

PLANNING COMMISSION REPORT
Regular Agenda - Public Hearing Item

PC Staff Report
3/28/11

ITEM NO. 2A RM32 TO MU; .19 ACRES; 1340 TENNESSEE ST (MJL)

Z-1-1-11: Consider a request to rezone approximately .19 acres from RM32 (Multi-Dwelling Residential) to MU (Mixed Use), located at 1340 Tennessee Street. Submitted by Paul Werner Architects, for Gremlin Holdings, LLC., property owner of record.

ITEM NO. 2B RM32 TO MU; .26 ACRES; 1344 TENNESSEE ST (MJL)

Z-1-2-11: Consider a request to rezone approximately .26 acres from RM32 (Multi-Dwelling Residential) to MU (Mixed Use), including establishing a Bar or Lounge use as an automatic Special Use Permit for Bullwinkle's, located at 1344 Tennessee Street. Submitted by Paul Werner Architects, for Lynn Investments LLC., property owner of record.

ITEM NO. 2C RM32 TO MU; .49 ACRES; 1343 TENNESSEE ST (MJL)

Z-1-3-11: Consider a request to rezone approximately .49 acres from RM32 (Multi-Dwelling Residential) to MU (Mixed Use), located at 1343 Tennessee Street. Submitted by Paul Werner Architects, for TK Property's LLC., property owner of record.

ITEM NO. 2D RM32 TO MU; .23 ACRES; 1403 TENNESSEE ST (MJL)

Z-11-25-09: Consider a request to rezone approximately .23 acres from RM32 (Multi-Dwelling Residential) to MU (Mixed Use), located at 1403 Tennessee Street. Submitted by Paul Werner Architects, for DJC Holdings, LLC, property owner of record.

ITEM NO. 2E RM32 TO MU; .14 ACRES; 1400 OHIO ST (MJL)

Z-11-26-09: Consider a request to rezone approximately .14 acres from RM32 (Multi-Dwelling Residential) to MU (Mixed Use), located at 1400 Ohio Street. Submitted by Paul Werner Architects, for Wakarusa Partners, property owner of record.

ITEM NO. 2F RM32 TO MU; .29 ACRES; 413 W. 14TH ST (MJL)

Z-11-28-09: Consider a request to rezone approximately .29 acres from RM32 (Multi-Dwelling Residential) to MU (Mixed Use), located at 413 W. 14th Street. Submitted by Paul Werner Architects, for Douglas J. Compton, property owner of record.

STAFF RECOMMENDATION: Staff recommends approval of the items 2A-2F (noted below) to rezone from the RM32 (Multi-Dwelling Residential) District to MU (Mixed Use) District with all properties identified as a Primary Development Zone and a SUP for the Bar or Lounge Use at 1344 Tennessee Street and forwarding it to the City Commission with a recommendation for approval. The recommendation is based on the findings presented in the staff report and made with the following conditions:

1. Item 2A: Z-1-1-11; 1340 Tennessee Street
2. Item 2B: Z-1-2-11; 1344 Tennessee Street - including a Special Use Permit for the Bar or Lounge Use
3. Item 2C: Z-1-3-11; 1343 Tennessee Street
4. Item 2D: Z-11-25-09; 1403 Tennessee Street
5. Item 2E: Z-11-26-09; 1400 Ohio Street
6. Item 2F: Z-11-28-09; 413 W. 14th Street
 1. A 16' wide access shall be designated where an alley is currently platted but not dedicated along the south side of W. 14th St between Ohio and Tennessee Sts.

Condition on all properties:

1. The entire MU District, including the existing MU District comprised of 414, 502 and 507 W. 14th St, 1340 and 1346 Ohio St., shall not contain over 50,000 square feet of retail space.

Reason for Request:

From deferred items:

This request is being submitted for the rezoning of the residential properties located at 413 West 14th St. in order update the zoning to match the historical commercial use. Rezoning is also being requested for the residential properties located at 1400 Ohio St. and 1403 Tennessee St. in order to provide continuity to this unique area of Lawrence.

From new items:

This rezoning request is being submitted for 1340 Tennessee, 1343 Tennessee and 1344 Tennessee. These properties are located on the northeast and northwest corner of 14th and Tennessee. The rezoning request is being submitted to update the properties with the recommended MU rezoning classification and adopted with the approval of the Oread Neighborhood Plan. The rezoning of these properties will add continuity to the previously approved MU zoning to the west along 14th and Ohio Street.

KEY POINTS

- The proposed rezoning is consistent with the *Oread Neighborhood Plan*.
- The area is and historically has been a mixed use area.
- The proposal is generally in conformance with the Comprehensive Plan Chapter 6 regarding the Mixed Use Districts.
- The proposed rezoning would make a currently nonconforming Bar use, Bullwinkle's, conforming and would establish automatic special use permit for the property.
- The proposal would increase the size of the existing MU District to 1.6 acres.

ASSOCIATED CASES/OTHER ACTION REQUIRED

- DR-07-65-10: 1403 Tennessee Street; Rezoning; Certified Local Government Review
- DR-07-66-10: 1400 Ohio Street; Rezoning; Certified Local Government Review
- DR-07-68-10: 413 W 14th Street; Rezoning; Certified Local Government Review
- DR-1-6-11: 1340 Tennessee Street; Rezoning; Certified Local Government Review
- DR-1-7-11: 1344 Tennessee Street; Rezoning; Certified Local Government Review
- DR-1-8-11: 1343 Tennessee Street; Rezoning; Certified Local Government Review

PLANS AND STUDIES REQUIRED

- *Traffic Study* – Not required for rezoning
- *Downstream Sanitary Sewer Analysis* – Not required for rezoning
- *Drainage Study* – Not required for rezoning
- *Retail Market Study* – Not required if approved with above condition

ATTACHMENTS

- Application materials

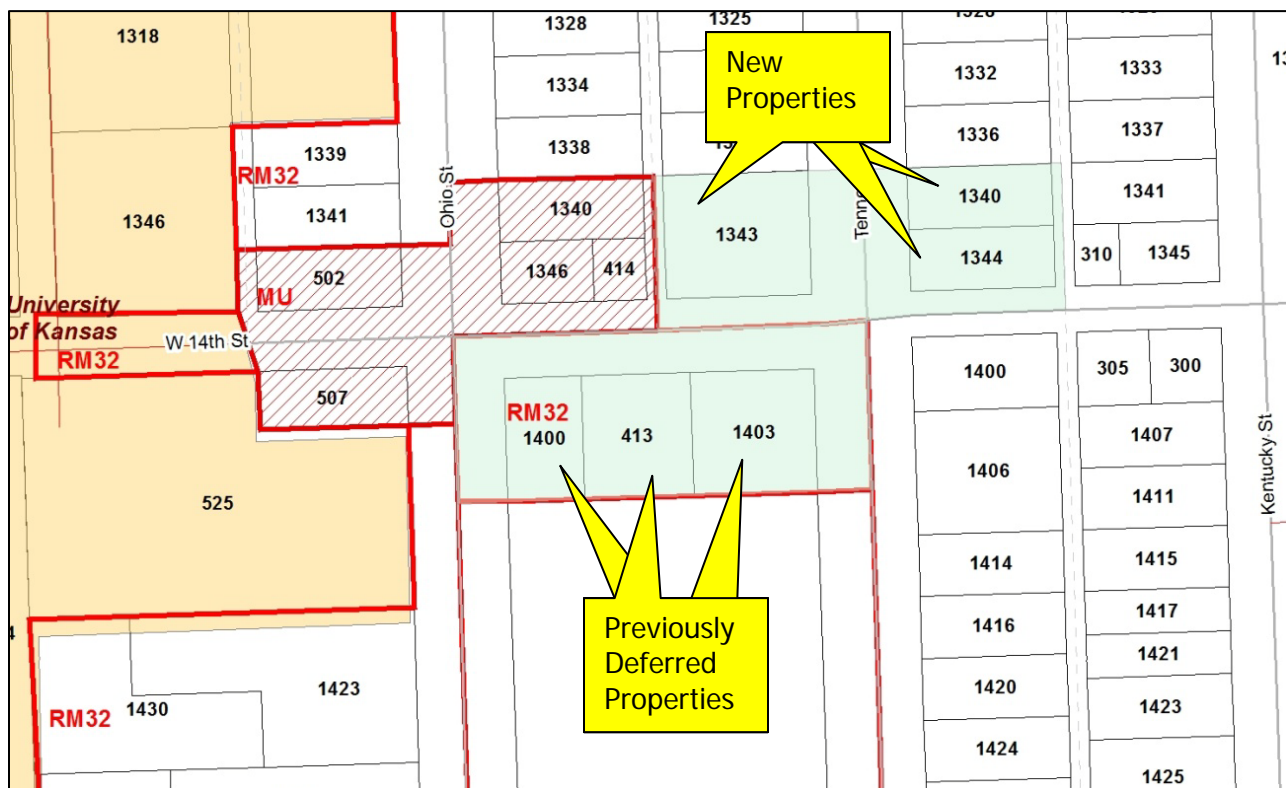
PUBLIC COMMENT RECEIVED PRIOR TO PRINTING

- None

Project Summary:

The request is to rezone the properties at 413 W. 14th St., 1400 Ohio St., and 1340, 1343, 1344 and 1403 Tennessee St. from the RM32 (Multi-Dwelling Residential) District to the MU (Mixed Use) District. The properties are generally located along W. 14th St., just east of the main KU campus. All the properties are developed and there are no plans for redevelopment at this time.

The Code requires a Special Use Permit for the Bar or Lounge Use in the MU District and also sets out provisions for an automatic SUP for an existing Bar or Lounge Use when rezoned to the MU District. If rezoned to the MU District, Bullwinkle's (1344 Tennessee St.) would automatically receive a SUP for the use since it is an existing bar. Bullwinkle's is currently restricted to a Cereal Malt Beverage (CMB) license. This use would no longer be nonconforming and the property owner would potentially be eligible for Drinking Establishment (liquor) license following the rezoning. This would permit the sale of liquor in addition to the potential to sell alcohol until 2 a.m.



1. CONFORMANCE WITH THE COMPREHENSIVE PLAN

Applicant's Response: *Chapter 14 of Horizon 2020 references the Oread Neighborhood Plan as the specific plan for this area. The Oread Neighborhood Plan shows on page 4-4 that the subject area is appropriate for MU Zoning.*

Staff Finding – Staff finds that the proposal is in conformance with the comprehensive plan. Chapter 14 – Specific Plans, Oread Neighborhood Plan identifies this area as a mixed use district. Chapter 6 – Commercial Land Use includes a Mixed Use District under the Commercial Center Category. It states that areas that are currently mixed use in nature should be preserved. Policy 3.14 outlines the criteria for Mixed Use Districts which includes

a mix of residential and non-residential uses, and multi-modal services. Currently the area is a mix of multi-family and bar uses and is within a quarter mile of various bus routes. Additionally it is identified on the bikeways map as a future bike route.

2. ZONING AND USE OF NEARBY PROPERTY, INCLUDING OVERLAY ZONING

Current Zoning and Land Use:	RM32 (Multi-Dwelling Residential) District; 413 W. 14 th St.: Apartments 1400 Ohio St.: Apartments 1403 Tennessee St.: Apartments 1343 Tennessee St: Apartments 1340 Tennessee St: Apartments 1344 Tennessee St: Non-conforming Bar, Apartments
Surrounding Zoning and Land Use:	North: RM32 District; apartments MU District; apartments, congregate living West: MU District; apartments, bars South: RMG (Multi-Dwelling Residential-Greek Housing) District; Beta Theta Pi Fraternity (John Palmer and Margaret Usher House-National Register of Historic Places) RM32 District; apartments East: RM32 District; apartments, detached dwelling

Staff Finding – The properties to the west of the subject properties are zoned MU and developed with apartments and bars. The property to the east is zoned RM32 and developed with a mix of apartments and single-dwelling structures. The property to the south is zoned RMG and developed with a fraternity which is a house listed on the National Register of Historic Places. The properties to the north are zoned RM32 and developed with apartments.

3. CHARACTER OF THE NEIGHBORHOOD

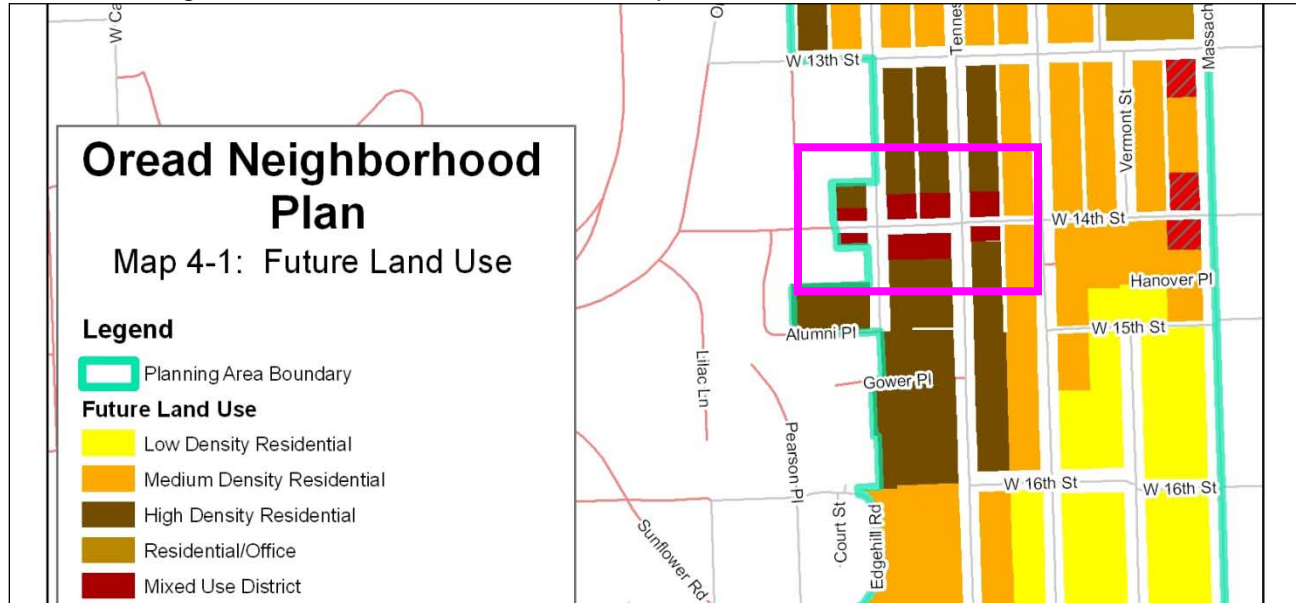
Applicant's Response: *The neighborhood is part of the Oread Neighborhood Association and is surrounded by Kansas University (U-KU) to the east and south as well as Greek housing (RMG) to the south. The remaining neighborhood is composed of mostly rental properties and a few single family homes (RM32).*

Staff Finding – The subject properties are located in a historic area directly adjacent to the main KU campus. The area surrounding subject area is developed with multi-family structures, single-dwelling structures and Greek housing. This area was part of the early development of Lawrence. MU zoning would be compatible with the character of the area.

4. PLANS FOR THE AREA OR NEIGHBORHOOD, AS REFLECTED IN ADOPTED AREA AND/OR SECTOR PLANS INCLUDING THE PROPERTY OR ADJOINING PROPERTY

Staff Finding – The subject area is within the planning area of the *Oread Neighborhood Plan* which was approved in 2010. The properties to the west were rezoned to the MU District in 2010. One property remains identified in the plan but outside of the request to be rezoned to MU.

Oread Neighborhood Plan Future Land Use Map



5. SUITABILITY OF SUBJECT PROPERTY FOR THE USES TO WHICH IT HAS BEEN RESTRICTED UNDER THE EXISTING ZONING REGULATIONS

Applicant's Response: *The subject commercial property where Bullwinkle's was located is not suitable to the use to which it has been restricted due to the current RM32 zoning. The existing residential properties are suitable to their current zoning restrictions however; MU zoning would still allow them to exist as they are in addition to allowing other uses as listed above should the properties be redeveloped.*

Staff Finding – The subject properties are currently zoned for high-density residential uses. One of the properties is currently developed with nonconforming commercial uses. Historically this area has been a mix of uses. In the past there have been restaurants, barbers, bookstores and various types of residential uses. The residential uses are suitable for the current zoning but the drinking establishment is not suitable for the RM32 District. If damaged past a certain threshold, the bar use would need to comply with the RM32 District uses.

6. LENGTH OF TIME SUBJECT PROPERTY HAS REMAINED VACANT AS ZONED

Applicant's Response: *The south half of 1343 Tennessee has been vacant since the time period between 1918 and 1927 when the former house that sat on the lot was torn down and replaced with the apartment building on the north side of the site. 1340 and 1344 Tennessee are not vacant and have not been since at least 1912.*

Staff Finding – The subject properties were developed in the late 1800's and early 1900's and have been a variety of commercial and residential uses over time. The property was zoned RD (Residence- Dormitory) with the adoption of the 1966 Zoning Ordinance and then converted to the RM32 District with the adoption of the *Land Development Code* in 2006.

7. EXTENT TO WHICH APPROVING THE REZONING WILL DETRIMENTALLY AFFECT NEARBY PROPERTIES

Applicant's Response: *A possible detrimental effect to the public by rezoning the properties to MU would be an increase in traffic and a need for more parking locations which would be addressed*

per the Development Code. However, it is also possible that this is not a destination served by people getting in their cars and driving there but, a destination for hundreds of students on foot walking to and from campus daily which would not increase vehicular traffic but instead increase pedestrian traffic, in addition, the surrounding properties and their uses are of a nature that the proposed MU zoning would not detrimentally effect nearby properties but would serve them by providing uses such as a coffee shop, café, offices, drug store or other retail uses on the first floor and residential uses on the second or third floor.

Staff Finding – The rezoning could result in redevelopment of the district into more intensive uses causing an increase in traffic, both pedestrian and vehicular, in the area though these impacts should not be detrimental to the area.

8. THE GAIN, IF ANY, TO THE PUBLIC HEALTH, SAFETY AND WELFARE DUE TO THE DENIAL OF THE APPLICATION, AS COMPARED TO THE HARDSHIP IMPOSED UPON THE LANDOWNER, IF ANY, AS A RESULT OF DENIAL OF THE APPLICATION

Applicant's Response: The gain to the public would be a unique commercial/residential area to serve the surrounding neighborhoods, KU and Lawrence. The hardship imposed upon the property owners if the rezoning is denied would be the lack of opportunity to take advantage of the MU District as the Oread Neighborhood Plan suggests. Should the RM32 zoning remain these properties would not redevelop to fit in with the surround MU uses causing the incompatibility that currently exists in the area to remain. Additionally hardship would be placed on the commercial use of Bullwinkle's should the building ever be destroyed by a natural disaster or a fire because they would not be allowed to rebuild their existing business.

Evaluation of this criterion includes weighing the benefits to the public versus the benefit of the owners of the subject property. Benefits are measured based on anticipated impacts of the rezoning request on the public health, safety, and welfare.

Staff Finding – The potential gain to the public health, safety and welfare if the rezoning was denied could be that the area remains as is with the potential future elimination of existing nonconforming uses. There would be less impact as far as a potential increase in traffic and potential uses that could develop with the MU District. The property owners could have a hardship imposed on them if not rezoned and the property is destroyed and not able to be redeveloped with the existing uses.

9. CONCLUSION

Historically this area has been a mix of uses. Currently the uses are multi-dwelling structures and a non-conforming bar. The area is zoned RM32 but abuts a new MU District and an RMG District.

MU District

The MU District is primarily intended to permit a variety of land uses together in one or more structures on a site including governmental, retail, office, public and community facilities, institutional, religious, and residential uses in a pedestrian-oriented and transit-oriented setting. The MU District zoning classification may not be appropriate in all areas of the city. The Code states that to be eligible for rezoning to the MU District, a site proposed for mixed use development shall be:

1. Within one-quarter of a mile of designated transit route at the time the rezoning is initiated; and (meets)

2. Near or adjacent to the intersection of arterial streets as per the adopted major thoroughfares map; or (does not meet)
3. Within one-quarter of a mile of university campuses; or (meets)
4. Within one-quarter of a mile of downtown, the boundaries of which are described in Chapter 6 of Horizon 2020; or (does not meet)
5. Immediately adjacent to public parks or open space; or (does not meet)
6. An existing nonresidential development proposed for redevelopment. (potentially meet in the future)

The Code requires the proposal meet number 1 above and any of number 2-6. This proposal is within one-quarter of a mile of several bus routes, one on Mass St. and several on campus, and within one-quarter of a mile of the university.

Development Zones

As part of the application, the applicant must designate development zones for the district. Development zones govern permitted density on the site as well as building height, scale and form. The three development zones (primary, secondary and tertiary) are hierarchical in terms of development intensity permitted. A proposal to rezone to the MU District need not designate all three development zones. Development zones shall be designated to ensure compatibility with surrounding existing development. The code defines the development zones as follows:

1. Primary Development Zone

The Primary Development Zone is that area of land within a Mixed Use development which is designated for the most intense development allowed by the District. Primary Development Zones shall contain Vertical Mixed Use Structures with a mixture of both residential and nonresidential uses and no interruption of Building Frontage along the Public Frontage. Where a Primary Development Zone fronts upon a Public Frontage, such area shall be designated as Primary Public Frontage. A Primary Public Frontage shall be designed to accommodate heavy pedestrian traffic and ground-level nonresidential uses. Residential uses shall not be permitted on the ground level of Structures in the Primary Development Zone.

2. Secondary Development Zone

The Secondary Development Zone is that area of land within a Mixed Use development which is designated for less-intense development, relative to that permitted by a Primary Development Zone. Secondary Development Zones may contain Vertical Mixed Use Structures, Horizontal Mixed Use Structures or single-use Structures with interruption of Building Frontage along the Public Frontage allowed only for Access to Parking Areas, for Alleys or service lanes. Where a Secondary Development Zone fronts a Public Frontage such area shall be designated as Secondary Public Frontage. A Secondary Public Frontage shall be designed to accommodate moderate amounts of pedestrian traffic, and if planned, vehicular Access to Parking Areas and service lanes in a manner that minimizes pedestrian-vehicular conflict. Secondary Development Zones may contain both nonresidential ground-level uses as well as ground level residential uses.

3. Tertiary Development Zone

The Tertiary Development Zone is that area of land within a Mixed Use development which is designated for the least-intense development, relative to that permitted in the other zones. Tertiary Development Zones shall permit a

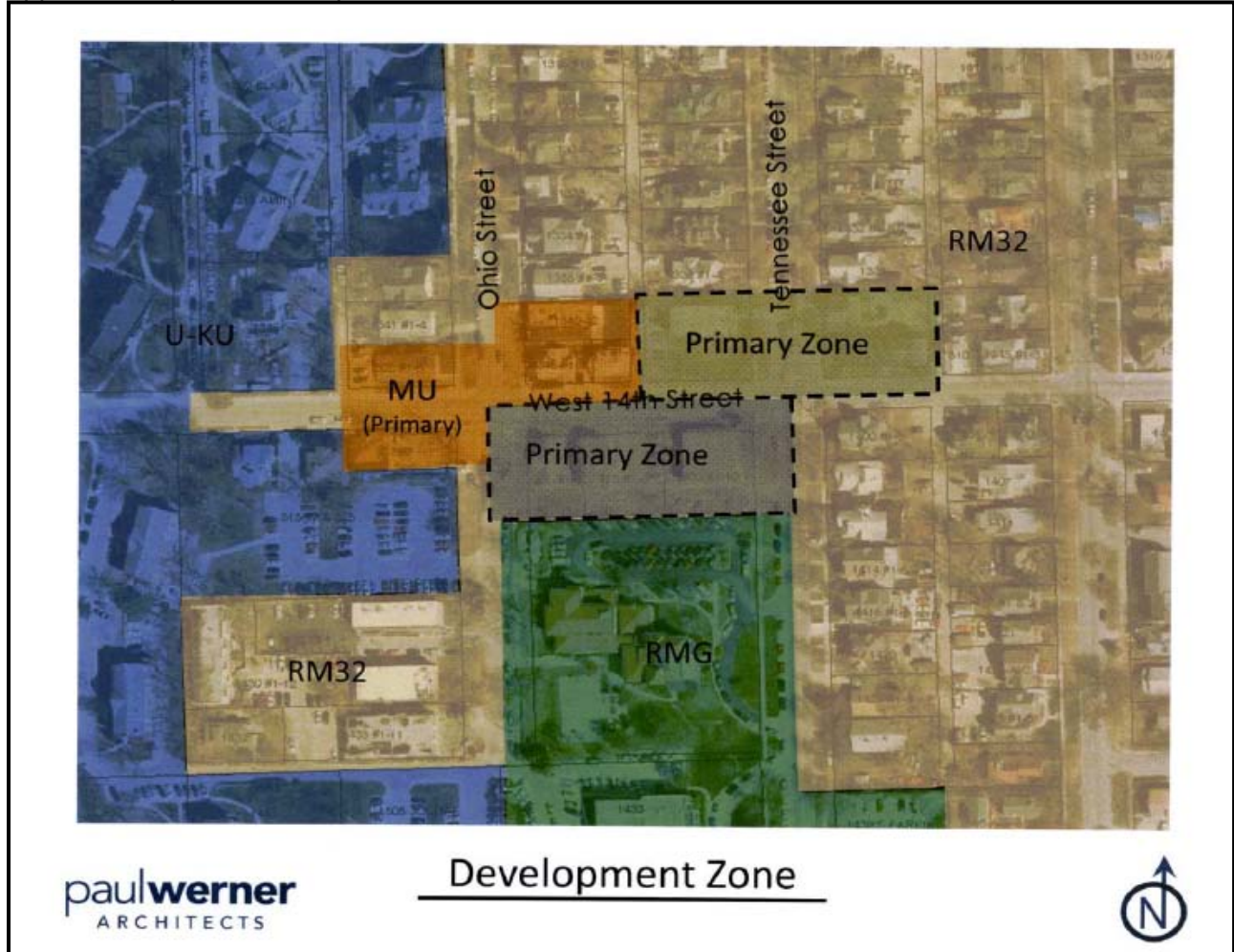
development intensity which is no greater than that of surrounding existing development. Such zones shall permit a development form which is consistent with that of surrounding existing development (i.e. two-story detached residential Dwellings across the street from existing Structures which are of the same form, etc.). Nonresidential uses shall only be permitted in a Tertiary Development Zone if the existing surrounding development contains such nonresidential uses. A Tertiary Development Zone shall only permit a residential use type which exists in surrounding development.

Additionally the Code lays out public frontages for each development zone which can be found in Section 20-1108. These descriptions and diagrams show how these frontages shall be planned and are urban form. These standards must be followed when redeveloping or developing with a Major Development Project.

The designation of the development zones is made by looking at the context of the neighborhood around the proposed district and taking into consideration the subject properties' existing uses and building heights along with the adjacent properties' uses and building heights. The Code states that the developments "shall be compatible with existing development which surrounds the proposed mixed use development." Compatibility is best achieved through a transition in building form, scale and intensity rather than through uses, peripheral buffers or landscaping.

Adjacent to the subject area are apartments and a fraternity. All of these buildings are 2-3 stories in height. The applicant has designated the entire district as a Primary Development Zone and submitted the supporting information. See attached application packet. This could create a district similar to the feel of downtown with structures abutting each other and no breaks between buildings except for streets and alleys. The longest block face in the subject area is comprised of the 3 lots on the south side of W. 14th St. between Ohio and Tennessee Sts. For comparison, a building developed there could be approximately 50' shorter in length than Hobbs-Taylor Lofts building located along New Hampshire St. Because the surrounding neighborhood is made up of individual structures with front and rear yards, staff believes the largest uninterrupted block face, along W. 14th St. between Ohio and Tennessee Sts., should be required to dedicate a 16' wide access where an alley is platted. This allows the uses and density of the Primary Zone but mimics the historic fabric, similar to that across W. 14th Street, with potential building massing being no larger than in the existing MU District at 117' X 100' lots.

Applicant Proposed Development Zones



The subject area is within the historic environs of the John Palmer and Margaret Usher House which is located directly south at 1425 Tennessee St. and the William Priestly House located at 1505 Kentucky St. Because these properties are within the historic environs, the Historic Resources Commission must also review and make a determination on the proposed rezonings. At their February 17th meeting, the HRC approved all of the rezonings with the following conditions: 1340 Tennessee St, 1344 Tennessee St and 1343 Tennessee St:

1. The applicant will work with the Historic Resources Administrator to develop future design plans.
2. Any changes to the approved project will be submitted to the Historic Resources Commission prior to the commencement of any related work.

1403 Tennessee St, 1400 Ohio St, 413 W 14th St:

1. The applicant will work with the Historic Resources Administrator in the design process to create future development;
2. Future development along 14th Street must include a break of 16' with access to the rear of the property line;
3. Any changes to the approved project will be submitted to the Historic Resources Commission prior to the commencement of any related work.

Historic Resources staff believes that a large building with an uninterrupted facade is not consistent with the pattern of the other structures or the historical building pattern of the area. It has been determined that a structure of that type would not meet the Secretary of the Interior Standards and Guidelines for Rehabilitation and Standards and Guidelines for Evaluating the Effect of Projects on Environs and would be difficult to obtain approval from the Historic Resources Commission to construct. Therefore, requiring a 16' access where a platted alley is located in the block capturing 1400 Ohio St., 413 W. 14th St., and 1403 Tennessee St. would result in more compatible redevelopment with the historic fabric of the neighborhood and similar massing as the properties across W. 14th St.



Nonconforming

If the subject properties are rezoned to the MU District, some of the structures may become nonconforming, if they are not already nonconforming. The nonconforming structures are permitted by Code to remain until proposed to be modified to the extent of a Major Development Project. Any modifications that qualify as a Minor or Standard Development Project are permitted and the project would not be required to meet the standards of the MU District.

By rezoning to the MU District some uses may become non-conforming such as a ground floor dwelling unit in a Primary Development Zone. These uses are permitted to remain as is until redevelopment. Registering the use under Section 20-1505 of the code would offer rights in the Non-Conforming Use section, Section 20-1502, of the code.

Retail Limit

Section 20-1107 of the Code requires a Retail Market Study for any application for site plan or zoning that could result in 50,000 square feet or more of additional floor area for retail businesses in the City. Because there is the potential for this district to develop with 50,000 square feet or more of retail, a Retail Market Study is required. In place of this requirement, since no redevelopment is proposed, a condition is recommended to be placed on each property that as a whole, the district cannot contain more than 50,000 square feet of retail space. These properties

would be added to the existing MU District to the west and the district as a whole, could not contain more than 50,000 square feet of retail uses.

Bars in the MU District

Currently the existing bar is a non-conforming use in the RM32 District and permitted with a Special Use Permit (SUP) in the MU District. The bar, if rezoned to the MU District, would automatically be granted a SUP and the public hearing for the rezoning would also be a public hearing for the SUP. The use would no longer be nonconforming.

Currently Bullwinkle's has a Cereal Malt Beverage (CMB) license. This permits the sales of cereal malt beverages and requires the establishment to close at midnight. This site has not been permitted a Drinking Establishment License because of the existing non-conforming status. If 1344 Tennessee is rezoned and a SUP is approved, the site would no longer be non-conforming and the property owner could request a Drinking Establishment License. This would permit the establishment to serve liquor and be open until 2 a.m. This could impact the area surrounding the property.

At the public hearing, the Planning Commission has the opportunity to place any conditions on that SUP that are deemed appropriate. This use then is regulated under the SUP section of the Code and the City Commission is able to revoke, suspend, or change the SUP if there are violations of the conditions of the SUP, City Code, or State or Federal Law. At this time, staff is not recommending any conditions be placed on the bar located at 1344 Tennessee St.

PROFESSIONAL STAFF RECOMMENDATION

Staff recommends approval of the items 2A-2F (noted below) to rezone from the RM32 (Multi-Dwelling Residential) District to MU (Mixed Use) District with all properties identified as a Primary Development Zone and a SUP for the Bar or Lounge Use at 1344 Tennessee Street and forwarding it to the City Commission with a recommendation for approval. The recommendation is based on the findings presented in the staff report and made with the following conditions:

1. Item 2A: Z-1-1-11; 1340 Tennessee Street
2. Item 2B: Z-1-2-11; 1344 Tennessee Street - including a Special Use Permit for the Bar or Lounge Use
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 1. A 16' wide access shall be designated where an alley is currently platted but not dedicated along the south side of W. 14th St between Ohio and Tennessee Sts.

Condition on all properties:

1. The entire MU District, including the existing MU District comprised of 414, 502 and 507 W. 14th St, 1340 and 1346 Ohio St., shall not contain over 50,000 square feet of retail space.