

ITEM NO. 9A RM32 TO MU; .13 ACRES; 502 W 14TH ST (MJL)

Z-11-21-09: Consider a request to rezone approximately .13 acres from RM32 (Multi-Dwelling Residential) to MU (Mixed Use), located at 502 West 14th Street. Submitted by Paul Werner Architects, for Oread Villas, LLC, property owner of record.

ITEM NO. 9B RM32 TO MU; .05 ACRES; 414 W 14TH ST (MJL)

Z-11-22-09: Consider a request to rezone approximately .05 acres from RM32 (Multi-Dwelling Residential) to MU (Mixed Use), located at 414 West 14th Street. Submitted by Paul Werner Architects, for D & D Rentals of Lawrence, LLC, property owner of record.

ITEM NO. 9C RM32 TO MU; .09 ACRES; 1346 OHIO ST (MJL)

Z-11-23-09: Consider a request to rezone approximately .09 acres from RM32 (Multi-Dwelling Residential) to MU (Mixed Use), located at 1346 Ohio Street. Submitted by Paul Werner Architects, for D & D Rentals of Lawrence, LLC, property owner of record.

ITEM NO. 9D RM32 TO MU; .13 ACRES; 1340-1342 OHIO ST (MJL)

Z-11-24-09: Consider a request to rezone approximately .13 acres from RM32 (Multi-Dwelling Residential) to MU (Mixed Use), including establishing a Bar or Lounge use as an automatic Special Use Permit for The Hawk, located at 1340-1342 Ohio Street. Submitted by Paul Werner Architects, for HDD of Lawrence, LLC, property owner of record.

ITEM NO. 9G RM32 TO MU; .13 ACRES; 507 W 14TH ST (MJL)

Z-11-27-09: Consider a request to rezone approximately .13 acres from RM32 (Multi-Dwelling Residential) to MU (Mixed Use), including establishing a Bar or Lounge use as an automatic Special Use Permit for The Wheel, located at 507 West 14th Street. Submitted by Paul Werner Architects, for John C. Wooden, property owner of record.

STAFF PRESENTATION

Ms. Michelle Leininger presented items 9A-9D and 9G together.

Commissioner Harris had questions about using the tool of Mixed Use zoning. She said if it is a tertiary zone it should be the same height and general size of the buildings, secondary is a little larger than that, and primary is larger. In the Code it says to use building form to provide buffers from adjacent uses. She asked why it was being recommended as primary instead of secondary.

Ms. Leininger said there are some larger structures in the area (pointed on map) and it was going up a hill. It would have less impact on adjacent historic areas. The four corners being the size they are the primary development zone would be less of an impact than what you could potentially see redevelop in the area.

Commissioner Harris asked if the primary, even though designated as most intense, would have less impact than secondary.

Ms. Leininger said based on the available lot area. She said currently the density was the same and the height was comparable. She said it boils down to looking at the potential developable area of the lot and the size of the building that could be built on that lot in relation to the surrounding properties. Those three areas would not have the potential for as large of a building as would the southern area.

Mr. McCullough said part of the application process was an exhibit based on height and it is comparable. Then staff also looked along 14th Street, where secondary was recommended, and there was a half block area that could be a continuous building frontage that would not be compatible. He said the stand alone lots would stand alone and there was no need to impart secondary there because it was comparable height and they will stand by themselves. When staff analyzed the two adjacent properties they did not think there was enough contiguous properties there to warrant breaking them up. Staff feels they are compatible in terms of form and height.

Ms. Leininger said the diagram Mr. McCullough was referring to was part of the application packet.

Commissioner Harris asked what guides the mix of uses.

Ms. Leininger said the descriptions of the development zones do and the Code specifies.

Commissioner Harris said the section on what uses were supposed to go in a Mixed Use area says there is governmental and service. She wondered if the people who own the properties want to have all bars in that area or bars and restaurants and no mix of governmental or services. She wondered who makes that decision.

Ms. Leininger said they would have to go through the Site Plan process and identify the potential uses and that would be when staff would say they need to have a mix of residential and non-residential uses.

Mr. McCullough said the Code requires mixing of uses and pays particular attention to the ground level. In the primary zone it prohibits residential uses but also requires a mix of uses but does not provide a specific ratio.

Commissioner Dominguez inquired about residential on the first floor.

Ms. Leininger said if it is a primary district it cannot have residential on the first floor, it would need to be on second floor and up.

Commissioner Dominguez inquired about the chart that shows eligibility. He wondered about a weighted percentage.

Ms. Leininger said they have to meet the first one and at least one of the next ones. They have to be within ¼ mile of a designated transit route.

Commissioner Dominguez asked if The Wheel and The Hawk would automatically be granted a Special Use Permit with these rezoning.

Ms. Leininger said that was correct.

Commissioner Burger asked if commercial uses would be allowed without a public hearing.

Ms. Leininger said they would have to follow what was permitted in the district and would have to go through a Site Plan process which includes public notification, but that the Site Plan process was not a public hearing process, it's an administrative process.

Commissioner Burger inquired about what the footprint of a 50,000 square foot single-story building would look like.

Mr. McCullough gave the example of Best Buy which was approximately 40,000 square feet.

Commissioner Hird said his understanding was that the 50,000 square foot limit applied to the entire district, not just one building.

Ms. Leininger said that was correct.

Commissioner Hird said if there are multi-story buildings with commercial on the first floor the square footage would be based on the commercial areas on all the buildings and is a first come first serve on how it is filled up. He asked if one building took a bunch of that square footage it wouldn't be there for the other buildings.

Ms. Leininger said potentially. She said there was also the potential to have retail on more than one story.

Commissioner Rasmussen asked what the Mixed Use District was. He asked if it is just these properties that they are considering tonight or all the Mixed Use identified properties in the Draft Oread Plan.

Mr. McCullough said it includes the requested items before them tonight.

Commissioner Rasmussen asked if it would include the rezonings that were deferred.

Mr. McCullough said the primary zones could stand on their own if the others were withdrawn. He said they may have to look at the commercial limit when they look at the deferred lots. He said in staff's opinion the lots being looked at tonight can stand alone as primary Mixed Use District zones.

Commissioner Finkeldei asked if staff would be okay with 50,000 square feet for the items being looked at tonight and then an additional 50,000 square feet for the deferred items.

Mr. McCullough said no, it would be 50,000 square feet for the entire area, including the deferred lots.

APPLICANT PRESENTATION

Mr. Paul Werner, Paul Werner Architects, agreed with the staff report. He said this came about to provide protection for The Hawk and The Wheel because they are non-conforming uses and if something happens they cannot rebuild.

Commissioner Finkeldei asked if the 50,000 square feet would apply to all properties.

Mr. Werner said yes, all eight. He said there were no plans to add more bars to the area. He said if they add anything to these properties it would be a Site Plan process.

Commissioner Carter said as far as moving it on there may or may not be an issue with RM15 versus RM32.

Mr. Werner said he did not foresee an issue. He said he would like to see some of the bonuses in primary added to secondary.

PUBLIC HEARING

Ms. Carolyn Crawford, Vice President for Sunset Hills Neighborhood Association, was very scared about a Mixed Use district. She said the Mixed Use District was loose and juicy. She said the neighborhood does not want a gas station, liquor store, or bar. She discussed a memo from Scott Miller from last year that discussed violations of bars. She was concerned about crime from bars. She wanted assurance about what would happen in their neighborhood. She asked them to tighten up the Mixed Use District.

Commissioner Liese asked Ms. Crawford to define the term juicy.

Ms. Crawford said poorly defined.

Mr. Dennis Brown, Lawrence Preservation Alliance, was fine with The Hawk and The Wheel needing to be rezoned to protect their property. He felt the rest of the agenda item was quite large, a change from RM32 to Mixed Use primary development for all of the requested properties. Primary development was the most intense development use in the MU Districts. He said the applicant was being vague about the development plans and

pretty much saying nothing was going to happen anytime soon. He felt the neighbors deserved to know. He wondered why change the zoning without more information. He was concerned about the staff report citing "consistency with the Oread Draft Plan." He suggested deferring until the plan is adopted.

Commissioner Carter agreed the Oread Plan needed to be moved forward.

Commissioner Dominguez asked if Mr. Brown understood that other bars would need to come back for a Special Use Permit.

Mr. Brown said he was concerned about the lack of detail in the remainder of the district.

Commissioner Harris asked if these rezoning were approved does it automatically approve Special Use Permits.

Mr. McCullough said that was correct. Certain future uses could be required to get a Special Use Permit and Site Plan.

Mr. John Davis, owns the northeast corner, and he initiated the rezoning. He wants to protect his non-conforming properties. He said they have no intentions or thoughts about redeveloping them whatsoever. He said it would not be a strip of bars because they cannot meet parking requirements.

Commissioner Liese asked if there were any other alternatives to Mixed Use.

Mr. McCullough said not necessarily for the minimum area or to resolve their issue of wanting to legalize the use.

Commissioner Liese inquired about the validity of community concerns versus owner claims that numerous bars cannot happen.

Mr. McCullough said it is possible that there could be an application for a third bar in the area. It would require a Special Use Permit, Site Plan, parking regulations and all the other standards of the district. It could be possible if they did underground parking or a parking variance. He said it would be a high hurdle to get a third bar in that area.

Ms. Carol von Tersch said the letter she submitted for the packet summarized her feelings on the subject. She felt the Oread Plan should be in place first. She felt they should find other ways to protect The Hawk and The Wheel. She requested a deferral.

Commissioner Dominguez asked why it should be deferred.

Ms. von Tersch said it should be deferred because the Draft Oread Plan does not include any other Mixed Use areas in the Oread Neighborhood.

Commissioner Carter asked if there was no other way to protect The Hawk and The Wheel under the current Code.

Mr. McCullough said not in the Code today. He stated for clarification there is one other area in the Oread Neighborhood designated as Mixed Use, it's by the Oread Hotel.

Commissioner Finkeldei asked what the holdup was with the Oread Plan.

Mr. McCullough said after Planning Commission forwarded the Oread Plan to City Commission and a study session was held to introduce the plan. He said there has been movement on it but it has not been placed on an agenda yet.

Commissioner Carter asked if staff had a sense if City Commission would be putting it back on the agenda soon.

Mr. McCullough said he did not have a sense either way.

Ms. Marci Francisco, 1101 Ohio St, said she wanted to make sure there was a plan to protect the neighborhood. She felt it would be better if there were criteria for the Mixed Use District. She summarized the letter she sent. She would rather that other ways to protect The Hawk and The Wheel be explored to protect their non-conforming uses. She was also concerned about the size of the lots with redevelopment. She said if the parcels were not large enough to provide for parking then there would not be underground parking in a very limited lot because there would need to be more circulation space. If the other alternative was parking offsite then obviously the lots aren't large enough. She was concerned about them considering a proposal that could not be used. She said if it is simply protection then there needs to be another way to protect properties that should have protection. She felt there should be restrictions about emptying glass in bins at 3:00am and she would like to see that included in a Special Use Permit.

Commissioner Finkeldei said it sounded like she was saying that the area, as small as it is, could never be created as a Mixed Use District. He asked if she thought it should be bigger in the Oread Plan to allow for bigger lots and redevelopment.

Ms. Francisco said she was saying that they should do something with the non-conforming uses to allow The Hawk and The Wheel to rebuild if something happens. She said they were not talking about developing the whole district, just allowing each of those individual lots to be redeveloped.

Commissioner Finkeldei said they were passing a whole district of Mixed Use.

Ms. Francisco said they are separate lots and cannot go over the lot lines.

Mr. McCullough said it could be replatted, or depending on the setbacks, may be able to build over the lot lines. It would be a minor subdivision to replat into one lot.

Ms. Francisco said they are on opposite sides of the street so they would not be platted into one large lot. She inquired about a sketch of the size of the commercial building with residential above that could be built on 507 W 14th Street, for example.

Commissioner Finkeldei said he was surprised at what she was saying because when they went through the entire Oread Plan, to his knowledge, she always supported 507 W 14th Street being in the plan as Mixed Use and now she was saying she did not want it to be Mixed Use.

Ms. Francisco said her job as a neighbor and property owner was to identify their interests in the Oread Plan and listen to what other people felt would work for them. She thought the property owners should be there to say what possibility they would have for construction in the primary zone.

Commissioner Finkeldei said he thought the Oread Plan was ready to go to City Commission but now she was saying she wanted the plan to change. All along she has supported the plan and now she was saying she wanted the plan to pass but as soon as it passes she would object to what the plan says.

Ms. Francisco said she supports protection for The Hawk and The Wheel. Planning Staff suggested the Mixed Use zoning was what would protect The Hawk and The Wheel. Now that it was before us as a zoning issue there was a situation. She said she sent a note to the Planning Director to ask if it could be developed and she was surprised to hear that it would take underground parking or parking offsite. She said she was assuming that if someone proposed it that they would have some information about how they could actually use this zoning to redevelop their property. She said she was not sure it protected The Hawk and The Wheel in the

way they wanted to be protected. If the property burns down now they would have zoning where they could rebuild a commercial use but would still have to meet the requirements. All they can rebuild is what they have.

Commissioner Singleton said The Hawk and The Wheel would be protected under the Special Use Permit but the other locations would have to go through the process.

Ms. Francisco said the protection that was being given to The Hawk and The Wheel was to rebuild what they have, not to redevelop.

Mr. McCullough said if approved, The Hawk and The Wheel would have an automatic Special Use Permit because any bar in the Mixed Use district requires a Special Use Permit. The language states any structure in use existing in the time of rezoning is allowed to exist in a non-conforming way and be rebuilt so any use could be rebuilt. He said parking is one of the driving forces for using it to its highest use and that is going to be a limitation no matter what the zoning is there.

Commissioner Liese inquired about deferring until the Oread Plan was adopted.

Ms. Francisco said they are doing this for protection of the existing structures and they need to understand the limits on redevelopment. She said she states that from the neighborhood point of view because they do not want the area to expand. They will need additional space beyond the limits of the district to be able to actually develop it as was intended. These are very tight limits for a Mixed Use District.

Commissioner Burger said if the rezonings were passed it could perhaps give City Commission confidence that the Oread Plan might be ready to be approved.

Ms. Francisco said it would give them confidence that these five parcels are ready to approve, not the overall plan.

Ms. Serena Hearn said 93% of the Oread Neighborhood is student/landlord owned/occupied. The Wheel and The Hawk are trying to cooperate with the zoning laws that have been superimposed on the neighborhood. She thought it would be great if there was a little store in the area for people to walk to and buy milk, food items, coffee, etc. She did not feel the Draft Oread Plan was ready and said the Oread Neighborhood was having a meeting to discuss it.

Mr. Kirk McClure, Lawrence Association of Neighborhoods, felt there were too many loose ends to this proposal and should be deferred to tighten up. He said in regard to The Hawk and The Wheel, the bars are seen as institutions and he did not have a problem with them being protected. Procedurally they should not be granted automatic Special Use Permits. He said they were concerned about the Mixed Use details. Form based codes will not protect neighborhoods. He expressed concern about uses allowed that could be nuisances.

Mr. Rob Farha said he would take spot zoning if allowed for The Wheel and The Hawk. He said they worked hours with staff and this was the best avenue. He said whether the plan is or is not in place he would have hired Mr. Werner for this process.

Commissioner Liese asked if there was any downside to deferring this decision.

Mr. Farha said it has been a long process and they have exhausted every avenue.

Ms. Candice Davis said the Draft Oread Plan was worked on for almost two years and was a good plan. She said Ms. Francisco was speaking about tweaking the plan. She said if this was deferred it would put pressure on City Commission to hear the Oread Plan.

Commissioner Hird asked if the plan was adopted as is it provides for Mixed Use in this area. He asked if she would object to Mixed Use in this area.

Ms. Davis said she would support the Oread Plan as is today.

Ms. Beth Reiber said 14th Street has changed over the past year due to change to the KU entrance. She felt that a Mixed Use would create more traffic.

APPLICANT PRESENTATION

Mr. Werner said he would rather not have it deferred. He said there was a positive recommendation from Historic Resources and Planning Staff. He felt the best way to get something in front of City Commission was to move it forward. He said a bar would not be granted by right, it would have to go through the Special Use Permit process and would be a big hurdle.

COMMISSION DISCUSSION

Commissioner Rasmussen said if the rezonings are approved it goes to City Commission for ultimate approval so whether or not the Oread Plan is approved or not is a moot point. If City Commission approves this that is a pretty good indication that they will approve that portion of the Oread Neighborhood Plan. If they don't approve the rezoning then that might be an indication that they have some heartburn over that portion of the plan. Either way he said he did not see that the Oread Neighborhood Plan needs to be completed for this application to move forward. Planning Commission did approve the Draft Oread Neighborhood Plan unanimously and during the discussions we talked about this area potentially having coffee shops, delicatessens, bakeries, or other uses allowed. He said the reason this area was designated as Mixed Use was to provide options in the future. He reminded them that the Mixed Use definition in the Development Code specifically refers to businesses that generate foot traffic. He did not care if someone says that they supported the Oread Plan but not Mixed Use in this area. He would like to see this move forward tonight and would support and follow recommendations from staff.

Commissioner Carter agreed that Mixed Use District has largely been brought up to protect The Hawk and The Wheel but there are other things that could fit in the Mixed Use District, such as a coffee shop. He said there seems to be a separation of urgency of getting the Oread Neighborhood Plan done.

Commissioner Liese said he would like to hear more opinions from the Commission about deferral versus not deferring and the issue about whether there was urgency or not.

Commissioner Hird said the comments he heard this evening were questions whether the right tool was being used to protect The Hawk and The Wheel and that by establishing a Mixed Use District with small practically undevelopable lots, we're inviting in the future for developers to come in and ask for exceptions for parking and other requirements for Site Plan approval. He felt that was based upon an assumption that the intent of the Mixed Use District would be abused and that this would become something it wasn't intended to be. He said he did not want to base a decision on that fear. The failure to move the Oread Plan to City Commission needs to be addressed to City Commission. One way to do that is to pass these rezonings up to them. This will allow City Commission to vote on this item and the Oread Plan together. He said when he voted for the Oread Plan he voted for Mixed Use in this district.

Commissioner Finkeldei said it is an appropriate area for Mixed Use and did not feel this should be deferred. He felt it was a good plan. He reminded the Commissioners about what Mr. Farha said about how this was not put in the Oread Plan just to protect the Hawk and The Wheel, but The Hawk and The Wheel have been asking for over two years how they could be protected. There are other ways; changing the non-conforming use rules or using a CN District, but staff does not really support either of those. He wanted City Commission to put the Oread Neighborhood Plan on the agenda and he agreed the best way to do that was to forward these rezonings on to City Commission.

Commissioner Burger said she liked that it did not just protect The Hawk and The Wheel but also protected the other existing property owners in the area. She thanked staff for looking toward the future. She expressed concern about this potentially allowing a sexually oriented business in the area.

Commissioner Rasmussen inquired about restrictions on sexually oriented businesses that would prohibit it from being in the area.

Mr. McCullough said a Sexually Oriented Media Store is permitted with use standards. (He looked it up in the Development Code) He said there were standards that address the theaters. No sexually oriented business may be located within 1,500 feet of another such business. No business may be located on the same block as property in a Residential Zoning District, Religious Assembly, School, Daycare, etc.

Commissioner Rasmussen said there was the same concern with the Jayhawk Bookstore but it was a false concern because it could not be put there due to it not meeting the criteria. He said the Commission did put some restrictions on the Jayhawk Bookstore rezoning such as excluding light manufacturing and recycling center.

Commissioner Singleton asked if buildings like the ones at 14th & Massachusetts could be built at this location without having to build underground parking.

Mr. McCullough said it was possible and there are options for parking such as shared parking. There may be uses that the Board of Zoning Appeals might grant a variance for. In the Primary zone parking can be reduced by meeting certain bonus requirements.

Commissioner Singleton said Ms. Francisco's comment about this being the wrong tool was interesting.

Mr. McCullough said a recent Text Amendment was created that benefited The Hawk and The Wheel after the Draft Oread Plan was created, so it has been evolving where they could benefit from the Mixed Use District. But it's only been evolving because it is appropriate for Mixed Use in this area.

Commissioner Singleton said the best way to get the Oread Plan in front of the City Commission was to bring up an issue that relates to the Oread Plan and not holding this back. She said she would support the item.

Commissioner Harris said some Mixed Use in that area would be appropriate and would be an amenity to the area. She was concerned about there not being guidelines for how to determine uses allowed. She said she was leaning toward approving the rezonings. If approved she would like to see two conditions added to the Special Use Permits for The Hawk and The Wheel. She would like glass and trash cleared from the exterior of the property, including the public right of way, at the end of each business day. She said she would also welcome some language about emptying trash bins at 3:00am.

Commissioner Burger asked staff to confirm that due to the residential nature of the surrounding area that her concern about sexually oriented businesses was not a concern.

Mr. McCullough said he would look it up in the Development Code.

Commissioner Dominguez said the concerns of the neighbors are valid. He felt they should look at the positives instead of the negatives and felt that Mixed Use would be a good asset to the area.

Mr. McCullough answered Commissioner Burger's question. He said the short answer was yes. He said there is a prohibition for sexually oriented businesses on these blocks because of the residentially zoned property. They would need to be at least 600' from Residential zoned property for the one permitted use of Sexually Oriented Media store that is allowed in the Mixed Use District.

Commissioner Carter wanted to talk about Commissioner Harris' suggested additional conditions to the Special Use Permits. He said the condition of having them clean up the glass sounds good but the challenge is the noise created from cleaning up the glass.

Mr. Farha said from the audience that he sells beer cans, not glass.

Commissioner Liese said he would support moving this forward. He felt the glass issue would be more of a noise ordinance issue.

Commissioner Blaser said he would support moving it forward and felt that the Mixed Use was appropriate for the area.

ACTION TAKEN on Item 9A

Motioned by Commissioner Carter, seconded by Commissioner Finkeldei, to approve the rezoning request Z-11-21-09 for 502 W. 14th Street, from the RM32 (Multi-Dwelling Residential) District to MU (Mixed Use) District as a Primary Development Zone based on the findings presented in the staff report with the following condition and forwarding it to the City Commission with a recommendation for approval:

The entire MU District shall not contain over 50,000 square feet of retail space.

Motion carried 9-1, with Commissioner Harris voting in opposition.

ACTION TAKEN on Item 9B

Motioned by Commissioner Carter, seconded by Commissioner Finkeldei, to approve the rezoning request Z-11-22-09 for 414 W. 14th Street, from the RM32 (Multi-Dwelling Residential) District to MU (Mixed Use) District as a Primary Development Zone based on the findings presented in the staff report with the following condition and forwarding it to the City Commission with a recommendation for approval:

The entire MU District shall not contain over 50,000 square feet of retail space.

Motion carried 9-1, with Commissioner Harris voting in opposition.

ACTION TAKEN on Item 9C

Motioned by Commissioner Carter, seconded by Commissioner Finkeldei, to approve the rezoning request Z-11-23-09 for 1346 Ohio Street, from the RM32 (Multi-Dwelling Residential) District to MU (Mixed Use) District as a Primary Development Zone based on the findings presented in the staff report with the following condition and forwarding it to the City Commission with a recommendation for approval:

The entire MU District shall not contain over 50,000 square feet of retail space.

Motion carried 9-1, with Commissioner Harris voting in opposition.

ACTION TAKEN on Item 9D

Motioned by Commissioner Carter, seconded by Commissioner Finkeldei, to approve the rezoning request Z-11-24-09 for 1340-1342 Ohio Street, including a Special Use Permit for the Bar or Lounge Use, from the RM32 (Multi-Dwelling Residential) District to MU (Mixed Use) District as a Primary Development Zone based on the findings presented in the staff report with the following condition and forwarding it to the City Commission with a recommendation for approval:

The entire MU District shall not contain over 50,000 square feet of retail space.

Motion carried 9-1, with Commissioner Harris voting in opposition.

Commissioner Harris said she was voting against these for lack of guidelines in the MU district.

ACTION TAKEN on Item 9G

Motioned by Commissioner Carter, seconded by Commissioner Finkeldei, to approve the rezoning request Z-11-27-09 for 507 W. 14th Street, including a Special Use Permit for the Bar or Lounge Use, from the RM32 (Multi-Dwelling Residential) District to MU (Mixed Use) District as a Primary Development Zone based on the findings presented in the staff report with the following condition and forwarding it to the City Commission with a recommendation for approval:

The entire MU District shall not contain over 50,000 square feet of retail space.

Motion carried 9-1, with Commissioner Harris voting in opposition.