

AREA PLAN COMMISSION OF EVANSVILLE AND VANDERBURGH COUNTY

Regular meeting held at 4:00 P.M. in Room 301
Civic Center Complex - Administration Building
Evansville, Indiana

October 13, 2005

ROLL CALL

Mr. Foster: I would like to call the October 13, 2005 meeting of the Area Plan Commission of Evansville and Vanderburgh County to order. Will the secretary please call the roll?

Members Present:

Tammy Barnett, Derek Dunigan, Roger Herrin, Jeff Kniese, Mike Lockard, Cheryl Musgrave, Yvette Payne, Stacy Stevens, Mark Foster

Members Absent:

Bill Jeffers, Phil Offerman, Bill Pedtke, Curt Wortman

Area Commission Staff Present:

Blaine Oliver, Assistant Director; Beverly Behme, Zoning Administrator; Janet Davis, Zoning Enforcement Officer; Donna Holderfield, Zoning Enforcement Officer; Kevin Winterheimer, Counsel

APPROVAL OF MINUTES

Mr. Foster: Is there a motion to approve the September minutes? (Motion was made and seconded.) The minutes of the September meeting are approved.

I would like to welcome all of you here this evening on behalf of my fellow Commissioners and the members of the staff of the Area Plan Commission. For those of you who have not been here before and are not familiar with the process, we are generally a recommending body that meets the second Thursday of each month. We recommend zoning decisions to the City and County legislative bodies. However, the Area Plan Commission is the sole authority on subdivisions.

REZONINGS

Mr. Foster: For rezonings, it takes seven affirmative votes to recommend approval of a petition or seven negative votes to recommend denial of a petition. In the event that there are not seven votes, it still goes forward to the City Council or County Commission with no recommendation. The City rezonings we hear tonight will be heard by the City Council on November 14, 2005, at 5:30 p.m. in Room 301. The County rezonings considered tonight will be heard by the County Commissioners on October 25, 2005 AFTER THE REGULAR 3:30 COUNTY COMMISSION MEETING in Room 301. (THIS IS A CHANGE FROM THE OCT. 18TH MEETING)

Mr. Foster: The Area Plan Commission has established the following guidelines to be followed for both rezonings and subdivisions. Mr. Mills will begin each presentation. As each case is called, the petitioner and the remonstrators who intend to testify will please stand and be sworn in at the beginning of the process. If your name is not on the petition, those who plan to testify need to please fill out the sheets in the back of the room. All testimony must begin by stating your name and address for the record.

The petitioner or person appearing for the case being heard will have a maximum of 10 minutes for the presentation of evidence, statements, and arguments in support of the petition. Then there will be a total of 10 minutes for the remonstrators. This testimony will be followed by a five minute rebuttal period for the petitioner as a summation of the case. Any request for additional time must be voted on by the Board. A timer will be used to help enforce the time limits. Both petitioners and remonstrators should organize their testimony to adhere to these guidelines.

When there is a group of individuals remonstrating against a petition, we strongly encourage the group to designate a spokesperson. If it is necessary for more than one remonstrator to speak, the group should meet out in the hall before the Area Plan Commission discussion of the agenda item, to coordinate the information presented, so that each speaker addresses a different issue of concern. In order to expedite the meeting, remonstrators should refrain from repeating the same concerns already expressed by another speaker about a particular development proposal. The Plan Commission appreciates the cooperation of all participants with these guidelines.

If the Commissioners have questions about issues that we feel have not been sufficiently addressed by the applicant, we have the option to request a continuance until the information needed to sufficiently answer our concerns is available or provided by the applicant or technical staff.

The following petitions will not be heard tonight:

Docket No: VC-10-2005 Sebrina Martin 15025 Petersburg Road
CONTINUED TO THE NOVEMBER MEETING AT THE PETITIONER'S REQUEST.

Docket No: 17-S-2005 Galleria Shoppes
CONTINUED TO THE NOVEMBER MEETING AT THE PETITIONER'S REQUEST.

Docket No: VC-9-2005 Gregory Moore 8530 Middle Mt. Vernon Road
CONTINUED TO THE NOVEMBER MEETING AT PETITIONER'S REQUEST

If you are here on any of these petitions, you may wish to leave at this time. Now, let's move on to the first item on the agenda.

Mr. Harrison: Mr. Oliver, on all matters tonight, do you swear or affirm that the testimonies you will give are true and accurate so help you God? (Mr. Oliver has been sworn in.)

NEW BUSINESS **CITY REZONINGS**

Docket No: 2005-33-PC R-2005-21 Petitioner: Matt Bertram/Habitat of Evansville, Inc.
Address: (Complete legal on file.) 1905 Shadewood Drive
Nature of Case: Change from a C-4 zone to an R-2 zone.

Mr. Oliver: Matt Bertram of Habitat of Evansville is requesting to downzone 4.3 acres of land located on the west side of Shadewood Avenue, between Sweetser and Bayse Avenues from C-4 to R-2. The common address of these two vacant parcels is 1905 Shadewood Avenue. These sites are in an older area of very mixed zonings and uses. This proposed downzoning to R-2 includes a 0.59 acre (198' x 130') C-4 zoned site located at the southwest corner of Shadewood Avenue and Sweetser Avenue, and a 3.73 acre (815' x 198') C-4 zoned lot along the east side of Shadewood that extends south to Bayse Avenue. There is an M-1 and C-4 zoned business which separates these two proposed residential sites. These sites are located in an area which borders commercial and industrial development to the south, mixed commercial and residential to the west, residential to the north, and Glenwood Middle School to the east. Habitat of Evansville is planning the construction of a number of new homes on the vacant sites. The construction of new residences on the site will require platting the site as a residential subdivision. This downzoning to R-2 to allow new residential development of the sites is consistent with the residential neighborhood zonings and uses to the north and east.

Mr. Harrison: All those who will speak on this petition, raise your right hand. Do you swear or affirm that the testimony you will give is true and accurate so help you God? (Mr. Bertram has been sworn in.)

Mr. Bertram: My name is Matt Bertram with Habitat of Evansville. We are looking to rezone this property from C-4 to R-2. We feel it is a good location for families. It is across from Glenwood Middle School. In your packets, you have a letter from the principal of Glenwood Middle School supporting the project. She would love to see houses put across the street from the school. I also have here Pat Thomas, the

president of the Glenwood Neighborhood Association. They also support the project. We have some other photos included. Shadewood is actually a school zone. The business that separates the two pieces of land is the business we are purchasing the property from. It is used as a storage warehouse right now, so it is not a manufacturer, So it will be very conducive for families to live there. Being that close to a school is great for the families. Glenwood Middle School has a fenced in area with a facility for exercising. We think this would be a good residential development.

Mr. Foster: Are there any questions?

Ms. Stevens: I have a question for staff. Is the R-2 versus R-1 because there are less restrictions?

Mr. Oliver: Yes. The setbacks are different. The percentage of lot coverage is different for R-2, and also the width of the lot.

Ms. Musgrave: Will the business be putting up any kind of fencing between their lot and the new homes?

Mr. Bertram: Yes, we will probably put a fence in on the south side of their business. Originally, we were going to buy more land. But we built a buffer zone there that is a little wider so we will have a nice buffer between the business and the homes.

Mr. Lockard: How many homes to you project to put in there?

Mr. Bertram: Either 19 or 20. It all depends. There is a sewer line that runs underneath. So probably 19.

Mr. Dunigan: Not only do you have M-2 separating the two lots, but for a big chunk of the one on the bottom, you have M-2 on the back. Do you feel like not only the existing M-2, but a future M-2 use that could go in there, could that be negative for this location?

Mr. Bertram: It is not perfect, but we what we feel the strength is is that it is across the street from that school. That street is a 20 mph street. Our families will know when they move into this neighborhood that there are businesses they're operating there. We think the school zone offers some protection there.

Mr. Foster: What is the existing business to the east?

Mr. Bertram: Residential, and Courier and Press has a storage warehouse and there is a sewer company back there.

Mr. Foster: So even though it is M-2, it is not heavy manufacturing.

Mr. Bertram: Not that I am aware of.

Mr. Foster: Are there any remonstrators? (None.) Motion for approval? (Motion was made and seconded.) Call the roll.

Ayes: Ms. Barnett, Mr. Dunigan, Mr. Herrin, Mr. Lockard, Ms. Musgrave, Ms. Payne, Ms. Stevens, Mr. Foster

Nays: None

Abstention: Mr. Kniese

There being 8 affirmative votes and 1 abstention, Docket No: R-2005-21 goes forward with a recommendation for approval.

Docket No: 2005-34-PC R-2005-22 Petitioner: Lena M. Frick
Address: (Complete legal on file.) 5300 Washington Avenue
Nature of Case: Change from an R-1 zone to a C-1 zone with a use and development commitment.

Mr. Oliver: Lena Frick is requesting a change in zoning of the residence located at 5300 Washington Avenue from R-1 to C-1 with a use and development commitment. This 0.41 acre site is located at the northeast corner of Washington And Cullen Avenues. The use and development commitment included as part of this rezoning petition limits use of the site to offices and light retail "gift shop" use only, and addresses hours of operation, lighting, and drainage issues. This site proposed for change to commercial use is located at the northeast corner of Washington Avenue and Cullen. Recently, EUTS sent a recommendation to the Board of Public Safety suggesting that the intersection of Cullen and Washington be considered for a traffic control signal. EUTS recommends that access should be limited to Cullen Avenue only, and that the access on Cullen be placed as far from the intersection as possible. The site plan indicates that a single commercial curb cut is planned onto Cullen Avenue. No access is shown onto Washington Avenue, and none should be permitted. This proposed office/light retail use is located at the northeast corner of Cullen and Washington. In 1988, four lots were rezoned with a use and development commitment at the opposite corner of this block frontage along Washington, on the northwest corner of Washington and Irvin, to accommodate construction of Boone Funeral Home on that site. In 1994, additional lots were rezoned to commercial east of the funeral home for mortuary use. This proposed C-1 use is separated by a single R-1 zoned lot at 5306 Washington. In 2002, the funeral home acquired the lot at 5306 Washington and razed the residence on the site. No residences will remain within this block frontage of Washington. This site along Washington Avenue in an area designated for residential use in the Comprehensive Plan. A single-family residential area is adjacent north of the site. South, across Washington Avenue, is Eastminister Presbyterian Church and residential. Washington Avenue has experienced some commercial development extending eastward from Green River Road to just east of Irvin Avenue. The Comprehensive Plan encourages the use of landscape buffers and setbacks greater than those required by

code when commercial development occurs adjacent to residential. The zoning code requires a minimum 10-foot open and unobstructed green setback buffer along property lines adjacent to residential.

Mr. Harrison: Is the petitioner here? (Not present.) Are there any remonstrators here? (Remonstrators present.) We can either wait a few minutes or we can continue this until next month.

Mr. Foster: Let's just continue this till next month.

Mr. Harrison: It will be continued until the November 10, 2005 meeting at 4:00 in this room. She will have to notify everyone again properly. This will be heard in December by City Council.

Mr. Nickolick: I am Joe Nickolick. I live at 1000 S. Cullen Avenue. That is the southeast corner of Cullen and Washington. We all have other things we have to do and we take the time out to come out here and if the petitioner doesn't have the time or has anything come out here to represent them, that's not our fault.

Mr. Foster: It is clearly a mistake. She had the wrong date and time on the letter she sent you.

Mr. Nickolick: Well, it is her letter. It is her mistake, not ours.

Mr. Foster: Correct.

Mr. Nickolick: Why should we pay the penalty?

Mr. Foster: You are not paying anything.

Mr. Nickolick: We will have to come back on the 10th now.

Mr. Foster: You don't have to come back if you don't want to.

Mr. Nickolick: But we have to protect our property.

Mr. Foster: We are going to hear this next month. You are welcome to come back. The petitioner is not here based on an honest mistake. If you all want to write letters, you can write a letter.

(Ms. Frick is now present)

Mr. Foster: Ms. Frick, apparently there has been some confusion as to the date and time of the meeting and of the notice that went out. You are aware of that?

Ms. Frick: No.

Mr. Foster: You didn't know the date and time on the notice you sent out was wrong? We are going to continue this for one month. You will need to resend the notice with the correct date and time on it. Then anybody who wants to be heard will be heard on November 10th at 4:00 p.m.

Mr. Harrison: There may be people that come at 6:00 to speak on this and we will be gone.

Mr. Foster: I would also suggest that you may want to meet with the neighbors. There appear to be a number of them here.

Ms. Frick: That sounds good.

Mr. Harrison: And those who can't make it on November 10th and want to address this Commission, they should send a letter or drop it off and it will be read into the record at the meeting on November 10th.

Ms. Frick: So we are going to come back here on November 10th at 4:00 p.m.?

Mr. Harrison: And you are going to have to send out another notice on that date and time. The Area Plan Commission can give you the proper form.

Mr. Harrison: But you know if you are not an abutting property owner, that it is November 10th at 4:00 p.m. in this room.

Mr. Foster: We have a motion and second to continue this petition. (Voice vote.) Upon unanimous voice vote, Docket No: R-2005-22 is continued to the November 10th meeting.

Mr. Lockard: How did she get a form with the wrong time?

Mr. Oliver: We had older forms before the time of the meeting was changed. So she may have gotten a hold of an older form.

[Docket No: 2005-36-PC R-2005-23](#) Petitioner: Larry W. Lang
Address: (Complete legal on file.) 404 Covert Avenue
Nature of Case: Change from a C-4 zone to an R-2 zone.

Mr. Oliver: Larry Lang is requesting to downzone the property located at 404 Covert Avenue from C-4 to R-2. This is a 0.1 acre lot located on the north side of Covert Avenue, just east of Governor Street. This request to downzone the C-4 zoned site will bring the existing residence into conformance with zoning code restrictions and to remove the legal nonconforming status designation and the accompanying legal nonconforming restrictions from the site. This downzoning to R-2 is consistent with the existing and adjacent residential use and is appropriate to the small size of the lot which

makes the provision of adequate on-site parking for commercial use of the site difficult. This site is located in an older area of very mixed zonings and uses. The properties along Riverside Drive from just east of Governor Street west to Judson, and north to Covert Avenue (including this site) have been zoned for commercial use by the City since 1940. A number of residences are included within this "commercial node" area. This downzoning to R-2 is consistent with the existing use of the site as a residence.

Mr. Harrison: All those who will speak on this petition, raise your right hand. Do you swear or affirm that the testimony you will give is true and accurate so help you God? (Mr. Birkle has been sworn in.)

Mr. Birkle: My name is Dave Birkle. I am here for Larry Lang who is in the hospital. I am here to answer any questions. I live at 24 W. Michigan Street. I work for Mr. Lang.

Mr. Foster: Are there any remonstrators? (None.)

Mr. Kniese: Do you know if Mr. Lang will be able to attend the City Council meeting?

Mr. Birkle: I am not sure.

Mr. Kniese: It would be helpful if he was at that meeting.

Mr. Foster: Is there a motion for approval? (Motion was made and seconded.) Call the roll.

Ayes: Mr. Dunigan, Mr. Herrin, Mr. Lockard, Ms. Musgrave, Ms. Payne, Ms. Stevens, Ms. Barnett, Mr. Foster

Nays: None

Abstention: Mr. Keifer

There being 8 affirmative votes and 1 abstention, Docket No: R-2005-23 goes forward with a recommendation for approval.

COUNTY REZONING

Docket No: 2005-35-PC VC-11-2005 Petitioner: SC Bodner Company, Inc.

Address: (Complete legal on file.) 7100 E. Virginia Street

Nature of Case: Change from a C-4 zone to an R-5 zone.

Mr. Oliver: SC Bodner Company, Inc. is requesting to downzone the property located at 7100 E. Virginia Street from C-4 to R-5. This 7.55 acres site is located on the north side of Virginia Street, between Burkhardt Road and Cross Pointe Blvd. This site has access to Burkhardt Road by way of Virginia Street. Additional access to Burkhardt will be provided upon completion of the extension of Columbia Street. County Engineer

John Stoll states: "1. Right-of-way will be required for Columbia Street. It is also recommended that a use and development commitment be provided that requires the developer of this site to participate in half of the design and construction costs of the section of Columbia Street along the north boundary of the site. 2. A right-turn deceleration lane might be required if warranted by the traffic generated by this site." SC Bodner Company is requesting to downzone this commercial site to a high-density residential classification which will allow multi-family development of the site, a use prohibited within the C-4 commercial classification. This 7.55 acre site is adjacent east of the 9.9 acre site rezoned to R-5 by SC Bodner Company in April, 2002 for construction of Brooklyn Apartments. The site is within an area designated as a mixed use area within the Comprehensive Plan. The surrounding area is predominantly commercial. This downzoning from the existing heavy commercial designation to the R-5 designation is consistent with the overall development plans for the area. It is strongly suggested that a use and development commitment or a written agreement by this developer be submitted prior to approval of rezoning of this site. The petitioner needs to install their half of Columbia Street. To the west of this site, Wal-Mart and Hirsch have committed to install Columbia Street. The developer to the east has also agreed to install Columbia Street. This petitioner needs to work with the owners of the property adjacent north of this site to assure development of Columbia Street at this location. Columbia Street should be installed when the earliest of either of these two occur: (1) the developer to the north builds their half of Columbia Street or (2) the developer extends Columbia Street from the east.

Mr. Harrison: All those who will speak on this petition, raise your right hand. Do you swear or affirm that the testimony you will give is true and accurate so help you God? (Ms. Lockyear has been sworn in.)

Ms. Lockyear: Krista Lockyear, here on behalf of SC Bodner. Multi-family residential use has been determined by this body and the County Commissioners in the past as an appropriate use for this area. It is designated on the Comprehensive Plan as an appropriate use for this area. As you can see, my client developed the Brooklyn Place apartments that are adjacent to this property a couple years ago and has successfully finished those and is seeking to put in some condominiums on this seven acre parcel. There was a private covenant entered into by the Cross Pointe Commerce Corp and the Estella Haas Family Limited Partnership, the current owners of this property. When they rezoned this property originally to C-4. That covenant provides for the dedication of the right-of-way and payment for the construction of Columbia Street, if and when that occurs. By purchase agreement with the sellers, my client has acknowledged that he is aware of that covenant and has indicated that he is fully accepting a responsibility under that covenant which we believe runs with the land anyway. But I have a copy of that purchase agreement acknowledging and accepting that responsibility. I would be happy to answer any questions you may have. I think the use is clearly appropriate and the concerns about Columbia Street have been adequately addressed in record and have been accepted by my client. We ask that you recommend to the County Commissioners that this rezoning be approved.

Ms. Musgrave: Do you have any more details about the proposed condos?

Ms. Lockyear: I don't. I hope before the County Commission hearing I will have some drawings of the sort. The layouts are in process. It will be potentially 100 units. But I don't have the details.

Mr. Oliver: One additional point, I did double check. We just found out about this covenant today. Joe Harrison faxed us a copy of it. I talked to John Stoll, the County Engineer, about it and read him the provisions. He was satisfied with the covenant as far as the Columbia Street extension.

Mr. Foster: Are there any remonstrators? (None.) Is there a motion for approval? (Motion was made and seconded.) Call the roll.

Ayes: Mr. Herrin, Mr. Kniese, Mr. Lockard, Ms. Payne, Ms. Stevens, Ms. Barnett, Mr. Dunigan, Mr. Foster

Nays: None

Abstention: Ms. Musgrave

There being 8 affirmative votes and 1 abstention, Docket No: VC-11-2005 goes forward with a recommendation for approval.

BUSINESS MEETING

Mr. Lockard: I originally talked to Brad Mills because I have been involved with some of the stuff that has been going on with the University Parkway that is feeding USI. It will be a wonderful access to the west side of Evansville. One of the concerns was that, and we talked about this two months ago, that eventually and potentially we will see more off-campus student housing somewhere in the County. So one of the concerns was with the way our current zoning code is written, it doesn't require potentially enough parking spots for the number of bedrooms that student housing will have. So I indicated to him that I had looked into other cities in Indiana such as Bloomington, Muncie, Marion County, Purdue, and found that many of those areas require one parking spot per bedroom because most college kids have a car now days. I asked if this would be something that would be feasible for Vanderburgh County with the thought that we may see more of that coming with USI being such a growing facility and asset on the west side. Staff has concurred that in other areas, this is something that they do. So the proposal is that in use group six, we add a classification called "off-campus student housing", and additionally, in the section that determines how much off-street parking is required, that for off-campus student housing, it would require one space for each bed. So we would like for you to consider that and then make a formal recommendation at the November meeting. It is a very minimal change. But looking at the University Parkway and how it is growing, I think you will see this type of housing out there

because USI will probably need it. This will make sure that whatever does come will have adequate parking for each one of these facilities.

Mr. Foster: Do we need to define off-campus?

Mr. Lockard: In other areas, it is not on land owned by the facility. So it is classified as off-campus.

Mr. Foster: What about the Mid-America Student Housing Corporation? It is a separate corporation, not the university.

Mr. Lockard: I think that is owned by a land trust fund that is owned by USI.

Mr. Foster: I am not saying it is a problem. Is that on-campus or off-campus? All that would be grandfathered in anyway.

Ms. Barnett: How do we define it off-campus?

Mr. Foster: If we say on-campus, we have a real problem with not only USI but U of E. There is no way U of E can put one parking space per bed.

Ms. Barnett: In many colleges, freshman are not allowed to bring cars on campus.

Mr. Harrison: This would be for new construction.

Ms. Musgrave: I would rather put it in there.

INAUDIBLE CONVERSATION

Mr. Lockard: I looked at five different cities and how they did it. They did not have a very distinctive description of student housing. They more or less oriented it to where the construction of the facility was an apartment-style building. In some cities, they treated where you have students living in a residential home, they actually considered that student housing and have a licensing to do that. But that seemed very burdensome. If was designed as a student housing complex, multi-family style construction, then they considered it student housing. I think if we keep it generic, it gives the flexibility for staff and us as we consider these. This is all addressed at Site Review anyway.

Mr. Harrison: INAUDIBLE

Mr. Lockard: In the other cities, the campuses were internal of the city and it was a little easier to decide that. Most of USI will be a county issue to deal with.

Mr. Harrison: The County has never issued a permit for anything on campus. So off-campus is good enough.

Mr. Lockard: I thought it was unique when I looked at the zoning maps for USI, there is a little square there where at one point, there is an R-5 in the middle of it. I think that was originally when they built the MASH housing, it was run by a private agency. They did have to have an R-5. Subsequently they turned that over to USI and it is a moot point.

Mr. Harrison: The term off-campus is probably okay.

Mr. Lockard: This is just a recommendation to try to move forward with it so we can address it at Site Review because the biggest thing I saw, the biggest problem with off-campus student housing is the off-street parking. This is how they addressed it in other communities.

Mr. Foster: I would suggest Joe putting it in ordinance form and then we can advertise it for the November meeting. We can pass on it and then it will go to both legislative bodies to be addressed.

Mr. Lockard: Thank you.

Mr. Foster: Thank you for your work.

Meeting adjourned.

Mark Foster, President

Attest:

The undersigned secretary certifies that the foregoing are minutes and not intended to be a verbatim transcript. Audio tapes of the proceedings are on file in the area Plan Commission office.

Bradley G. Mills, Executive
Director/Executive Secretary

Karen Yokel, Transcriber