

ITEM NO. 2A RS10 TO RS7; 2.186 ACRES; 1146 HASKELL AVE (MKM)

Z-13-00350: Consider a request to rezone approximately 2.186 acres from RS10 (Single-Dwelling Residential) District to RS7 (Single-Dwelling Residential) District, located at 1146 Haskell Ave. Submitted by Struct/Restruct LLC for BK Rental LLC, property owner of record.

ITEM NO. 2B RS10 TO IL; 1.785 ACRES; 1146 HASKELL AVE (MKM)

Z-13-00351: Consider a request to rezone approximately 1.785 acres from RS10 (Single-Dwelling Residential) District to IL (Limited Industrial District) District, located at 1146 Haskell Ave. Submitted by Struct/Restruct LLC for BK Rental LLC, property owner of record.

ITEM NO. 2C RS10 TO OS; 2.384 ACRES; 1146 HASKELL AVE (MKM)

Z-13-00408: consider a request to rezone approximately 2.384 acres from RS10 (Single-Dwelling Residential) District to OS (Open Space) District, located at 1146 Haskell Ave. Submitted by Struct/Restruct LLC on behalf of BK Rental LLC, property owner of record.

ITEM NO. 2D PRELIMINARY PLAT FOR BURROUGHS CREEK ADDITION; 1146 HASKELL AVE (MKM)

PP-13-00352: Consider a Preliminary Plat for Burroughs Creek Addition, a 6.36 acre subdivision consisting of 9 residential lots, 1 industrial lot, and one open space tract; 1 associated variance from right-of-way requirement in Section 20-810(e)(5) of the Subdivision Regulations. The property is located at 1146 Haskell Ave. Submitted by Struct/Restruct LLC for BK Rental LLC, property owner of record.

STAFF PRESENTATION

Ms. Mary Miller presented items 2A-2D together.

APPLICANT PRESENTATION

Mr. Eric Jay & Mr. Matt Jones, Struct/Restruct, said they hoped to purchase the property and move their office to it. He said the property was a lot more space than they needed so they came up with ideas of how to develop the property to mitigate some of the cost. He said they were going to keep the current building at 12th & Haskell for their shop and office, develop the 9 lots to the east, and donate a little over 2 acres to the City for a park or outdoor recreational facility. He said they wanted to have a positive impact in the neighborhood.

Mr. Brian Sturm, Landplan Engineering, said he helped with the preliminary platting. He said this project could revitalize East Lawrence and the Brook Creek Neighborhood. He said the open space provided floodplain management. He said the State of Kansas was currently working on a new floodplain study and the residential properties would not be final platted until after the flood insurance study was complete. He said the plan was to only final plat the IL piece initially. He said they would be setting aside approximately 40% of the property as open space. He said in some places there would be as much as 45' of greenspace between the street and property lines that had no underground utilities on it. He said water lines would be the least invasive to install and could be directionally bored from a small hole above ground to avoid significant trenching. He said they would do their best to minimize damage with the installation of water lines south of 12th Street

PUBLIC HEARING

Ms. Julie Mitchell, Brook Creek Neighborhood Association, thanked Struct/Restruct for holding neighborhood meetings. She said the neighborhood understands this may be the best option for the property. She said a lot of the neighborhood questions were answered by Ms. Miller during her presentation, such as the industrial use concerns. The neighborhood was concerned about flooding issues and insurance rates increasing. She wondered if the real estate deal didn't go through for Struct/Restruct to purchase the property if the zoning would still go through.

Mr. McCullough said the zoning would go with the land, not people, so the property would be rezoned with conditions. He said if anyone wanted to lift the prohibitions it would go back through the rezoning process. He said part of the consideration was that no matter who the applicant was the land use should be compatible with the neighborhood.

Ms. Mitchell expressed concern about enforcement and concern about easements. She said it felt like plans were still up in the air.

Mr. Clement Garrick wondered how long the property had been zoned RS10.

Mr. McCullough said since the property was annexed in the 1960's.

Mr. Garrick asked how the recycling use was allowed.

Mr. McCullough said there was an underlying issue in the background that wasn't really up tonight for Planning Commission discussion, in his opinion. He said there was a lot of discussion at the Board of Zoning Appeals and City Commission about a land use enforcement case. He said essentially the property was annexed in 1966 with automotive related uses and some commercial and industrial uses throughout the years. He said in approximately 2003 Mr. Bo Killough began a use that ended up turning out to be not in compliance with the non-conforming status. He said that was enforced and at the end of the day Mr. Killough moved his business up the street, which left the property vacant. He said this proposed use had turned out to be one of the better outcomes for this property. He said he did not want to dwell on the history of the legal non-conforming case.

Mr. Garrick wondered if it was appropriate to have residential development so close to a sewage treatment facility.

Ms. Sharon Vaughn said Brook Creek has not had much work done to improve it. She said she asked the City's first Stormwater Engineer about 10 years ago how long it would be before the Brook Creek stormwater flooding issues would be addressed and he said it would be 30 years. She said there were still flooding problems in the area. She felt that nine curb cuts on 12th Street were a lot and she wondered how that would impact flooding to existing homes. She expressed concern about toxic waste on the site.

Mr. Michael Almon showed slides on the overhead of the property when it was owned by Mr. Bo Killough. He was concerned about extensive industrial use activities by future owners or by Mr. Killough if he retains the property. He said Struct/Restruct considerably requested that 38 use groups be prohibited with the IL. He disagreed with the character of the neighborhood as described in the staff report.

Ms. Melinda Henderson, 1202 Almira, expressed concern about vegetation being destroyed with the water line installation. She was also concerned about development to the north increasing the floodplain area. She said that fill added for new homes would affect the ability for the area to drain to the northeast. She showed pictures on the overhead of 12th Street. She wished the Hydraulic and Hydrologic study was complete before the rezoning. She said if the rezoning was approved she would like conditions place on the industrial zoning.

Ms. Cille King, League of Women Voters, said floodplain should be left undeveloped for flood waters. She said if the homes were raised on stilts they would lose tornado protection. She felt the safety of the soil should be proven before rezoning.

Mr. Byron Wiley, 1200 Almira, said he was mostly pleased with the proposal presented by Struct/Restruct. He said his major concern was the rezoning conditions. He felt there was no need for industrial zoning and that it could be zoned CC with restrictions.

APPLICANT CLOSING COMMENTS

Mr. Jay discussed ideas they had about the residential portion. He said they were thinking about the idea of pier construction homes which would have as little impact to the site and floodway as possible. He said it would consist of a structure being on stilts/piers and would still include some sort of storm shelter as part of the structure where the utilities come into the house from beneath. He said there would probably be some sort of pre-construction site grading plan to balance the cut and fill of the site to divert the water differently. He said the plan was that the piers would be the only change to the site. He said regarding access it didn't make economic sense to build two cul-de-sacs within the development which would create higher development costs. He said an environmental study was completed by Larson and Associates and states the contamination levels were below State requirements for residential development. He said he had no objection to the restricted uses.

COMMISSION DISCUSSION

Commissioner Denney asked if Planning Commission rezoned and replatted tonight would that remove any previous non-conforming use agreements that may be out there. He asked if anything that was grandfathered before would go away.

Mr. McCullough said yes.

Commissioner Denney asked if it would be starting new with no previously existing conditions.

Mr. McCullough said that was correct.

Commissioner Denney inquired about addressing the drainage issues.

Mr. McCullough said the State needed to complete the review and analysis with the Hydraulic and Hydrologic study on Burroughs Creek and how it intercepts with Brook Creek. He said the final plat could not be done until that study was received.

Commissioner Denney asked if what they were considering tonight would approve any structures being built at this point.

Mr. McCullough said no. He said another step for the light industrial site would include site planning. He said that may include some property improvements and limited fill or paving.

Commissioner Denney asked if the lots that were being rezoned to RS7 would qualify for RS10.

Ms. Miller said there was enough area to be an RS10 lot but the length of 12th Street with RS10 would require 70' of frontage per lot and RS7 would require 60' of frontage per lot.

Commissioner von Achen asked for examples of other areas in town where industrial was next to single-family.

Mr. McCullough said the City was essentially established in a pattern of linear corridors and Haskell Avenue was one of those corridors where there is industrial development flanked by residential development. He said there was a historic pattern of industrial along corridors with residential back to back with it.

Commissioner von Achen inquired about transitions between uses.

Mr. McCullough said conditional zoning could be employed as another protection. He said the reason staff advised the applicant not to request commercial zoning was because the only commercial zones that support the construction sales and service use was Community Commercial, Regional Commercial, or Commercial Strip. He said IL was the district that most accommodated the requested use. He said conditional zoning can be used on top of that zoning to make it compatible with the neighborhood.

Mr. Jay said the current location of Struct/Restruct at 920 Delaware Street was zoned similarly and contains a mix of uses.

Commissioner von Achen asked if staff had seen the soil test that the applicant did.

Ms. Miller said no, staff had not seen the report.

Commissioner von Achen asked if staff would see the environmental study.

Mr. McCullough said staff could accept the environmental study into the record. He said during the enforcement process staff had been in contact with KDHE and it was his understanding there were no open KDHE cases on the property.

Commissioner von Achen asked if all of the houses in the development would be built by the same developer or would individual buyers purchase the lots and build with their own builder.

Mr. Jay said the plan was to place some covenants on the nine lots for the design of the properties and potentially submit an approved contractor list. He felt the design was more important than who the builder was.

Commissioner Rasmussen asked for staff to put an aerial on overhead. He asked questions based on the Golden Factors. He said he was concerned about going from RS to Industrial zoning. He asked how this fit within the Comprehensive Plan.

Ms. Miller said it was zoned residential because when properties were annexed in the 1960's they were automatically zoned to a placeholder zone of RS1 and that district converted to the RS10 district with the adoption of the Development Code. She said the RS10 zoning was just a placeholder zoning, it wasn't intentionally zoned RS10.

Commissioner Rasmussen asked if when it was annexed in 1966 it was already an industrial use.

Mr. McCullough said it was a vehicle storage lot.

Commissioner Rasmussen asked how it fit with the Comprehensive Plan.

Mr. McCullough referred to the staff report. He said there was industrial zoning and uses in the area.

Commissioner Rasmussen said he felt Brook Creek was a natural stopping place of industrial into the neighborhood. He did not see any properties south of the creek that were industrial.

Mr. McCullough said historically it has been 12th Street where the pattern stops between residential and industrial uses.

Commissioner Rasmussen asked if staff considered the residential parts of the neighborhood. He expressed concern about what happens when Struct/Restruct is no longer at that location in the future.

Mr. McCullough said one of the hardships to the neighborhood has been the unknown with the non-conforming use issue. He said currently the site was RS10 and it may or may not have some non-conforming use rights today. He said one of the positive impacts of this rezoning request was that it would clearly zone the property to a zoning district and could include conditional zoning. He said a site plan would provide an enforcement mechanism. He said in his opinion it was never the intent of the enforcement process to try and get the building and use completely demolished and abandoned.

Commissioner Rasmussen asked Mr. Jay if the conditions Mr. Almon mentioned earlier were accurate.

Mr. Jay said yes.

Ms. Miller said restricting uses from the district that could be compatible could just bring the issue back to Planning Commission if Struct/Restruct decided not to build at the site. She said restricting uses that were allowed in the neighborhood to the south didn't make sense. She said staff went through all the uses recommended and she did not think uses that were actually permitted in the RS7 district should be prohibited in the IL district. She said it would provide a clear zoning district with uses that were compatible, not necessarily all the uses the neighborhood suggested or even the one the applicant would agree to.

Commissioner Rasmussen asked if at this point staff was not including any more conditions than what was recommended in the staff memo.

Ms. Miller said that was correct.

Commissioner Liese said this was a terrific example of a developer, community, and staff doing a professional job working together to get rid of a problem in the community. He appreciated the developer's willingness to approach and talk to the neighborhood. He thanked staff for going through all the questions. He asked about the question that a public member brought up regarding the regulations about residential development near a treatment plant.

Mr. McCullough said there were no distance standards.

Commissioner Liese felt IL was a reasonable transition between the higher intensity industrial uses to the north and the residential uses to the south. He felt it was a sensible plan. He said he would support the rezoning.

Commissioner Josserand agreed with Commissioner Liese's comments. He felt it was a well thought thru plan. He thanked the applicant for meeting with the neighborhood. He said the history of the property was an additional factor that could be considered. He expressed concern about the flooding in the area and hoped some of the stormwater issues could be solved. He said it was unfortunate the water line needed to be on the south but it was right-of-way and he agreed with Mr. Sturm that the water line was not as noxious as some other things that could be in the right-of-way. He said there may be changes to the right-of-way that may be necessary to solve the flooding issue.

Commissioner Liese inquired about the access to the open space.

Ms. Miller said access to the open space would be provided from 12th Street from a pedestrian easement.

Mr. Jay said the leg of open space north of the IL district was for a small pedestrian bridge over the creek.

Commissioner von Achen had strong reservations that the proposal did not meet the criteria necessary for industrial zoning, it's not identified in future land use maps for industrial, it does not meet the setback criteria for street frontage where industrial is across the street from residential, it abuts RS7 district on two sides without any transition. Said she could not support the IL zoning.

ACTION TAKEN on 2A

Motioned by Commissioner Liese, seconded by Commissioner Graham, to approve the rezoning request for approximately 2.186 acres from RS10 (Single-Dwelling Residential) District to RS7 (Single-Dwelling Residential) District and forwarding it to the City Commission with a recommendation for approval based on the findings of fact found in the body of the staff report.

Unanimously approved 9-0.

ACTION TAKEN on 2B

Motioned by Commissioner Liese, seconded by Commissioner Josserand, to approve the rezoning request for approximately 1.785 acres from RS10 (Single-Dwelling Residential) District to IL (Limited Industrial) and forwarding it to the City Commission with a recommendation for approval based on the findings of fact found in the body of the staff report subject to the following condition:

The following uses are permitted only upon approval of a Special Use Permit:

- Lodge, Fraternal & Civic Assembly
- Active Recreation
- Hotel, Motel, Extended Stay
- Public Safety

The following uses are not permitted within the district:

- Kennel
- Livestock Sales
- Fast Order Food, Drive-in
- Car Wash
- Gas & Fuel Sales
- Heavy Equipment Sales/Rental
- Heavy Equipment Repair
- Light Equipment Sales/Rental
- Light Equipment Repair
- RM & Boats Storage
- Scrap and Salvage Operation
- Broadcasting Tower
- Large Collection Recycling Facilities
- Recycling Processing Center
- Participation Sports and Recreation, Outdoor

Commissioner Britton said this was a unique area and in other circumstances he would echo Commissioner von Achen's concern about the industrial zoning. He said it made sense at this location given its unique history and the fact that the land could be put to good use. He said he would support the motion and felt it was a good compromise.

Motion carried 8-1, with Commissioner von Achen voting in opposition.

ACTION TAKEN on 2C

Motioned by Commissioner Liese, seconded by Commissioner von Achen, to approve the rezoning request for approximately 2.384 acres from RS10 (Single-Dwelling Residential) District to OS (Open Space) and forwarding it to the City Commission with a recommendation for approval based on the findings of fact found in the body of the staff report.

Unanimously approved 9-0.

ACTION TAKEN on 2D

Motioned by Commissioner Liese, seconded by Commissioner Josserand, to approve the variance requested from Section 20-810(e)(5) from the requirement to dedicate additional right-of-way for Haskell Avenue adjacent to Lot 1 Burrough's Creek Addition based on the findings listed in the report, subject to the following condition:

The plat shall be revised to include the following note: *"On October 21, 2013, the Planning Commission approved a variance from the requirement in Section 20-810(e)(5) to dedicate 100 ft of right-of-way for minor arterials to allow the right-of-way for Haskell Avenue as shown on this plat."*

The approval of the Burrough's Creek Addition subject to the following conditions:

1. Provision of a revised plat with the following changes:
 - a. Increase the width of the utility easement between Lots 9 and 10 to 15 ft.
 - b. Revise General Note 10 to note that Tract A will be donated to the City rather than 'dedicated'.
 - c. Revise the site summary to include the tract in the net area.
 - d. Add the following note: *"In order to maintain the health and vigor of a Bur Oak Tree (specifically one being a 50" caliber, DBH), and their root systems; the following restrictions apply within the Landscape Easement on Lot 10:*
 - *No building.*
 - *No building material or debris storage of any kind.*
 - *No person shall deposit, place, store, or maintain any stone, brick, sand, concrete, or other materials which may impede the free passage of water, air and fertilizer to the roots of any tree growing inside the easement.*
 - *No cut/fill grading over 4 inches and no excavation of ditches or trenches.*
 - *No drives shall be installed.*
 - *No driving, parking, or storage of vehicles."*

Unanimously approved 9-0.