

ITEM NO. 7A PRELIMINARY PLAT; GEORGE SUBDIVISION NO. 4 (NORTHWINDS APARTMENTS); 1.31 ACRES; 200 NORTH MICHIGAN ST (SLD)

PP-6-4-10: Consider a Preliminary Plat for George Subdivision No. 4 (Northwinds Apartments), a one lot residential subdivision containing approximately 1.31 acres, located at 200 North Michigan Street. Submitted by Bartlett & West, Inc., for Northwinds L.L.C., property owner of record.

ITEM NO. 7B RS10 TO RM12; 1.31 ACRES; 200 NORTH MICHIGAN ST (SLD)

Z-6-10-10: Consider a request to rezone approximately 1.31 acres from RS10 (Single-Dwelling Residential) to RM12 (Multi-Dwelling Residential), located at 200 North Michigan Street for Northwind Apartments. Submitted by Bartlett & West for Northwinds L.L.C., property owner of record.

STAFF PRESENTATION

Ms. Sandra Day presented items 7A and 7B together.

Commissioner Dominguez wondered how 'cutting sparingly' would be enforced.

Ms. Day said this is a new process but that hopefully there is enough understanding built in of what the expectation is. The area in the Site Plan would show where those activities are. She said she would not expect a lot of activity with the exception of maybe the applicant creating walking trails.

Commissioner Rasmussen inquired about the definition of conservation values.

Ms. Day said it is not a defined term at this time.

Mr. McCullough said staff is looking at a tract on the Plat versus the ability to develop on that in the future. He said language is being used in the Plat to try and show intent as much as possible to give staff the tools to enforce if needed. It is not air tight but enough to show intent. He said this is the first Environmentally Sensitivity Land Site Plan associated with the development project.

Commissioner Hird inquired about trees being cut for authorized purposes. He asked why they should care if it is used for personal use or sold.

Ms. Day said the draft language received from the County was intended for not selling timber or have a commercial market for this product.

Mr. McCullough said so profit isn't a motive to cutting trees.

Commissioner Hird said if a corporation or limited liability company cuts trees they couldn't have a personal use. He said he would rather the timber go to some use rather than waste.

APPLICANT PRESENTATION

Mr. Darron Ammann, Bartlett and West, said the applicant agrees with the conditions in the staff report. He said the owner is an limited liability company and agrees with Commissioner Hird that the language is a little odd when dealing with personal use of the timber.

Commissioner Dominguez asked what he would foresee as limitations on cutting of trees.

Mr. Ammann said the applicant does not want to take out any trees he doesn't have to but there are a few large trees outside of the environmentally sensitive area that will need to come down. He felt that private property owners should have some right to decide what they want to do with the trees but that he was not here to debate the language.

Mr. McCullough said the language was geared toward single-family lots with several acres of timber, not necessarily guided by multi-family development.

Commissioner Hird said Mr. Ammann talked about cutting trees on the non-protected area. He asked if any trees would be cut in the environmentally sensitive area.

Mr. Ammann said the only trees being cut would be in the non-sensitive area.

Commissioner Hird asked for clarification that the limitation of cutting and selling of timber was only for environmentally sensitive areas.

Mr. McCullough said that was correct.

PUBLIC HEARING

No public comment.

COMMISSION DISCUSSION

Commissioner Harris suggested adding the word 'only' in condition 1e1 and striking the following language:

*"Timber. Cutting of trees and woody shrubs may be accomplished **only** to maintain the character of the protected property, to maintain fences, and to prevent invasion of woody plants on the native vegetation.; ~~as long as the same does not adversely affect the conservation values of the protected property.~~ Trees cut for authorized purposes may be utilized for personal use and shall not be sold commercially."*

Commissioner Finkeldei agreed with the changes Commissioner Harris suggested.

Commissioner Rasmussen asked if they also wanted to eliminate the same wording in condition 1e2:

Recreational Use. Property Owner, and its licensees and invitees, may make normal and customary non-commercial recreational uses of the of the Protected Property, such as hiking or unimproved walking trails, ~~as long as the same does not adversely affect the conservation values of the Protected Property.~~

Commissioner Hird agreed with Commissioner Harris that the phrase invites issues and an invitation to lawsuits at some point on other projects. He felt the removal of that phrase in condition 1e1 maintains the intent and gives clear direction. He also felt it was not necessary to have it included in condition 1e2. He suggested removing the last sentence of condition 1e1:

"Timber. Cutting of trees and woody shrubs may be accomplished only to maintain the character of the protected property, to maintain fences, and to prevent invasion of woody plants on the native vegetation.; ~~as long as the same does not adversely affect the conservation values of the protected property. Trees cut for authorized purposes may be utilized for personal use and shall not be sold commercially.~~"

ACTION TAKEN on Item 7A

Motioned by Commissioner Hird, seconded by Commissioner Finkeldei, to approve a Preliminary Plat for George Subdivision No. 4 (Northwinds Apartments) and forwarding it to the City Commission for consideration of acceptance of easements and rights-of-way, subject to the following conditions:

- 1) Provision of a revised Preliminary Plat to show the following details of the Environmentally Sensitive Lands to be protected:
 - a. Label area as Tract A and show boundaries with dimensions,
 - b. Specify that the ownership shall be private,
 - c. Specify that the maintenance responsibility for the tract is that of the property owner,

- d. List specific protection measures to be implemented during construction such as fencing and signage,
 - e. List specific protection measures to be implemented for long term uses and improvements such as walking trails to include the following specific notes:
 1. Timber. Cutting of trees and woody shrubs may be accomplished **only** to maintain the character of the protected property, to maintain fences, and to prevent invasion of woody plants on the native vegetation.; ~~as long as the same does not adversely affect the conservation values of the protected property. Trees cut for authorized purposes may be utilized for personal use and shall not be sold commercially.~~
 2. Recreational Use. Property Owner, and its licensees and invitees, may make normal and customary non-commercial recreational uses of the of the Protected Property, such as hiking or unimproved walking trails, ~~as long as the same does not adversely affect the conservation values of the Protected Property.~~
 3. Fences. Property Owner may construct, repair, replace maintain, improve or remove any additional fencing as deemed necessary to secure the Protected Property, as long as done so in compliance with state and local laws including site planning.
 4. Structures. Structures are prohibited within the sensitive lands area. A structure is defined as: A building or anything constructed that requires permanent location on the ground or attachment to something having a permanent location on the ground, including but not limited to fences, signs, billboards, and Mobile Homes per section 20-1701 of the Development Code. Except, fences may be provided as stated in Note. 3.
- 2) Update note 7 regarding floodplain to reference August 5, 2010 date and include the FEMA panel number.

Commissioner Harris wondered if the Recreational Use language would make it possible for motorized vehicles to be used on the trails.

Mr. McCullough said it would not be addressed in the Land Development Code. He said it may be a larger issue in a rural area versus within the City limits.

Commissioner Harris asked if it would be subject to the noise ordinance.

Mr. McCullough said it would.

Unanimously approved 10-0.

ACTION TAKEN on Item 7B

Motioned by Commissioner Hird, seconded by Commissioner Harris, to approve the rezoning request for approximately 1.31 acres from RS10 (Single-Dwelling Residential) District to RM12 (Multi-Dwelling Residential) District, located at 200 N. Michigan Street and forwarding it to the City Commission with a recommendation for approval based on the findings of fact found in the body of the staff report.

Unanimously approved 10-0.