

2. **STEVE & CATHY SNOWDEN ZONING MAP AMENDMENT & HENRY CLAY SUBDIVISION #2 ZONING DEVELOPMENT PLAN**

- a. **MAR 2013-4: STEVE & CATHY SNOWDEN (4/7/13)*** - petition for a zone map amendment from a Single Family Residential (R-1C) zone to a Neighborhood Business (B-1) zone, for 0.309 net (0.403 gross) acre, for property located at 708-712 Henry Clay Boulevard.

LAND USE PLAN AND PROPOSED USE

The 2007 Comprehensive Plan (Sector 2) recommends Retail Trade and Personal Services (RT) and Medium Density Residential (MD) future land use for the subject property. The petitioner has requested a Neighborhood Business (B-1) zone in order to expand a neighborhood shopping center and to provide additional off-street parking.

The Zoning Committee Recommended: Approval, for the reasons provided by staff.

The Staff Recommended: Approval, for the following reasons:

1. The requested Neighborhood Business (B-1) zone is in agreement with the land use recommendation of the 2007 Comprehensive Plan for a portion of 712 Henry Clay Boulevard, since it is recommended for Retail Trade and Personal Services land use. This portion of the zone change will bring the existing parcel into one zoning category for consistency.
2. The 2007 and 2012 Goals and Objectives of the Comprehensive Plan are supportive of sustainable small neighborhood centers, which can provide for a better quality of life within the immediate area and reduce travel demands (Themes A.2.a. and A.3.b.).
3. The requested Neighborhood Business (B-1) zone, with conditional zoning restrictions, is more appropriate than the existing zoning for 708 Henry Clay Boulevard for the following reasons:
 - a. The adjoining neighborhood shopping center and the single-family residence share a gravel driveway. Additionally, there is no landscape buffer or other separation between the business and residential uses. Deliveries to the shopping center utilize the access point and driveway, as do solid waste service vehicles.
 - b. The requested B-1 zoning will allow for a landscape buffer to be installed along the southwest property line, and will permit an adequate service and delivery area to be installed to the rear of the existing shopping center rather than deliveries being made from the public right-of-way.
 - c. The requested B-1 zone will permit a small addition to the shopping center and the addition of off-street parking to accommodate the current and proposed use of the shopping center.
 - d. Shifting the R-1C zone line to the south approximately 50 feet will provide adequate space to allow buffering and maneuvering on the site for improved circulation; this will improve the quality of life for the residential properties that will remain in the area along Henry Clay Boulevard, Liberty Road and Clayton Avenue.
4. This recommendation is made subject to approval and certification of **ZDP 2013-16: Henry Clay Subdivision #2**, prior to forwarding a recommendation to the Urban County Council. This certification must be accomplished within two weeks of the Planning Commission's approval.
5. Under the provisions of Article 6-7 of the Zoning Ordinance, only the following use restrictions are recommended via conditional zoning for the subject property:

Prohibited Uses

- a. Automobile service stations.
- b. Tattoo parlors.
- c. Miniature golf courses.
- d. Carnivals and circuses, even on a temporary basis.
- e. Community centers.
- f. Drive-through facilities.
- g. Outdoor live entertainment.

Landscaping and Lighting Restrictions

- a. A landscape buffer shall be installed along the southwest and southeast property lines, which shall adhere to the Article 18 zone perimeter screening requirements, with the addition of 3-foot shrubs located between any required trees.
- b. No pole lighting may be installed on the subject property; however, ground-level lighting, lighting for pedestrian paths and sidewalks and indirect lighting shall be permitted.

Signage Restrictions

- a. No free-standing signs shall be erected within 25' of a residential zone.
- b. No directional signs shall be installed within 20' of a residential zone.

These restrictions are appropriate and necessary in order to ensure that the subject property can be appropriately buffered and to limit the intensity of the land use nearest to residential uses at the edge of an existing residential subdivision.

* - Denotes date by which Commission must either approve or disapprove request.

- b. ZDP 2013-16: HENRY CLAY SUBDIVISION #2 (4/7/13)* - located at 708-712 Henry Clay Boulevard.
(Barrett Partners)

The Subdivision Committee Recommended: Approval, subject to the following conditions:

1. Provided the Urban County Council rezones the property B-1; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm and sanitary sewers and floodplain information.
3. Urban County Traffic Engineer's approval of parking, circulation, access and street cross-sections.
4. Building Inspection's approval of landscaping and landscape buffers.
5. Urban Forester's approval of tree inventory map.
6. Division of Fire, Water Control Office's approval of fire hydrants, fire department connections and fire service features locations.
7. Division of Waste Management's approval of refuse collection.
8. Clarify height of building in feet.
9. Denote existing tree canopy to remain as a TPA.
10. Resolve parking arrangement backing onto Henry Clay Boulevard right-of-way.
11. Discuss plan status.
12. Addition of conditional zoning restrictions, as necessary.
13. Resolve water quality improvements proposed for new parking lot.

Zoning Presentation: Mr. Sallee presented the staff report, briefly orienting the Commission to the location of the subject property, which is near the signalized intersection of Liberty Road and Henry Clay Boulevard. He noted that that is the only traffic signal on Liberty Road between New Circle Road and Winchester Road. Henry Clay Boulevard extends approximately three blocks past the subject property to the north, ending in a "T" intersection at Strader Drive; it continues to the south and west of the property nearly all the way to Richmond Road.

Mr. Sallee stated that the 712 Henry Clay Boulevard parcel is split-zoned; most of the property is zoned B-1, with the exception of the eastern portion, which is zoned R-1C. The building on that property extends across the zoning line, and an existing conditional use permit allows the extension of the B-1 zoning regulations up to 50 feet into that portion of the property. The property at 708 Henry Clay Boulevard is also zoned R-1C, and it is occupied by a single-family dwelling. Mr. Sallee explained that the petitioner is proposing to rezone the subject properties in order to expand the existing small commercial shopping center on the site.

Displaying several aerial photographs of the subject property and surrounding area, Mr. Sallee noted the location of: the existing dwelling and commercial buildings on the property; the driveway that is shared by the two uses; the existing off-street parking areas for the commercial center, which does not meet the current standards for off-street parking; and the existing angled parking, which has access to both Henry Clay Boulevard and Liberty Road.

Mr. Sallee stated that the 2007 Comprehensive Plan recommends Retail Trade & Personal Service land use for all of the property at 712 Henry Clay Boulevard. The surrounding properties along Liberty Road are recommended for Medium Density Residential land use, which is defined as 5-10 dwelling units per net acre. The staff finds, therefore, that the proposed rezoning for the portion of the property that is recommended for Retail Trade & Personal Service land use is in agreement with the Comprehensive Plan recommendation, but the proposed zone change for the existing dwelling is not in agreement.

Mr. Sallee said that having a gravel access drive shared by a commercial and a residential use is an unusual circumstance. He added that a small addition is proposed to the commercial center on the same side as the residential use, which would allow for additional parking for the commercial center. That addition would also allow for the installation of proper landscape screening between the commercial uses and its parking and the existing residential structures. The staff believes that allowing this rezoning will strengthen the neighborhood shopping center by providing for a small increase in its size, and will stabilize its long-term viability by allowing for proper screening and a more finished appearance.

Mr. Sallee displayed another aerial photograph of the property, explaining that it depicts very clearly the conflict between the residential and commercial portions of the subject property, since it happened to indicate a garbage truck parked on-street blocking the driveway to the residential structure (temporarily).

Mr. Sallee stated that the staff also reviewed the adopted Goals & Objectives of the 2012 Comprehensive Plan, specifically Theme A.2.a, which calls for opportunities for infill and redevelopment to respect context and design wherever possible; and Theme A.3.b., which provides for well-designed neighborhoods and communities. The staff believes that both of these Themes speak to the positive aspects of the proposed zone change to B-1.

Mr. Sallee said that the staff is cognizant of the residents who live near this existing commercial center, and the fact that the proposed rezoning might result in an increase in the activity there. Therefore, the staff is recommending conditional

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zoning restrictions, as listed in the staff report and on the agenda, in order to help protect those residents. The proposed conditional zoning includes several use restrictions; additional landscaping along the new zoning boundary between B-1 and R-1C; and that no pole lighting be allowed on the properties that are currently zoned R-1C. Mr. Sallee stated that the staff and the Zoning Committee are recommending approval of this request, for the reasons listed in the staff report and on the agenda.

Development Plan Presentation: Mr. Taylor presented the zoning development plan, noting that, as it is a final plan, this would possibly be the last opportunity for the Planning Commission to review it. He said that the petitioner is proposing a 2,700 square-foot addition to the portion of the property along Henry Clay Boulevard, which would result in a total of approximately 17,000 square feet for the entire center. The biggest change proposed by this plan would alter the access alignment by closing approximately half of the existing apron along Henry Clay Boulevard. Mr. Taylor stated that the Subdivision Committee recommended approval of this plan, subject to the 13 conditions as listed on the agenda.

Mr. Taylor said that, at the Subdivision Committee meeting, there was some discussion about traffic backing out of two of the parking spaces onto the Henry Clay Boulevard right-of-way. Since that meeting, the petitioner has submitted a revised plan that removed some of the offending spaces and, following discussions with the Division of Traffic Engineering, marked the remaining two spaces in that area for compact car parking only. The Division of Traffic Engineering was satisfied with that arrangement, and condition #10 could now be deleted. With regard to condition #11, Mr. Taylor stated that that condition is typically included on final development plans submitted with zone changes. Given the required two-week turnaround necessary for certification of such a plan, the staff likes to ensure that the petitioner is fully aware of the sign-offs needed and the timing involved in getting a plan certified within that time frame. Should the petitioner choose for this to remain a final development plan, the staff would be agreeable to the deletion of condition #11.

Petitioner Presentation: Richard Murphy, attorney, was present representing the petitioners. He said that one neighbor of the subject property was present at this hearing in support of the proposed zone change, and he distributed to the Commission members copies of a letter of support from the owner of a directly adjoining property.

Mr. Murphy stated that the petitioners purchased the shopping center on the subject property two years ago, when it was unkempt and nearly vacant. He displayed several photographs of the subject property and surrounding area, noting the significant improvements that have been made to the property, including: the removal of the existing flat roof and installation of a hipped roof for the shopping center building; completely new fronts for the buildings; and the addition of a cupola. The main tenant on the property today is a popular restaurant facing Henry Clay Boulevard. A chiropractic office and an upscale retail/consignment store also face Henry Clay Boulevard. A cupcake bakery is located in the portion of the center that faces Liberty Road. Referring to a photograph of the Eastminster Presbyterian Church, located across the Henry Clay Boulevard/Liberty Road intersection, Mr. Murphy said that, although existing signage in the shopping center parking lot directs overflow parking to the church, few drivers choose to park there, possibly due to the unusual configuration of the intersection and the difficulty in crossing it. He explained, referring to a photograph of the driveway that is shared between the commercial and residential uses on the property, that the driveway is divided between the commercial and residential zones. All of the truck traffic to the property, including delivery vehicles and solid waste trucks, are forced to use that shared driveway to access the rear of the property. Mr. Murphy also identified the parking spaces that are proposed to be removed in order to prevent drivers from backing out onto Henry Clay Boulevard, and he added that the petitioners hope that the addition of more parking spaces on the subject property will help to alleviate problems with on-street parking.

Mr. Murphy stated that adequate off-street parking is one of the main issues facing the existing commercial center. He said that there are currently 34 off-street spaces; the development plan depicts 50 off-street spaces, which should bring the currently nonconforming property into compliance with regard to parking, and provide an average of eight spaces. The major complaint voiced to the petitioners by neighbors of the property is that the recent success of the center has resulted in additional on-street parking, which causes difficulties for residents and drivers in the area.

Mr. Murphy said that the other existing issue of concern on the subject property is the driveway that is shared between the commercial and residential portions of the property. He explained that the petitioners have purchased the residential property, and there is currently no screening or buffering on it. The development plan is proposing an appropriate buffer between the subject property and adjoining parcels, and the new parking spaces are proposed to face toward the commercial area to prevent vehicle headlights from facing the residential area. The petitioner is also proposing to fence the existing yard area behind the commercial buildings and ensure that it will be properly maintained.

Mr. Murphy stated, with regard to the staff's recommendation, that the Liberty Road portion of the proposed rezoning is in agreement with the recommendations of the 2007 Comprehensive Plan, and the petitioner contends that the rezoning of the residential portion is in agreement with the Goals & Objectives of the 2012 Comprehensive Plan, particularly with regard to maintaining the viability of neighborhoods.

Mr. Murphy said that the petitioners believe that "neighborhood shopping centers do not exist on their own." He stated that being located in a nice neighborhood does not ensure that a shopping center will be commercially viable, as evidenced by the decline of this commercial center prior to its purchase by the petitioners two years ago. The petitioners

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contend that granting this requested zone change could maintain the viability of the commercial center, while providing the opportunity to expand slightly and improve the required parking. Mr. Murphy stated that the petitioners are in agreement with the staff's recommendations, including the proposed conditional zoning restrictions, and he requested approval.

Citizen Support: John Considine, 1136 Liberty Road, stated that the subject property was previously blighted, and the petitioners have made major improvements to it. He said that he fully supports the proposed zone change.

Citizen Opposition: Caren Caton, 313 Henry Clay Boulevard, stated that she is not in favor of rezoning the existing residential property for business use.

Ms. Caton asked that the Planning Commission consider the history of the commercial portion of the property; it has housed a variety of businesses, in the same footprint, since 1952. She believed that, since the property has been viable for business use in its existing configuration for many years, it does not need to be expanded in order to continue to be viable.

Ms. Caton said she was also concerned that a rezoning for business use could be precedent-setting, particularly since no property on Henry Clay Boulevard has ever been rezoned to a business zone. Following the closing of the Julia R. Ewan school, the neighborhood struggled to find a use for that building that would be compatible with the surrounding residences. She opined that, should the subject property be rezoned to B-1, there are several other nearby properties that could be "likely targets for business zone expansion," and the proposed landscape buffering would not be adequate to protect the residences from those uses.

With regard to concerns about traffic, Ms. Caton said that the Henry Clay Boulevard area is already burdened with heavy traffic, to the extent that the Division of Traffic Engineering is currently performing a traffic study at the request of neighborhood residents. She stated that she believed that, rather than being a problem in itself, on-street parking is a symptom of an overburdened street system.

Ms. Caton said that, although the improvement of the subject property had a positive effect on the surrounding neighborhood, commercial properties tend to go through cycles along with the economy. She is concerned that, once the subject property is zoned B-1, any of the allowable uses would be permitted there, no matter what effect they might have on the residences. In addition, the enlargement of an existing commercial center could create interest for additional business to locate there, necessitating further expansion.

Ms. Caton stated that there are several nearby commercial centers that currently have vacancies, including Strader Plaza, and she believes that the community would be better served by maintaining residential properties, and locating business uses in vacant areas that are already zoned to accommodate them.

Petitioner Comments: Steve Snowden, petitioner, stated that he understands Ms. Caton's concerns. He said that, for the six years prior to his purchase of the property, the center had only one tenant. He believes that the property is fully occupied today due to the efforts made to improve and renovate the structures.

Mr. Snowden stated that the biggest problem on the subject property is lack of off-street parking, which is essential for a successful restaurant. He said that the parking configuration is also outdated, with cars backing out onto Henry Clay Boulevard. The primary reason for the proposed rezoning is to allow the petitioners to convert the residential property, with which the commercial center shares a driveway, to appropriate parking, access, and landscaping. The proposed addition to the commercial center would be a retail use, rather than a restaurant, so it should not generate much need for additional parking.

Mr. Snowden said that, since his purchase and renovation of the subject property, there are now approximately 30 people employed in the businesses there. He opined that the commercial uses that formerly occupied the property went out of business not due to the location or lack of parking, but because of the deplorable condition of the property. Mr. Snowden stated that he and his wife believe that the work they put into the renovation of the subject property has improved the neighborhood, and increased property values for everyone in the vicinity.

Petitioner Rebuttal: Mr. Murphy stated, with regard to Ms. Caton's concerns about the proposed rezoning setting a precedent in the area, that the Planning Commission would be required to approve any additional zone change requests in the vicinity.

With regard to the concerns about traffic impact, Mr. Murphy said that the petitioner is proposing to locate a small retail business in the new portion of the commercial center, so it should not generate a great deal of additional traffic. He noted that the proposed conditional zoning restrictions would not permit any "heavy traffic generators" to locate on the property.

Mr. Murphy said that many of the neighbors nearest the subject property have been supportive of the commercial center and the proposed rezoning. He noted that Ms. Caton has valid concerns, but she lives in the 300 block of Henry Clay Boulevard, not immediately adjacent to the subject property.

Staff Rebuttal: Mr. Sallee stated that the staff had not received any communications from nearby residents about this request prior to this hearing.

Zoning Action: A motion was made by Mr. Brewer, seconded by Ms. Mundy, and carried 10-0 (Penn absent) to approve MAR 2013-4, for the reasons provided by staff, including the conditional zoning restrictions as recommended by staff.

Development Plan Action: A motion was made by Mr. Brewer, seconded by Mr. Cravens, and carried 10-0 (Penn absent) to approve ZDP 2013-16, subject to the conditions as listed on the agenda, deleting #10 and #11.