. Shaw and Mr. Jennings intend to maintain the property as their home for the next few years, they believe a commercial use might be appropriate in the future depending on the changes to Manor Rd. effected by the expansion of IH-35.

- Their adjoining residential neighbor supported commercial zoning on 3001 Cherrywood even though he currently lives and sometimes rents out his residential property next door.
- Mark Walters noted that that leaving this lot commercial and allowing Mr. Carter's property to roll back to SF did not follow sound planning principles and would create a situation where a single-family lot is surrounded by commercially zoned ones.

Points against maintaining a commercial zoning on 3001 Cherrywood:

- The CS zoning of this property seems like an aberration since it is surrounded on all sides by properties zoned residentially. The neighbors felt they should not have to pay for a zoning decision made in the 1960s.
- One of the chief goals of the plan is to preserve single family residential areas.
- The Planning Commission's proposed commercial zoning is more intense for 3001 Cherrywood than for Mr. Carter's property at 2917 Cherrywood. This does not make sense since 3001 Cherrywood is more interior to the neighborhood.
- The residents of Cherrywood Rd. that were present at the previous meeting but not present today were clearly against any commercial zoning of this property. They stated that Cherrywood Rd. is already too heavily trafficked in its current state. They also stated that since they bought property in what appears to be a residential area, they should have the right to maintain property in a residential area. Giving 3001 Cherrywood commercial rights threatens that residential character to a degree.

Motion: A motion was made for the team to adopt Planning Commission's commercial zoning recommendation for this property. The zoning recommendation was GR-MU-CO-NP (see details of Conditional Overlay above).¹

Decision: Motion passed 7 to 6.

Again, Bo McCarver questioned the ethical validity of the vote since all parties were not properly notified. Stephen Kreger stated that the team needed a recommendation for procedural reasons, but both parties could explain their sides of the case to Council directly.

The team then discussed possible MEDIATION for both 2917 and 3001 Cherrywood such that compromises agreeable to all parties could be reached.

Discussion: Mark Lind asked whether the results of a mediation would be binding on the parties or not. Some meeting attendants suggested that if they could not reach a compromise, Council would become the official decision-maker; so, no, the mediation results would not be binding. Bo McCarver

¹ A substitute motion was offered, but the original motion-maker declined. The substitute motion proposed that the team make no recommendation on this property and explicitly ask City Council to determine the zoning after both sides pleaded their case before them.

suggested that the Cherrywood St. residents opposed to commercial zoning on Cherrywood would prefer mediators not associated with the City, perhaps one from the Dispute Resolution Center. Also, although Kristi Shaw said Ms. Duffie did not respond to her attempt to mediate in the past, Bo McCarver said that she and other residents might be ready at this point, having had time to digest the prospect.

Motion: A motion was made stating that the City should initiate mediation for Tracts 16 and 17, 2917 and 3001 Cherrywood respectively. If one party did not appear at the mediation table or if a compromise was not ultimately achieved, the UBC team would present to Council the zoning recommendation made on June 18, 2002, the current meeting. If compromises were reached, the team would recommend those results to Council.

Decision: Motion passed 11 to 0.

Decision to Extend: A motion was passed to extend the meeting from 9:15 PM to 9:30 PM.

III. Wilshire Wood/Delwood I and II Secondary Apartment Amendment Submitted by Planning Commission

When Planning Commission passed the plan, they inserted the amendments noted above (Cherrywood tracts) as well as one to allow Secondary Apartments on 5750 square foot lots in the Wilshire subdistrict. The team's original plan recommended only small lot amnesty for this subdistrict.

Leslie Lawson of Wilshire Wood passed out a handout titled "Why Should the Upper Boggy Creek Neighborhood Planning Team Oppose the Infill Amendment? (While Not Opposing Infill)." The handout detailed several reasons why the recommendation would not significantly improve housing options in this neighborhood and why the team should maintain its recommendation that Wilshire Wood only adopt the small lot amnesty infill option.

She touched on several points demonstrating that City Council should not accept Planning Commission's proposed amendment:

- Accepting it would set a bad precedent. The amendment from a Planning Commissioner was last minute and had not been discussed or mentioned by Planning Commission at all before.
- There is no particularly strong reason for secondary apartment in WW/DI&II, since most lots are over 7000 sq/ft and can build them anyway- or not according to the deed restrictions. Either way, the Planning Commission has dismissed the team's housing planning for this area for a recommendation that has minimal real results but feels like rejection to the team.

Bo McCarver said Planning Commission appeared to be using subdistricts to teach neighborhoods a lesson- to patronize them in other words. This negates their planning process, which has gone on for over a year.

Mark Walters explained that Planning Commission recommended this amendment because some commissioners feared that by approving subdistricts, they might be used to exclude specific segments of the population.

Steve Barney of Neighborhood Housing and Development said that his department did not have a strong feeling either way.

Motion: A motion was made stating that the UBC team should reject Planning Commission's proposal regarding this amendment and should lobby Council to delete it when they consider the plan. Therefore, the team would recommend that the Wilshire Wood/Delwood I & II subdistrict should not adopt the secondary unit option.

Decision: Motion passed 8 to 0.

Meeting adjourned at 9:30 PM.