PARTIAL MINUTES OF THE
ZONING COMMISSION
April 15, 2019

Z-19-04-004: An original zoning request from CD-C-M (Conditional District Commercial Medium) and R-5 (Residential Single-Family-5) to CD-C-M (Conditional District Commercial Medium) for the property located at 2301 Battleground Avenue, generally described as West of Battleground Avenue and north of Markland Drive, 1.33 acres (Favorable Recommendation)

Mr. Carter provided the zoning map and other summary information for the subject property and surrounding properties and noted the conditions associated with the request. He also noted the applicant intended to offer an additional condition with the request.

Speakers From the Floor:
Carol Carter, 5505 Hempstead Drive, Greensboro, stated they were going to add a condition to have no illuminated signage on Markland. Chair Lester stated that needed to be taken up first. Ms. Carter stated they are offering no illuminated wall signage on the Markland Drive side of the building or on the rear of the building.

Mr. Holston inquired if the proposed lighting condition extends beyond Markland to run parallel to Battleground Avenue on the rear of the property or just on Markland. Mr. Carter responded that the condition is for wall signage on Markland Avenue. There can be no illuminated wall signage on that side of the building toward the single-family residential. Any side of the building that faces Markland would not be able to have an illuminated wall sign.

Motion was made by Chair Lester to accept the condition, second by Ms. Mazzurco. The Commission voted 7-0 in favor of adding the condition. Ayes: Lester, Mazzurco, Marshall, Pinto, Holston, Blackstock, Alford. Nays: none). The condition was added to the request.

Ms. Carter advised she is representing ALB Enterprise Holdings, LLC for a rezoning. The rezoning is needed because of a small triangular piece of property. Originally ALB Holdings took a drawing to staff for TRC review and at that time the Planning Department noted that there was a small portion of the property that remained R-5. The rest of the property is zoned CD-Commercial Medium. She stated they could have gone forward with their plan by amending it and not using the triangle, but felt it was a good opportunity to clean up the property's zoning and add conditions that would better protect the Guilford Hills neighborhood.
Ms. Carter indicated on a projected map where the triangle portion of the property is zoned R-5, which was a result of a 1972 or '73 zoning and noted there was no ordinance at that time to allow for any type of buffers. It probably should have been zoned Commercial at that time but was left R-5. One of the conditions being offered with this request is a minimum 8-foot tall opaque fence which is a usual condition seen on commercial corridors that separate commercial uses from residential uses. She stated they did decrease the building height to a maximum of 25 feet. They recognize Guilford Hills neighborhood as an historic neighborhood for the City and wanted to lessen the impact in case this does not go through and for future development.

Ms. Carter stated the proposal is for a restaurant and small specialty shops with a total of 9000 square feet. It is not a final design or concept but provides an idea of the type of architecture they use to mix in and meld with the neighborhood. She stated the Commission received a copy of the letter sent to over 150 residents. They tried to pinpoint rental properties and make sure that the residents at the rental properties also received a copy of the letter. There have been two meetings with a group of neighbors with herself representing the applicant. She has had many phone discussions and emails and they have offered to meet at any time with the neighbors. Ms. Carter stated they did change some conditions to reflect what the neighbors were looking for such as illuminated signs and they lowered the lighting pole height.

One outstanding issue is the neighbor to the rear and the 8-foot fence. They met with the neighbor on April 4 to look at the fence. The neighbor ceased communication, which is the outstanding issue. An 8-foot opaque fence is not an unusual condition where there is commercial abutting residential and they could build a 6 to 8-foot fence on the property now. Part of the issue is the survey, which shows the garage of the neighbor to be inside the required setback. There is also a gravel patio that encroaches into their property by at least 15 feet. The Markland residents have asked for new and improved landscaping which they would do according to the ordinance as required. There are some trees on Markland Drive that are old and have not been maintained. Several have fallen and several are leaning over each other. Ms. Carter showed various pictures depicting the survey post, the gravel patio area encroaching into the ALB Enterprise property and the small triangle that was left undisturbed and not been maintained over the years resulting in old growth trees. Ms. Carter stated ALB Holdings is also known as Mythos Restaurant and are local owners with a proven local business in Greensboro. A restaurant with small specialty shops has a much less impact than many other potential Commercial Medium uses. They have conditioned out some of the noxious uses for the neighborhood. They could tweak things a little bit and not come in for a rezoning, but they did feel it important to look at some of the conditions that would make it a better parcel for the adjacent neighborhood. They want to protect the neighborhood. Ms. Carter spoke to tree conservation and landscaping which are going to be required as part of the development ordinance through the site plan process. They will be working with the City's Arborist to have trees tagged that are a danger to the site, which is part of the design phase of any project that would go through TRC.

Mr. Kirkman stated he noticed something that the Commission needed to address. Condition 3 in Ms. Carter's presentation regarding limiting the one freestanding sign on Battleground Avenue did not get into the public notice apparently. It was on some materials communicated to staff and it is staff's error so he asked the Zoning Commission to accept that additional condition so it is consistent for this hearing.

Chair Lester asked should it be stated as only one freestanding sign on Battleground Avenue and added to the application. Mr. Kirkman responded correct. Second by Ms. Mazzurco. The Commission voted 7-0 to allow the condition. (Ayes: Lester, Mazzurco, Marshall, Pinto, Holston, Blackstock, Alford. Nays: none).
Ms. Carter stated at some point during discussion they would like to hear a ruling on hookah lounges, vape shops and sweepstakes even though sweepstakes are no longer legal they may pop up again.

Laura Piedad, 2520 Fernwood Drive, Greensboro stated she had been a resident of Guilford Hills for 12 years who moved to Guilford Hills because it is a beautiful residential neighborhood that is bordered by businesses which means they could walk to dinner and have accessibility to the walking trails. The current condition on Markland Drive prohibits safe walking down Markland Drive to cross over Battleground Avenue to get to the walking paths behind Target. It is dangerous when neighbors park on that street as there is no accessibility both ways. The new owners of this property have offered to clean up an area that has not been cleaned up in 12 years. They fully support what they are trying to do to help the neighborhood and ask that the Commission supports it too.

Ms. Mazzurco asked Ms. Carter if the stake marked on page 5 of the presentation is representative of her client's property line. Ms. Carter responded that is the property line for ALB Enterprise Holdings. Ms. Mazzurco asked if ALB Holdings owned the home. Ms. Carter responded it is owned by a separate owner to the rear of the property. ALB Holdings owns the property where the chairs are. Ms. Mazzurco stated the hot topic for discussion on page 2 where the triangle piece is on the map backing up to the house is creating the contention here. Ms. Carter stated that was correct.

Ms. Mazzurco asked why the triangle on the property that is zoned R-5, was not cleaned up in

the LDO in 2010. Mr. Kirkman responded he could not speak specifically to that piece, as he was not involved in that conversation. In general, the idea was trying to convert the existing zoning to whatever the closest equivalent was between the Unified Development Ordinance that was in effect from 1992 to 2010 and the Land Development Ordinance adopted in 2010. He assumed because that property was zoned RS-9 the closest equivalent would have been R-5. It was a city-wide change and the city's efforts was to try to use whatever the closest equivalent district was when changing from one ordinance to the next ordinance.

Ms. Mazzurco stated everyone in Greensboro received a letter about the LDO and how it would affect your property, so did the owner of the picture on page 5 receive the letter and was there some sort of agreement or something that was attached to the deed that would have run along with the deed to allow this homeowner here to use PNC's property for a sitting patio area and asked if anyone knew the answer. Ms. Carter responded she did and has spoken to the former owner of the property who did not understand why there is a portion of the property still zoned R-5. She knows it was offered as a buffer some time ago but didn't understand why it had not been zoned with the rest of the property. Ms. Carter stated there is no agreement for maintenance, encroachment, or anything between that property owner who has owned the property since the '70s and anyone today. There is nothing attached to the deed.
Mr. Holston read from the summary provided, the fifth bullet point and asked what it means. Ms. Carter responded they did not have to come to Zoning, they could have changed their plans and left that triangle vacant, 90 percent of it will be a landscape buffer as required by the ordinances. Had they just gone ahead and taken those parking spaces out, they could have gone forward with the proposal without rezoning. In thinking through the project, it was decided to clean up the zoning on the property and have it all zoned one classification to recognize the value, history, and greatness of Guilford Hills. They want to be good neighbors and implement a conditional zoning application that would rule some of the more noxious uses, not only for now but also for the future. She stated if the proposal doesn't work, they want to protect the future of the property.

Mr. Holston asked if the parking spaces are based upon the square footage and the like. Ms. Carter stated they meet and exceed the minimum parking spaces and easily could have removed them, but parking is an issue with every plan. The entire parcel could not be used for parking as most of it will be taken up in the landscape buffer, which is 24-feet. A question was asked if the deed included the triangle to which Ms. Carter responded the deed does include the triangle, it is all one plat and one deed. In response to a question by Mr. Holston, Ms. Carter responded it has always been a portion of the property. Ms. Carter referred to the 1972 or '73 zoning case to zone it Commercial-Medium, which at the time there were no buffers or controls at all, and the triangle was conserved as a landscape buffer. Under the current landscape ordinance, 90 percent of that part of the property will become landscape buffer by ordinance.

Speakers in Opposition:
Alan Ferguson, Attorney, 4794 Troy Smith Road, Liberty, stated he represented Jennifer Leung who is not against restaurants or Mythos, or the property being used. Mr. Ferguson requested the people in support of Ms. Leone to stand so the Commission could see the kind of interest there is in what he will be speaking of.

He stated nothing has changed in this neighborhood that could be cited as evidence regarding the need to change the zoning of this triangle piece of property. The plat references back to a 1949 plat of the entire sub-division. The main body of this parcel was blank when the sub-division was developed in 1950 and the lots were drawn out for the houses built. Zoning has essentially followed these plats all these years. Mr. Ferguson stated the fact that the triangle is zoned residential is not an accident; it has been that way since 1950 and earlier when Mr. Leung's house was built which has now been there for 69 years. The house and driveway have been there in the same relationship to the property line as it is currently.

The triangle has not impaired the use of the property to the front even though it is zoned R-5. This issue was visited last at a rezoning in 1973 when the natural landscape buffer was zoned and was imposed by the Zoning Board. Mr. Ferguson stated for Ms. Leung's home, the fencing condition is onerous to her. He stated if a fence were put up on the property line as a condition, she would be boxed up against an 8-foot slab every day. Property owners do have a right to put a fence up, but the Commission is being asked to approve a zoning change that requires that be done and is not something Ms. Leung has agreed to and does highly object to.

Ms. Jennifer Leung, 2310 Markland Drive, Greensboro stated she shares two property lines with the 2301 Battleground Avenue property. She referred to a picture indicating the property line inches from her driveway and if the 8-foot opaque wall were there, she would not be able to open a car door fully. She stated any person backing up or pulling in would have issues with damaging their vehicle or themselves. Ms. Leung stated she has disabled parents who would not be able to fully open a car door when visiting. They would have to be dropped off in the road and walk up a steep driveway. Ms. Leung is strongly against the 8-foot opaque fence. She attempted to talk with Ms. Carter and their representative over two weeks ago and felt she got the run around and false information.

She stated the media uproar started because of concerns that went on deaf ears. She needs to have visibility with a fence and indicated she does not want to have a criminal alleyway or a homeless camp next to her home. Ms. Leung implored the Commission to understand she is not against the property but feels security and safety are most important to her as her home has been broken into. Ms. Leung stated in lieu of privacy, safety and security are most concerning to her and does not want to create a criminal alleyway. She would like the Commission to understand she was born and raised in Guilford Hills, this is her first home, her heart is in the neighborhood. Ms. Leung implored the Commission for an unfavorable decision, as it would totally diminish her property values, security and safety.

Rebuttal in Favor:

Ms. Carter advised the condition states a minimum 8-foot fence would be placed between the properties. It does not say where it would be placed and does not say on the property. In the ordinance, they can put up an 8-foot fence, they would decrease to a 6-foot fence for the small triangular piece of property if this was turned down and it is still residentially zoned. Ms. Carter stated by requirement they cannot block the site distance with a fence of anyone's driveway. The fence would have to allow a person to see to back out or pull out of their driveway. It is required by ordinance.

Ms. Carter stated she would like to see the 1950s reference plat as her understanding from the former owner was the residential portion was placed in the 1970s zoning. Along all the properties on Battleground Avenue there is a fence or wall that is constructed at the rear of the property to buffer all the way up both sides and you will see 8-foot, 10-foot fences, walls, all types of fences. They did talk about different type of fences and wanted an opaque fence that the top would be open for lattice work. Regarding the distance from the property line, she talked to the owners on that and wanted to confirm her meeting with Ms. Leung for discussion. She said Ms. Leung shut down conversation at that point and stated she may obtain an attorney. There was no further discussion because communication was shut down and that email is in the folders presented.

Ms. Carter referenced back to the triangle portion. It is a 0.119-acre piece of parcel. It is a very small piece of this parcel. There is a lot of tree work that needs to be done in there. They will be working with the City's Arborist to identify trees that may be at risk and may need to be removed. They will identify trees to keep and improve upon existing landscape as per the landscape ordinance.

Chair Lester inquired if there was anyone wishing to speak in in rebuttal in favor of the application.

Ms. Peidad wanted to make the point that she reached out to Carol upon hearing about Mythos going in on Battleground two weeks ago. Any question or concern she had as a homeowner was answered very quickly. She stated she has been kicked out of the neighborhood site for posting this area was going to be cleaned up, visibility was going to be improved and the perimeter of their neighborhood would be protected.

Chair Lester asked if there was anyone else who wished to speak in favor of the application. Mr. Holston went back to the .119 triangle of land and asked if there were any illustrative drawings that show what could be done with the property or parking spaces. Ms. Carter responded that 90 percent of that portion of the property would be landscape buffer as is required by the ordinance. A site plan has not been done or renderings. A full parking space cannot go in the buffer but only overhang. The ordinance spells out the landscape design has grass cover, shrubs, canopy trees, and whatever existing can be kept in. It will be done according to Ordinance.

Mr. Holston asked about dumpsters. Ms. Carter responded there would be a need to locate dumpsters on the property, probably in the rear of the property. They need to determine with the Waste Department that there is adequate access for the trucks to back in. The Waste Department dictates the location because they must make sure the trucks can pull in and backup to get the dumpsters. Mr. Holston asked if dumpsters could be in that landscaped zone. Ms. Carter deferred to Mr. Kirkman and Mr. Kirkman indicated no.

Opposition Rebuttal:

Mr. Ferguson stated that since it just came up as an issue, the plat he was referring to a few minutes ago was from 1949. The yellowed end is the small triangle in question and is in Plat Book 17, page 59 in the Guilford County Register of Deeds Office. This plat would be well known to somebody who would have taken title to the property when they took title to it. This is not a secret and has been well known for 70 years in June.

Mr. Ferguson stated there is a lot of extraneous information in front of the Commission. Their problem is the rezoning condition says" a minimum 8-foot tall opaque fence shall be installed along the western property boundary". It states, "shall be installed." He is an attorney, he must pay attention to language, and he has nothing but the language that is on the record in front of everyone tonight. That's what it says and that is Mrs. Leung's problem. Mr. Ferguson stated historically inconsistent zoning is done every day. He has done thousands of titles as an attorney and when obtaining a title for a commercial piece of property there is an endorsement for title insurance that deals with that problem.

Mr. Ferguson added something Mr. Fox said earlier; he said "this one just isn't right, right now" about his case. This one is not right either and it's not right because of the way it was set up. Bring it back and let us deal with this fence issue. Let us get this right before this is rezoned. Mr. Ferguson respectfully requests the petition be denied and they come back and get this done the right way.

Ms. Bonnie Wallace, 2303 Markland Drive, Greensboro, stated she had been a resident there for 38 years. She was sold her home with assurances from her realtor that this natural buffer would continue to exist. Their main concern is similar to Ms. Leung's. They feel the fence on the Mythos property line will reduce the chances of her home being sold and would create a domino effect on the properties on that side of the street. They ask that the Commission please protect Guilford Hills.

Chair Lester asked Mr. Ferguson if the zoning was to stay residential and the owner of the property would ask for a variance to put a tiny house on this property, would his client oppose that. Mr. Ferguson responded he had not discussed that with his client because it had not come up. After talking with her, he might be able to answer quickly but that is not a subject that has come up so far and he doesn't think it could happen on a .119-acre parcel.

Mr. Pinto asked Mr. Ferguson if his client agrees with the applicant regarding the property line. Mr. Ferguson responded the property line seen on the drawings is the property line based on the petitioner's survey. They had just gotten their own survey done today and he was not able to obtain the survey prior to the hearing. He did not think there will be anything dramatically different, but this property line issue is in many ways a red herring because encroachments and that type of thing is not really what they are talking about this request.

Mr. Pinto asked if Mr. Ferguson would agree that even if the property remains at the same zoning, the current property owner could build a fence on that property line. Mr. Ferguson responded yes but consistent with a buffer zone
Ms. Mazzurco asked what his client wants this applicant to do with the property that they now own. Mr. Ferguson responded Mrs. Leung wants a fence that is set back from the property line and one that can be seen through like the chain link fence that bounds the current parking lot of the property.

Ms. Mazzurco then asked if his client sells her house and the new owner wants a concrete or cinder block wall, or an 8-foot fence or a 5-foot fence to protect them, wouldn't that put them in a precarious position when they're willing to condition it now to give them privacy because that's what 95 percent of Battleground has now. Mr. Ferguson responded if he were being asked that question as a real estate attorney, he would say no, because if a subsequent owner brought the property from Mrs. Leung, they would not have any right to go to ALB and demand anything. They would have to buy as is exercising their due diligence to go and check it out, not only visibly but to check the public records.

Chair Lester closed the public portion of the hearing and requested staff's recommendation.

Mr. Kirkman stated this site is designated as Mixed Use Commercial and Low Residential on the Generalized Future Land Use Map of the Comprehensive Plan, with the Mixed Use Commercial designation covering most of the site. The Mixed Use Commercial designation is intended to promote a mix of uses, of which various commercial uses are predominant, but where residential, service and other uses are complementary. Staff does find that the proposed request supports the Comprehensive Plan's Reinvestment/Infill goal to promote sound investment in Greensboro's urban areas and the Economic Development goal to promote a healthy and diversified economy. The proposed CD-C-M request, as conditioned, allows a variety of restaurant, retail, office and service uses of a similar scale and intensity as other properties located along this section of Battleground Avenue. Staff recommends approval of the request.

Chair Lester asked what ordinance or development standard would protect or respond to Ms. Leung's concern the fence will be too close to her driveway. Mr. Kirkman advised the ordinance allows fences to encroach into any required setback, so fences can go up to the property line by right. The ordinance lists a range of acceptable materials that include chain link fence and the opaque fencing and wooden fencing.

Chair Lester asked if something could happen without the present condition included in this request. Mr. Kirkman responded correct. The residential zoning, as it would be residential uses, has different height requirements than a commercial one. But in terms of the placement and style of the fence it could be done right away. There is a more prescriptive standard in residential uses for where that location is in terms of fence height. Currently they could go all the way to the property line with the existing zoning.

DISCUSSION:

Ms. Mazzurco stated she regrets this case has come to this impasse. Ms. Mazzurco commended the applicant for imposing the conditions, noting the intent was good and was to

protect the neighborhood. She stated the applicant could start right away and start the building and not talk to anyone but took the higher road. She is going to support this project.

Mr. Holston felt that something isn't right for him. The neighbors recognize there is a property line that doesn't belong to them and the business can put up a fence. He feels there is a better resolution. He is unsure of the impact to the neighborhood and strongly feels there is a better way. Based on all that he has heard, he will not be able to support this request.

Mr. Marshall stated in looking at the zoning, it's clear cut and is clearly commercial use and the rezoning is bringing the rest of the property into conformity. He stated it is not the Commission's job to tell property owners what they can and cannot build on their property lines. He is in support.

Zoning Commission Action

Ms. Mazzurco stated that in agenda item Z-19-04-004, the Greensboro Zoning Commission believes its action to recommend approval of the zoning amendment for the property located at 2301 Battleground Avenue from CD-C-M, (Conditional District Commercial Medium), and R-5 (Residential Single-Family) to CD-C-M, (Conditional District Commercial Medium), to be consistent with the adopted Connections 2025 Comprehensive Plan and considers the action taken to be reasonable and in the public interest for the following reasons: The request is consistent with the Comprehensive Plan's Reinvestment/Infill goal to promote sound investment in Greensboro's urban areas, including Center City, commercial and industrial areas and neighborhoods. The request is also consistent with the Economic Development goal to promote a healthy, diversified economy with a strong tax base and opportunities for employment, entrepreneurship and for-profit and non-profit economic development, and for all segments of the community, including the under-served areas such as East Greensboro. The request includes conditions that limits potential negative impacts to the surrounding areas. Seconded by Mr. Marshall. The Commission voted 5-2 in favor of the recommendation. (Ayes: Lester, Mazzurco, Marshall, Pinto, and Alford. Nays: Holston and Blackstock). Chair Lester advised this constituted a favorable recommendation due to their being less than 6 affirmative votes and is subject to a public hearing at the May 21, 2019 City Council meeting.