



City of Las Vegas

Agenda Item No.: 35.

**AGENDA SUMMARY PAGE PLANNING & DEVELOPMENT
PLANNING COMMISSION MEETING OF: AUGUST 14, 2008**

DEPARTMENT: PLANNING & DEVELOPMENT
DIRECTOR: M. MARGO WHEELER

Consent Discussion

SUBJECT:
CON-2900 - REZONING - PUBLIC HEARING - APPLICANT: EXCEED PROPERTIES, INC. - OWNER: EXCEED PROPERTIES, INC. AND FAITH COMMUNICATIONS -
Request for Rezoning FROM: R-12.5 (SINGLE-FAMILY RESIDENTIAL PLANNED DEVELOPMENT - 25 UNITS PER ACRE) AND DRU (SINGLE-FAMILY RESIDENTIAL) TO: C-1 (LIMITED COMMERCIAL) - 1.5 acres adjacent to the east side of 6th Street, approximately 360 feet north of Sahara Avenue (APNs: 162-03-801-011, 013, 014, and 162-03-811-001 through 084), Ward 3 (Reese)

C.C.: 09/17/2008

PROTESTS RECEIVED BEFORE:

APPROVALS RECEIVED BEFORE:

Planning Commission Mtg.	<input type="text" value="19"/>	Planning Commission Mtg.	<input type="text" value="12"/>
City Council Meeting	<input type="text" value="0"/>	City Council Meeting	<input type="text" value="0"/>

RECOMMENDATION:
APPROVAL

BACKUP DOCUMENTATION:

1. Location and Aerial Maps
2. Conditions (Not Applicable) and Staff Report
3. Supporting Documentation
4. Photos
5. Justification Letter
6. Protest/Support Postcards
7. Submitted after Final Agenda Protest/Support Postcards and Protest/Support Email for Items 35 and 36
8. Submitted at Meeting Support Petition by Trevor Hayes

Motion made by STEVEN EVANS to Deny

Passed For: 3; Against: 2; Abstain: 0; Did Not Vote: 0; Excused: 2
SAM DUNNAM, DAVID STEINMAN, STEVEN EVANS; (Against-BYRON GOYNES, GLENN TROWBRIDGE); (Abstain-None); (Did Not Vote-None); (Excused-RICHARD TRUESDELL, VICKI QUINN)

Minutes:
CHAIR GOYNES declared the Public Hearing open for Items 35-37.

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DOUG RANKIN, Planning and Development, reported that the Rezoning application is in conformance to the General Plan; therefore, he recommended approval. Regarding the Special Use Permit (SUP) and the Site Development Plan Review (SDR), he pointed out that several iterations and changes reduced the scale of the project, but staff could not support the SUP nor the SDR because the SDR would need a waiver of both the Residential Adjacency Standards and the Landscape Buffer Standard.

TREVOR HAYES, 360 South Fourth Street, appeared representing the applicant and agreed that the project had undergone seven iterations. He described the project as previously presented to the Commission and listed some of the concerns voiced at the neighborhood meetings, such as a possible increase of traffic on Sixth Street and the high intensity of the use of 43 stories and 1,100 units. He explained that the applicant tried to address the concerns of the residents by reducing the intensity of the project to 10 stories with 296 units, with 4,000 square feet of retail instead of 180,000 square feet. From the clients discussions with the neighbors, they were not opposed to the site plan; they were mainly concerned with C-1 zoning, which was in conformance with the General Plan.

MR. HAYES pointed out that his client went to a great extent to meet with as many neighbors as possible and has done a good job of addressing the concerns. He submitted a 98-signature petition in support of the project. MR. HAYES concluded by presenting elevation plans, noting that this is an attractive project that would be a good transition into the existing residential area from the heavily trafficked Sahara Avenue. He requested approval.

TODD FARROW, 240 North Fourth Street, expressed his support of the project.

MARGO WHEELER, Director of Planning and Development, pointed out that there were late protests submitted after the agenda was finalized.

JOHN DELIKANAKIS, 508 Barbara Way, appeared in opposition to the rezoning application, noting the project's inconsistency with the surrounding area. He stated that the C-1 zoning was not necessary to build an apartment complex. He pointed out that the neighborhood was specifically excluded from the Redevelopment Area Plan because it is a residential neighborhood. MR. DELIKANAKIS explained that signatures in opposition were not gathered because those in opposition were dealing directly with the developer. He urged the Commission's denial.

MICHAEL HANRATTY, President of the South Ridge Neighborhood Association, concurred with the comments of MR. DELIKANAKIS and stated that he sent an opposition e-mail to staff.

PAM HARDLEY, 1700 Rexford Drive, stated that according to the land use hierarchy of the 2020 Master Plan, C-1 zoning should be confined to the intersections of primary and secondary thoroughfares. She expressed her opposition to the Rezoning.

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GREGORY BROWN, 606 Bonita Avenue, remarked that he met with the applicant regularly and that about 700 collective hours had been spent on this project. He stated that many suggestions were made to the applicant that would make it a project the residents could support, such as conforming to the Neighborhood Plan, respecting the Residential Adjacency Standards, limiting the impact on the neighborhood by preserving the shopping center and moving traffic off of Sixth Street, and keeping the residential neighborhood from exposure to potential commercial development along Sixth Street.

MR. BROWN commented that as MR. HAYES pointed out, the developer finally saw the wisdom of the aforementioned suggestions, and then submitted a revised proposal. Subsequently, at least two meetings were held, during which the applicants representative was informed of the remaining issue of the commercial encroachment, and the representative pointed out that the project was revised to consist of more than 95 percent residential. The representative also alleged that the revised plan resulted in a less intense development.

MR. BROWN stressed that rezoning the property to C-1 would only serve to eliminate any protection to the residential neighborhood because the applicant could come back in the future with a shopping center proposal. Contrary to the applicant's claim that there are no other options, MR. BROWN insisted that there are other options and urged the Commission's denial of the C-1 Rezoning.

MR. BROWN noted that COMMISSIONER CHRIS GENCHIGLIANI, Clark County Commission, asked him to take any opposition to this project, as she attended the meetings as well.

SCOTT SWANK, 546 Barbara Way, President of the Beverly Green Association, opposed the C-1 Rezoning and listed some of the positive measures the City has taken in the area to improve the neighborhood. He pointed out that all these improvements significantly increased the stability of the R-1 zoning, decreasing any attempts to put in any commercial uses and increasing the number of owner-occupied homes. Although MR. SWANK was not opposed to development of the property, he felt that 4,000 square feet of retail was excessive for the parcel, given the number of underutilized retail businesses in the area.

JESSICA BROWN, 606 Bonita Avenue, requested the Commission's denial of the Rezoning, stating that the biggest fear of the residents is that all their efforts to preserve the neighborhood would be squandered with C-1 zoning, which could later open the door to payday loan centers and 24-hour massage parlors. She commented that the developer asserted its intent to develop the residential component of the project despite the economic downturn, rendering the Rezoning unnecessary.

JOHN McCORMICK, 1064 Canosa Avenue, shared the concerns of the previous speakers and noted the number of opposition postcards that were submitted.

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LAUREN BEATTIE, 545 Bonita Avenue, HEIDI SWANK, 546 Barbara Way, RICHARD HAVEY, 550 Barbara Way, and RUTH JAGCDZINSKI, 2216 South 6th Street, commended the developer for scaling down the project, but expressed their opposition to the commercial component. MS. JAGCDZINSKI added that Las Vegas is ranked number five in foreclosures, and she did not see a need for 300 new residential units.

MR. HAYES showed a color-coded neighborhood map with green dots representing the people in proximity to the project that are in favor, the red dots representing people in opposition and the homes without dots representing people not at home and indifferent to the project. MR. HAYES pointed out that the map depicts that the people residing closest to the project are overwhelmingly in favor, due to the developer's efforts to address the residents' issues and make it a project that fits well with the neighborhood.

MR. HAYES responded to some of the residents' concerns. The C-1 zoning was requested by the applicant as suggested by staff, because it fits the General Plan. Excess Properties has never bought and flipped land. The condominium component is geared more toward median-income people that work on the Strip, not at tourists who purchase high-end condominiums on the Strip to visit on the weekends, so salability is not an issue. He stated that the C-1 rezoning of this property might affect the zoning for the adjacent property should be a concern because the Planning Commission considers every application on a case-by-case basis.

CHAIR COYNES verified with MR. HAYES that the condominiums would be sold.

COMMISSIONER EVANS thanked the applicant for reducing the scale of the project, stating that there were a number of concerns brought up when this matter was previously heard and it was paramount for the applicant to communicate with the residents. He mentioned that he frequently made telephone contact with several of the neighbors, as well as had a telephone conference with former SENATOR MICHAEL RABRYN and MR. HAYES, to stay informed on the details on this project. He felt that there has been a lot of speculation about what might happen in the future with this property if it were rezoned C-1 and concern that the residential neighborhood might be compromised.

COMMISSIONER EVANS remarked that despite the concerns, the residents were primarily in objection to the 4,000 square-foot commercial piece, and he did not understand why it was necessary for a project with many amenities.

COMMISSIONER EVANS recalled the multiple proposals for the site throughout the years, which he believed were the cause of the property being rezoned to R-PD25, and understood the position of the developer to request commercial in order to build a mixed-use project. However, COMMISSIONER EVANS did not think that the residents were being unreasonable in their desire to keep commercial from encroaching further into the neighborhood. He noted that the neighborhood has undergone a renaissance in the last 15 years, resulting in many professionals moving back into the area and many other people who care about the neighborhood.

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COMMISSIONER EVANS suggested further revisions and that the applicant could apply for a General Plan Amendment (GPA) to achieve its desired project.

MR. HAYES disagreed with COMMISSIONER EVANS' suggestion to revise the project, as all the neighbors he spoke with expressed objection to the zoning. In his opinion, a compromise was reached and it would be ineffective to go back through the process with a request for a GPA only to come back with the same project. He urged the Commission to review the project and determine its compatibility solely on whether or not it would be a good project for the neighborhood.

COMMISSIONER EVANS emphasized that the idea of GPA zoning for this property was proposed well before this project was calendared and pointed out staff's recommendation for denial of Items 36 and 37, suggesting that it would be beneficial for the applicant to obtain the residents' support.

COMMISSIONER TROWBRIDGE said that the support of the residents/tenants along 6th Street is very important to him and asked MARGO WHEELER, Director of Planning and Development, why C-1 zoning is necessary for this subject. WHEELER replied that in order to approve this project without the commercial component, there would be a need for submittal of applications for a GPA and a Rezoning.

COMMISSIONER TROWBRIDGE observed that staff recommended denial of the SUP and the SDR for not meeting the Residential Agency Standards, yet the people most affected had no objection, according to the color-coded map presented by MR. HAYES.

COMMISSIONER EVANS pointed out that one of the nearby properties depicted in support is a halfway house and three of the properties are rentals; he questioned whether or not the actual property owners were contacted. CHAIRMAN MILES, Executive Development, affirmed that he went door-to-door in the neighborhood and some of the people he spoke with disclosed that they were the owners, but others did not. He pointed to the color-coded map and explained in detail the areas he covered.

COMMISSIONER EVANS had no doubt that MR. MILES walked the neighborhood; however, he insisted that the most vocal residents were the ones in attendance, and they were the founders of many programs in the neighborhood to ensure its preservation. He asked MR. MILES if he would be interested in seeking a GPA, so that he could build the same project without the 4,000 square-foot commercial component. MR. MILES expressed his preference for C-1 zoning, which is what staff recommended, noting that he did not understand the constraints of a GPA.

CHAIR GOYNES informed MR. MILES that if this project were to fail, the people in the neighborhood would have to live with C-1 zoning. MR. MILES stated that several iterations were done, and he did not want to have to come back with a different application because it is very expensive. He offered to enter into an agreement that would restrict him to the proposed project and that would require him to present a new site development plan, should any

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substantial changes be made.

COMMISSIONER EVANS stated that the City Attorney has consistently advised the Commissioners that any deed restriction agreements and memorandums of understanding do not provide any protections. He asked MR. MILES why the 4,000 square feet of commercial would make such a difference to a project of this scale. MR. MILES answered that he would like to tap into the strength of the existing restaurant corridor and connect his project to that strength, by offering a nice restaurant and other ancillary uses, such as a beauty salon.

COMMISSIONER EVANS did not believe the restaurant and a beauty salon would fit on the commercial footage requested. MR. HAYES added that the 4,000 square feet of commercial is required to obtain the zone change, which would allow the applicant to build the project as presented and pointed out that earlier versions had 180,000 square feet.

COMMISSIONER STEINMAN deduced that MR. MILES intends to keep this property. MR. MILES reiterated that he wants to build this project, and COMMISSIONER STEINMAN insisted that the residents are chiefly opposed to C-1 zoning and preferred the applicant seek a GPA.

MR. MILES commented that he wanted the Commissioners' approval and would opt for a GPA, if he could get it that evening. CHAIR GOYNES advised him that he would have to go through the process again. MS. WHEELER added that the process takes about six weeks, and MR. RANKIN noted that the election for the GPA cycle would be around August 23, 2008.

COMMISSIONER TROWBRIDGE was pleased with the applicant's willingness to forego the 4,000 square feet of commercial, which was the biggest reason the project was being held up, and appreciated his efforts to do what is necessary to gain staff's support. He added that this project has been before the Commissioners numerous times in various formats and felt that some of the suspicions of the residents were justified, but he advised MR. MILES that he would be better off to hold this matter in abeyance to resolve some of the issues. COMMISSIONER TROWBRIDGE noted that he likes the building, but the residents need to trust the applicant's intentions for this project.

GREG TRAPANI, President of Exceed Development, asked if the commercial component could be eliminated in its entirety through a deed restriction, and CHAIR GOYNES replied that deed restrictions are not enforceable.

DEPUTY CITY ATTORNEY JIM LEWIS advised that deed restrictions placed upon parcels could be removed by the property owner and are not enforceable by the City. The City regulates uses through the Zoning Code and its Master Plan; therefore, the Planning Commissioners and the City Council are consistently advised to not use any other means to regulate uses on land. The only way this applicant could develop this project without the commercial component would be through the GPA process.

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MS. WHEELER agreed with DEPUTY CITY ATTORNEY LEWIS that the only way to eliminate the commercial component would be to submit an application for a GPA. Further, she advised that at this meeting, the existing zoning application could be modified if the intensity were reduced, the SUP would no longer be necessary, and the SDR could be modified; however, the GPA application was not being considered at this meeting and could not be acted upon by the Commissioners.

COMMISSIONER EVANS pointed out that the applicant might be better off to seek the GPA, as approval by the Planning Commission does not guarantee approval by the City Council. MS. WHEELER informed the Commissioners that the soonest a GPA application could be considered by the City Council would probably be the latter part of October.

MR. TRAFANI confirmed with MS. WHEELER that seeking a GPA for the same project without the commercial would not make the process any easier, as there would still be issues with a waiver of the Residential Adjacency Standards, and there might be other issues that the neighbors might have.

DEPUTY CITY ATTORNEY LEWIS pointed out that if substantial changes are made to the applications being denied, the applicant could submit another application without a waiting period. However, should Planning and Development staff find that substantial changes were not made after the Planning Commission's denial of these applications, the applicant would be required to wait one year before applying again.

MR. MILES was troubled about the matter and asked to accept this matter being held in abeyance, as he felt that the most affected people were in support of the project. MR. HAYES requested a decision by the Planning Commission.

CHAIR GOYNES declared the Public Hearing closed for Items 35-37.

