

ITEM NO. 3A RM32 TO MU-PD; 2.391 ACRES; 1101 INDIANA ST (SLD)

Z-13-00516: Consider a request to rezone approximately 2.391 acres from RM32 (Multi-Dwelling Residential) District to MU-PD (Mixed Use with PD Overlay) District, located at 1101 Indiana St. Submitted by Hartshorne Plunkard Architects, for Berkeley Flats Apartments LLC, property owner of record.

ITEM NO. 3B PRELIMINARY DEVELOPMENT PLAN FOR HERE @ KANSAS; 1101 INDIANA ST (SLD)

PDP-13-00518: Consider a Preliminary Development Plan for HERE @ Kansas, a mixed use multi-dwelling residential apartment building with ground floor retail uses, located at 1101 Indiana St. Submitted by Hartshorne Plunkard Architects, for Berkeley Flats Apartments LLC, property owner of record.

STAFF PRESENTATION

Commissioner Rasmussen disclosed ex parte that he talked with the applicant, Mr. Jim Heffernon several times. He said Mr. Heffernon's great great great grandmother was sisters with his great great great grandmother. He said since he was not able to attend the Planning Commission Mid-Month meeting where additional information was provided about the HERE @ Kansas project he met with Mr. Heffernon on February 11, 2014 and received that information.

Ms. Sandra Day presented items 3A and 3B together.

APPLICANT PRESENTATION

Mr. Jim Heffernon, HERE Enterprises, said currently there were two curb cut locations that provided access to the current parking lot of Berkley Flats, one on 11th Street and the other on Mississippi Street. He said the new design would eliminate all vehicular access on 11th Street due to safety concerns with the topography. He said when the project was being designed to fit within the context of its surrounding. He said one of the criteria for the zoning was that 7,700 square feet of outdoor open space be provided. He said he was proud of the fact that they were proposing 58,000 square feet of open space, which was 7 ½ times more than what was required by the Code. He said the project would provide outdoor dining venues. He said in addition, there were two 5,500 square feet indoor courtyards. He said the roof would contain 27,000 square feet of open space. He showed drawings on the overhead of what the project would look like. He said the garage would be composed of three levels and contain automated parking.

Commissioner Josserand asked if KU had any input or expressed any concerns.

Ms. Day said KU provided general comments.

Mr. Heffernon said

PUBLIC HEARING

Mr. Norman Bell said he grew up at 1115 Indiana Street and that his mother owns the house. He expressed concern for the safety of his mother. He stated there used to be an alley behind 1115 Indiana Street and that his mother parks her vehicle behind the house. He said the new development would block his mother's house in by building around it on three sides.

APPLICANT CLOSING COMMENTS

Mr. Heffernon showed a picture of 1115 Indiana Street and the topography of the area. He stated the new proposed building would be farther south and farther west than the current Berkley Flats building. He said 1115 Indiana Street was fenced in on three sides and an improvement with the proposed project would be the location of the trash, which was currently outside the back of 1115 Indiana Street. He said the project took into consideration the effects of the sun on that property over a period of time. He showed shadow studies for different times of the year on the overhead. He said the effect of sun exposure to the house was remarkably

mitigated. He said regarding safety, soil engineers determined the setbacks and parking structure were such that the foundation and integrity of the house would not be impaired. He said regarding the nature of access, currently there was an undocumented license of understanding that the property owner of 1115 Indiana Street, Ms. Georgia Bell, uses to drive through the parking lot of Berkley Flats to a gate that she manually opens and enters. He said they thoroughly researched it and that in Kansas law as long as there was access to a public street there was no easement of necessity. He said he discussed with staff about providing a designated parking spot on Indiana Street for the occupant of 1115 Indiana Street.

COMMISSION DISCUSSION

Commissioner Liese asked if there was a stairway to 1115 Indiana Street.

Mr. Heffernon said there was an existing staircase to Indiana and he showed a picture of it on the overhead.

Commissioner Liese inquired about any improvements to the stairway.

Mr. Heffernon said the stairway was not his property to improve.

Commissioner Rasmussen asked the staff attorney to respond to the applicant's interpretation about Kansas law. He asked if staff thought it was a good idea to reserve a parking spot on Indiana Street.

Mr. Randy Larkin, staff attorney, said the statement about the law was correct. He said if there was access to the street to get to the property it would be fine. He said if the property was cut off and can't get access the law would probably impose an easement of necessity across someone else's property. He said if there was access to the street there would be no easement.

Commissioner Rasmussen asked if there could be an easement by adverse possession in the state of Kansas.

Mr. Larkin said yes. He said whether there was in this case or not he did not know.

Mr. McCullough said one of the first issues reviewed and looked at were the records of the existing apartments to determine whether or not there was an instrument of access to the back lot. He said they did not find anything. He said essentially the research found there was no legal access that provided access to 1115 Indiana Street. He said there was some sort of unwritten agreement with the current owners of Berkley Flats to use the surfaced parking lot as a way to get in to Ms. Bell's back property. He said the design to keep and maintain some form of driveway would not benefit the project or be very feasible given the mixed use project. He stated one idea that was not decided yet was to grant some sort of permit parking in the front of the lot to 1115 Indiana Street. He said there were lots in the city that did not have any parking and got all their access from on-street parking. He said this project was not unique in that perspective. He said the reason they were considering it here was because it was a direct impact of a development on the property.

Commissioner Rasmussen asked Mr. Herrernon about his attempts to purchase the property.

Mr. Heffernon said he had met with Ms. Bell, the owner of 1115 Indiana Street, and also talked with her on the phone, totaling about 12 hours. He said HERE had offered her \$600,000 for her house and that he would be prepared to honor that today. He said Ms. Bell wanted more money.

Commissioner Denney asked if Mr. Bell grew up in the house at 1115 Indiana Street.

Mr. Bell said yes.

Commissioner Denney asked if there used to be an alley behind 1115 Indiana Street.

Mr. Bell said he was almost positive there used to be an alley behind 1115 Indiana Street.

Commissioner Denney asked if there was ever a garage off of the alley behind the house.

Mr. Bell said no, he didn't remember a garage. He said they parked on Indiana Street but mainly parked behind the house.

Commissioner Liese felt substantial efforts had been made to help Ms. Bell by the City and the applicant.

Mr. Bell said his mother was 93 years old and could not hear very well and could get confused. He said he recommended that she obtain a lawyer.

Commissioner Liese asked what Mr. Bell thought would help his mother if the development moved forward.

Mr. Bell said his mother needed an attorney and needed to sell the property and be satisfied.

Commissioner Liese asked if Mr. Bell would be satisfied if a conclusion was reached with an attorneys help.

Mr. Bell said yes.

Commissioner Culver asked how the development plan would change if that particular piece of property, 1115 Indiana Street, was acquired.

Mr. Heffernon said inefficiencies in the parking design would not be necessary. He said it may create additional commercial space on Indiana Street and a nominal addition of units above that. He said it would also create a third interior courtyard.

Commissioner Liese asked Mr. Heffernon if Planning Commission approved the development to what extent he would be open to talking to Ms. Bell's lawyer about a fair deal.

Mr. Heffernon said he had suggested to Ms. Bell on numerous occasions that she obtain a lawyer. He said he researched public council for her but that free public council was not available on this subject matter. He said HERE retained a lawyer through Stevens and Brand and offered that the lawyer sit with her and go through a simple sale contract but she refused.

ACTION TAKEN on Item 3A

Motioned by Commissioner Liese, seconded by Commissioner Struckhoff, to approve the request to rezone approximately 2.391 acres from RM32 (Multi-Dwelling Residential) District to MU-PD (Mixed Use with PD Overlay) District based on the findings presented in the staff report and forwarding it to the City Commission with a recommendation for approval.

Commissioner von Achen asked what 1115 Indiana Street would be zoned.

Ms. Day said it would remain RM32.

Commissioner Rasmussen said he was excited the Oread Neighborhood Plan that was approved a few years ago was actually going to get used.

Commissioner Culver agreed that it was neat to see an area plan being utilized.

Commissioner Josserand said parking was a critical resource in the Oread Neighborhood and that a novel solution had been come up with for parking at 1115 Indiana Street. He said he would support the project but expressed concern about the resident of 1115 Indiana Street and hoped future negotiations would result in some sort of satisfactory arrangement.

Commissioner Denney felt a development like this was a huge improvement in the public welfare and safety of that intersection. He said he had great sympathy for the property owner of 1115 Indiana Street. He said there was probably an alley there in the past and that when the property was transitioned from housing to an apartment complex the alley was probably vacated. He said in the interest of the greater good of the area he would support the project.

Commissioner Liese hoped some decision could be made with the property owner of 1115 Indiana Street. He said in terms of her safety he hoped whatever happened would make her life even more safe and comfortable. He encouraged Mr. Bell to stay involved in the process.

Commissioner Britton felt this was a great project and he was impressed by the development group and their interactions with Ms. Bell. He supported the project and hoped an agreement could be made with what Ms. Bell should do with her property.

Commissioner Kelly said it was a historic area and 1115 Indiana Street was a historic home. He encouraged the developer to honor that space and the history of the property if it was acquired.

Unanimously approved 10-0.

ACTION TAKEN on Item 3B

Motioned by Commissioner Liese, seconded by Commissioner Graham, to approve the HERE @ Kansas Preliminary Development Plan based upon the findings of fact presented in the body of the staff report and subject to the following conditions:

1. Provision of a revised plan to reflect correct unit and density

Unanimously approved 10-0.

Motioned by Commissioner Liese, seconded by Commissioner Graham, to approve the variance associated with HERE @ Kansas Preliminary Development Plan for the reduced right-of-way for 11th Street.

Unanimously approved 10-0.