
ORDINANCE NO. O-1718-31

ITEM NO. 10b

STAFF REPORT

GENERAL INFORMATION

APPLICANT	Hollywood Corners Stations, L.L.C.
REQUESTED ACTION	Rezoning to SPUD, Simple Planned Unit Development
EXISTING ZONING	A-2, Rural Agricultural District
SURROUNDING ZONING	North: TC, Tourist Commercial District East: A-2, Rural Agricultural District South: A-2, Rural Agricultural District West: A-2, Rural Agricultural District
LOCATION	SW corner of Porter Avenue and Franklin Road
SIZE	2.38 acres, more or less
PURPOSE	Rezoning to allow for Outdoor Live Entertainment Venue and Bar, Nightclub or Tavern
EXISTING LAND USE	Convenience Store/Restaurant
SURROUNDING LAND USE	North: Residential, Commercial & Industrial East: Vacant & Residential South: Vacant & Residential West: Vacant & Residential
LAND USE PLAN DESIGNATION	Very Low Density Residential Designation

SYNOPSIS: In the companion land use amendment the applicant is requesting to amend the NORMAN 2025 Land Use and Transportation Plan from Very Low Density Residential Designation to Commercial Designation (R-1718-25). This application requests rezoning the property from A-2, Rural Agricultural District to SPUD, Simple Planned Unit Development with the approved uses consistent with those listed as allowed uses by right and Special Use under the TC, Tourist Commercial District; these uses are more specifically detailed in the SPUD. The references to the TC District are proposed for two reasons: TC zoning exists directly north, across Franklin Road. In 1983, a tract of land across Franklin Road, to the north of Hollywood

Corners, was rezoned from A-2, Rural Agricultural District to TC, Tourist Commercial with Permissive Use for an Auto Sales business. The site is now utilized as a construction yard/office for a concrete contractor. The NORMAN 2020 Land Use and Transportation Plan reflected the property on the north side of Franklin Road as Very Low Density Residential. At the adoption of the NORMAN 2025 Land Use and Transportation Plan the land use designation on the same site was amended to reflect the existing use that, of Commercial, as now reflected on the NORMAN 2025 Land Use and Transportation Plan. The second reason for proposing uses from the TC District is because it is the zoning district designated in the Zoning Ordinance as the district intended to accommodate the grouping of those commercial activities necessary to supply the normal needs of tourists, and to protect against other incompatible commercial uses; i.e., those uses in the C-1, C-2 and C-3 Districts.

ANALYSIS/DISCUSSION This property developed prior to annexation and has been a variety of businesses since its beginning 90 plus years ago (since 1925). In reviewing several land surveys, businesses on this site have varied from a café and travel court with areas for trailers and what appears to be dwelling units, to the convenience store/deli and gas station still in operation.

The recent permits for the site are as follows: A permit was issued in 2014 for the property to be remodeled and reopened as a new deli and convenience store, as a grandfathered land use on the site, with no expansion of the structure except for an outdoor patio on the west side of the building and reconfiguration of an ADA accessible ramp on the south side of the building. In 2015 a permit was issued for the area identified as the stage, located on the south edge of the property. The permit was issued as a TCTL – Temporary Construction Trailer because the structure was to be used for a private benefit concert at the site. In 2016 a permit was issued for a roof/covering over the stage. Though the stage has been used for outdoor live entertainment the applicant could have received a permit for an accessory structure and covered the structure, as was done – it is not the stage structure that is at issue for zoning; it is the use of the structure/site that is at issue. Realistically, the property could continue as a convenience store/restaurant and the stage area located on the south edge of the property could be used for seating of guests eating lunch or dinner at the site. In 2016 a permit was issued for a small storage building located just north of the existing restaurant building.

The rezoning to SPUD, Simple Planned Unit Development, seeks to mimic the TC, Tourist Commercial regulations as much as possible. In the Zoning Ordinance (Z.O.) under the TC, Tourist Commercial District a restaurant is an allowed use. Per the Z.O., a restaurant can provide live entertainment and/or a dance floor to their guests as long as all such activity is located inside an enclosed building, provided that the kitchen remains open with full food service whenever live entertainment is offered. If Hollywood Corners kept the restaurant use, and provided their guests live entertainment inside the building, they would be complying with the TC Zoning regulations. A Special Use request to allow a Nightclub or Tavern with Live Entertainment would also allow the indoor live entertainment and serving of alcohol. What requires Hollywood Corners to request the SPUD is the fact that they want an outdoor live entertainment venue on the stage area or possibly the back-patio area; and as part of the SPUD they are requesting to be a Bar. They are combining their requests into one zoning request to a SPUD.

With regard to the request for Outdoor Live Entertainment Venue, the applicant is requesting a use not historically approved within the city limits through a zoning request – that of outdoor live entertainment. The site is already considered to be a legally nonconforming restaurant and under the restaurant the business has the licensing to serve alcohol, not just beer. The

request to allow for a Nightclub or Tavern with Live Entertainment will simply eliminate the requirement to have 51% of their sales from food at the business. If the request is approved, the business would no longer be required to have the kitchen open, serving a full menu, to serve liquor and have an indoor live entertainment venue.

BACKGROUND

Live Entertainment is discussed in the Zoning Ordinance as follows:

Live Entertainment Venue is defined as "An establishment where a major component of the business includes live or electronically amplified music, dancing, or other entertainment and which may impose an admission charge or cover charge to observe that entertainment. Night clubs, bars and dance halls are typical uses within this category. This category shall not include, in any manner, any Adult Entertainment Establishment".

Hollywood Corners does not charge an additional fee/cover charge for the live entertainment venues.

Live entertainment is also discussed as follows under the definition of Accessory:

Accessory. ".....Live entertainment, when offered in conjunction with an otherwise unrelated legal commercial use, will be considered an accessory use when it constitutes no more than ten (10) percent of the gross monthly revenue of the establishment".

The definitions of Live Entertainment came from Bar/Dance Hall; historically all activities took place within a fully enclosed facility/business. The interpretation from City staff has been that live entertainment, as defined as an accessory use with a restaurant, dance hall or bar, is done within a fully enclosed building. Per City Council discussion at the December 13, 2016 meeting, the intent of allowing live entertainment is that it is to be an indoor use on a site.

A business owner can also request a Noise Variance Permit per Article III – Noise Control.

A noise variance permit and a special event permit can work together; a noise variance is required as part of an application for a special event if the special event volume will violate the Noise Ordinance. For example, Norman Music Festival applies for both a special event permit and a noise variance permit. If Council were to approve a Special Use Permit for outdoor live entertainment, the business with the special use permit would still need a noise variance permit if the noise level will exceed the noise ordinance. The maximum number of allowed Noise Permits per year is 7, unless additional permits are approved by the City Manager.

In addition to the above discussion there is the issue of Article III – Noise Control. The Zoning Ordinance does not address issues of sound and a zone change request for SPUD does not give Planning staff the ability to vary a standard in a different section of the Municipal Code.

The application for rezoning from A-2 to SPUD is an appropriate request for this site since the use of the gas station and convenience store/deli has been allowed in the past and grandfathered and those uses do fit within the allowed uses in the TC District, TC being the referenced zoning district in the SPUD. To allow for the request of a bar with live entertainment as historically interpreted from the Zoning Ordinance – all such activity fully within an enclosed building - may be appropriate as well since they already serve alcohol under the current use of a restaurant. Conversely, to allow the addition of outdoor live entertainment in this area may not be an appropriate fit for the area unless additional restrictions are attached to the

use of the site and those restrictions are strictly followed by the applicant. There have been numerous complaints from nearby residents about the attendance numbers and sound level resulting from outdoor concerts. The applicant has indicated they will provide sound barrier equipment and are proposing to follow Article III – Noise Control as outlined in the SPUD Narrative.

ALTERNATIVES/ISSUES:

The particulars of this SPUD:

- **USES** In regard to the Outdoor Live Entertainment Venue on the property, the following provisions shall apply when exterior amplification of sound is utilized:
 - Live exterior amplified music events shall be restricted to meet the standards shown on Exhibit B.
 - The performance stage will be enhanced with sound barriers along the rear and sides of the stage such that amplified sound shall be directed to the northeast direction of the stage and shall be diminished from the rear and sides of the stage.
- **IMPACTS** Impacts of attendance numbers, sound levels and parking have already been an issue in this general area – there are multiple complaints from neighboring property owners and through the SPUD the applicant is proposing measures to alleviate these concerns/issues.
- **ACCESS** The access for the property will be by way of the existing access points along Porter Avenue. There are no other points of access requested from Franklin Road and none recommended for approval.
- **SITE PLAN** With the exception of sound barrier materials there are no additions/expansions proposed on the site. The owners/applicants placed a large amount of gravel on-site to help accommodate parking. Through the SPUD Narrative the applicant is requesting approval of the existing parking surface for patron parking.
- **PARKING SOLUTION** – There have been complaints regarding the parking situation for this site when there are larger events scheduled. With 57 parking spaces on the site there is adequate parking for the existing convenience store, deli/restaurant and for smaller venue shows but for the larger shows parking shortage is an issue. The owner has indicated that they have an arrangement for temporary parking facilities across Franklin Road, to the northeast. However, staff does not have documentation from the owner to confirm this arrangement.

OTHER AGENCY COMMENTS:

- **GREENBELT COMMISSION – GBC NO. 17-12** **MEETING MAY 15, 2017**
There was no Greenbelt meeting required for this application.
- **PRE-DEVELOPMENT – PD NO. 17-29** **MEETING DECEMBER 21, 2017**

Application Summary

The applicant, Hollywood Corners Station, L.L.C., is proposing a NORMAN 2025 Land Use and Transportation Plan amendment from Very Low Density Residential to Commercial and rezoning from A-2, Rural Agricultural District to Simple Planned Unit Development, SPUD to allow for commercial uses on the property. The applicant is proposing the following: convenience store/fuel sales, deli/restaurant and bar with indoor/outdoor live entertainment venues.

Neighbor's Comments/Concerns/Responses

- Why does the music have to be so loud? The site is small, you can still hear the music even if you turned it down to not impact the neighbors.
- We, as neighbors, don't want you to close; we don't want the business to go away. We just want the music level, bass, to be turned down so it isn't such an impact on adjacent properties. One neighbor stated they could hear the words with windows closed and A/C unit running.
- Our property values have decreased and will continue to decrease if the music volume isn't controlled.
- The decibel of sound should be no louder than 50 after 9 p.m.
- The Noise Ordinance is in place for a reason – quality of life is lost without control.
- We, as neighbors, want the entertainment but at a lower level.
- Have you thought about the type of sound board you will use to buffer the sound?
- Can you use "sound walls" to buffer the music?
- Have you hired a sound engineer?
- Are you planning to extend hours of operation?
- What is the parking surface?
- Your parking area may work for the restaurant but not for the times when you have concerts.
- Blaine Nice – Neighbor's Legal Counsel – requested a copy of the SPUD Narrative when completed.

Applicant's Response

- Applicant's representative stated the business model will follow the TC, Tourist Commercial District, Special Use – Convenience Store, Deli/Restaurant, Bar and Live Entertainment Venue. Rieger Law Group has conducted sound studies. The parking surface is gravel. We do not intend to extend the business hours. Currently, looking at sound walls, buffering solutions for the site. They will work toward a solution that will not negatively impact the neighbors yet allow Hollywood Corners the opportunity to provide a venue to local artists and the community.

- **PARK BOARD** This property is not platting with a residential component; therefore, there are no park dedications required.
- **PUBLIC WORKS** The property is not platting. Per Section 19-103-104 of the Subdivision Regulations platting is not required for this site.

STAFF RECOMMENDATION Staff presents this item to Planning Commission for their consideration with the following recommendations:

- Staff recommends approval of the request for SPUD, Simple Planned Unit Development for the Bar, Lounge or Tavern.

- Staff recommends approval of Live Entertainment Venue as historically interpreted for indoor use only; staff cannot recommend approval of a use not identified in the Zoning Ordinance.