

Planning Commission

Meeting date, May 12, 2020

Agenda Item # 11

Rezoning of 218 S Lamar from CS to PUD

Locally known as the Schlotzsky's PUD

Commissioners

The proposed re-zoning of this property should be rejected for the following reasons.

1. Does not meet the criteria for use of the Planned Unit Development zoning tool.

PUD zoning was created to address particular zoning challenges that could not be resolved by standard zoning. But the threshold for the application of this zoning tool has several criteria that projects are required to meet:

- It was intended to be utilized by large tracts (either singular or multiple parcels) of 10 Acres or more. This site is considerably less than that threshold.
- PUD zoning was also intended to deal with parcels that had multiple existing zoning that the individual zoning site design standards, if respected, would preclude a reasonable use. This site has only one zoning which left unto it's self, would allow the reasonable development of the property (unless the developer is paying too much for the property's current entitlements, in which case the city is not supposed to "back stop" this speculative proforma by granting additional entitlements just to off set the developer's risk!).
- The essential aspect of providing this zoning tool was to allow for a development that would result in a superior (environmental or other community/civic benefit but not just an economic benefit to the developer) product that could not be created using the existing zoning. This project is just another office building with no superior aspect to it whatsoever!

2. Does not meet the standards of the Waterfront Overlay Ordinance

This project is proposed in the Butler Shores sub district of the WFO which also has specific criteria for projects

- The WFO Task Force final report recommended that the Bonus Provision General to all sub districts allowed a 60% increase in the FAR if the project met eight criteria. Those criteria were
 1. Residential uses
 - 2 Pedestrian Oriented uses
 3. Parking structure
 4. Tree protection
 5. Public Access dedication
 6. Restrictions for scenic vistas
 7. Impervious cover

At best this proposed project only meets 3 of these criteria and therefore would not even be allowed the 60% increase in FAR as allowed under 25-2-714 (A) (3)

But assuming that by some crazy logic you could make a plausible case that it met all of these standards, then this site, that has 54,896 SF and a 2:1 FAR under the current CS zoning or 109,792 SF, could increase this by 60% (65,857 SF) for a maximum buildable area of 175,649 SF (6,857 + 109,792) for a not to exceed FAR of 3.2:1. However this PUD request is for a FAR of 3.55:1 which exceeds the maximum allowed if it met the eight criteria noted above from the WFO Task Force report, which it does not!

However, I believe that 25-2 714 (A) (2) is the more appropriate standard as it specifically calls out the sub-districts that are limited to a total of a 20% increase in FAR and the Butler Shores sub-district is noted as one of the districts so limited. If this is the case then the total FAR allowed would be the 109,792 SF of the base district 2:1 FAR plus 20% or 21,958 SF for a total of 131,750 SF with a resultant FAR of only 2.4:1 which is consistent with the WFO ordinance recognition of the importance of this sub district to the preservation of the scenic vistas of the Lady Bird Lake corridor, which is the reason we have 25 – 2 – 714 (A)(2)!

- The WFO of 1986

In staff's initial report on this case, they included this statement "The Butler Shores subdistrict and overall Waterfront Overlay were created in the 1990's and do not reflect the rapid growth of our city over the past 20 years" The insertion of this statement was a blatant attempt to undermine the community's desire to preserve the spatial quality of the Lady Bird Lake Corridor. While staff may have their opinions, it does not have the legislative authority to change the rules, only the City Council has that authority. What if we were to abandon any old law, we now found inconvenient? I guess some folks would throw out the 1964 Voting rights act (way older than the WFO) or why not just decide to ignore the constitution as it is even older! No, staff is only the administrative arm of local government and by our City Charter, they are not allowed to change the rules just because they think they are out of date.

- The WO Task Force and the 2008 WO

What is even more distressing is that they completely ignored (or deliberately tried to hid) the fact that the City Council instituted the Waterfront Overlay Task Force in 2008 to repair the damage done to the original 1986 Waterfront Overlay Combining District (WOCD) by the staff's "plain English Rewrite" of the land development code in 1999. As a founding member of SAVE TOWN LAKE. Org at that time, I was appointed to that task force and we spent from November 2007 until December 2008 reviewing every aspect of the WFO, from the foundational documents, such as the Town Lake Corridor study to the original 1986 ordinance and the 1999 rewrite.

From that report it states “This final report is the result of this collaboration among various interest groups. It truly represents a team effort and is the culmination of hundreds of volunteer hours spent on behalf of our entire community to ensure the best possible future for Austin Colorado River corridor and the Lady Bird Lake waterfront.” But staff’s recommendation would have you ignore this exercise in civic responsibility!

At the time of the Waterfront Overlay Task Forces work we heard similar comments about the WFO being dated and not reflect of the “current Austin”. However one key piece of data provided by STL. Org was a survey that was done to see if the original community intent of protecting the look and feel of the Lady Bird Lake Corridor was still consistent with community values. That survey was a statically valid sample done by a reputable polling firm which indicated that the vast majority of Austinites (as I recall about 80% of our community) felt that preserving the crown jewel of our park system was more important than developing it and to maintain the quality of this community resource we should adhere to the standards for building setbacks and heights adjacent to the parkland as well.

I know that since that survey was done our community has changed but it has changed in ways that make preserving the town lake corridor even more important now. With almost a million folks, many having limited access to outdoor green space, the need for maintaining the scenic vistas, the openness of the town lake park space is far more important to our quality of life that a few thousand extra square feet of space for a private for profit, office development. The visionaries who foresaw the transition of Austin from a college town to a major urban city understood the need for protecting this community asset for the generations to come, hence we are indeed fortunate to have the WFO standards (even if they are a bit old!) Now lets just abide by them!

- Residential versus office use and the question of building height

The housing crisis Austin is now facing is not new as alarms have been going off about this problem since the late 1990’s (The Community Action Network report of 1997 comes to mind). So the WO Task Force recommendations put an emphasis on Residential uses when it listed it’s suggested criteria for granting any FAR Bonuses as noted above. When the Task Force recommendations were formalized in the 2008 re-adoption of the WO, that emphasis was dealt with in a “back door” way. The 1986 WO had provisions limiting any addition FAR but also limited the increase in height in exchange for “community benefits. The 2008 codification took a different approach, it did not state any allowance for additional height but limited the maximum height to the current base zoning would allow. In this case for CS it is 60 feet. However for residential zoned property, say MF 6, one could go up to 90 feet. This was intended to encourage more residential development by the combination of the FAR bonuses with this height increase. There is nothing in the current code to allow for the FAR bonuses to be used to justify any height increase above 60 feet much less to over 100 feet as being requested by this PUD.

Being just an office building with no residential component, the max height should be 60 feet. This PUD request to go to about 115 feet is almost doubling that allowed height with NO residential use. So if we are really having a Housing Crisis, then granting this PUD is going in the wrong direction!

4. Other concerns with this PUD zoning

* Community Benefits

Staff has calculated that the fee-in-lieu for affordable housing would be about \$350,000. Is that at all reasonable for the additional FAR and height requested? So lets compare that to what the Zilker Neighborhood Association got from another development right down the street from this PUD, it is the Barton Place lofts. The terms of ZNA support for that project included

1. Preserving existing pedestrian friendly business along Barton Springs Road, restaurant row.
2. No increase in FAR but allowed a transfer of development rights (TDR"s) lost due to the preservation of the existing restaurants to be transferred to the back of the property
3. The use of the TDR area resulted in an increase of building height from 60 feet to 73 feet while preserving the scale of the existing restaurants.
4. While the new construction (Condos behind the restaurants) was all residential the developer donated \$500,000 to ZNA for future affordable housing.
5. The preservation of the existing heritage pecan trees on site and the planting of new trees on adjacent park land.
6. All parking for the new construction is in structured parking garage under the condo's
7. Provided a public access easement and trail connecting Barton Springs Road to Toomey Road for better access to the adjacent parkland.

So in ever regard ZNA's negotiation with the developer of the Barton Place lofts produced more community benefits than this PUD is offering and staff is supporting. We should expect even more community benefit from this project since it is purely an office development.

* Parking

This project is proposing to essentially provide more than code required parking, While it is appreciated that this parking will be underground, granting this PUD would imply that the city is "talking out of both sides on it's mouth" How can staff support the elimination of residential parking requirements and the reduction of commercial parking minimums to support a modal shift to public transit as proposed in CodeNEXT and then support an office building that has MORE parking that required by the current code? Where does staff think all those cars go to after working hours? And how does the accommodation more cars at this location support the modal shift needed to support CapMetro's proposed Project Connect? Or is staff supporting the ability for this development to use the excess parking spaces as a "profit center" to replace all the other parking spaces lost due to reduced commercial parking requirements in other developments?

- Traffic congestion

The traffic analysis provided in support of the PUD application is deficient in accounting for all development in the area and the impact the added traffic to this site will have on congestion for South Lamar, the proposed Daughter Art Center and ZACH theater. We need an honest traffic analysis and not one tailored to support this proposal.

- ZACH fly loft

Staff's attempt to use the ZACH theater fly loft as an excuse for approving the requested height fails to heed the City Council approved ordinance that stated clearly that staff is prohibited from using the approval on the height of the theater fly loft as a precedent for future approvals on building heights on surrounding properties. The neighborhood support for granting ZACH this additional height was conditioned on such an understanding and was based on the fact that the use, a theater, and its operator a non profit organization provided a community benefit that is in no way comparable to an office use for a for profit developer.

- Envision Central Texas

When the five-county planning exercise, Envision Central Texas, was done in 2003, one of its recommendations was to spread job creation out of central Austin to reduce traffic congestion and auto emissions (pollution) by less driving into downtown. How has Austin responded to this recommendation, we have encouraged building more and more in Downtown, wow what a skyline we have created, never mind about the increased problems of congestion, we will just build more roads and add more public transit and all those wealthier new comers can pay for it! Do we ever learn?

- 2020 Pandemic

This pandemic is horrifying, and it is sad to think of the illness and deaths it has caused. But one aspect of the consequences of COVID 19 is the realization that so much of the work product of our country can continue even with the stay at home orders due to the digital capacity we now have with the internet. Whether it is remote learning for our students or working from home using the latest project management platforms or zoom meetings, the reality for many businesses is that they do not need traditional office space to thrive. As an architect, I believe that what is happening today due to this pandemic will have a lasting and long-term impact on future development patterns. This begs the question, "will we be sacrificing the protections to the scenic beauty and spatial quality of the Lady Bird Lake corridor by granting this PUD project that when built out, sits vacant as a reminder of negative consequences of one developer's short term profit motive?"

For all of the reason's stated above, I strongly urge the Planning Commission to reject this request for PUD zoning.

Thanks
Jeff Jack

