

AN ORDINANCE AMENDING THE ZONING ORDINANCE OF THE CITY OF KILLEEN BY CHANGING THE ZONING OF CERTAIN PROPERTY OUT OF THE CITY OF KILLEEN, BELL COUNTY, TEXAS, FROM “R-1” (SINGLE-FAMILY RESIDENTIAL DISTRICT), “R-3” (MULTIFAMILY RESIDENTIAL DISTRICT) AND “B-5” (BUSINESS DISTRICT) TO A PLANNED UNIT DEVELOPMENT (PUD) WITH “R-3A” (MULTIFAMILY APARTMENT RESIDENTIAL DISTRICT); PROVIDING A SAVINGS CLAUSE; PROVIDING FOR THE REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Payton Senior L.L.C. on behalf of Franklin Harris, L.L.C. has presented to the City of Killeen a request for amendment of the zoning ordinance of the City of Killeen by changing the classification of approximately 8.5 acres out of the W. H. Cole Survey, Abstract No. 150, from “R-1” (Single-Family Residential District), “R-3” (Multifamily Residential District) and “B-5” (Business District) to Planned Unit Development (PUD) with “R-3A” (Multifamily Apartment Residential District), said request having been duly presented and recommended for approval by the Planning and Zoning Commission of the City of Killeen on the 6th day of March 2017, and due notice of the filing of said request and the date of hearing thereon was given as required by law, and hearing on said request was set for 5:00 P.M., on the 28th day of March 2017, at the City Hall, City of Killeen;

WHEREAS, the City Council at said hearing duly considered said request, the action of the Planning and Zoning Commission and the evidence in support thereof, and the City Council being of the majority opinion that the PUD for “R-3A” zoning request should be approved;

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF
THE CITY OF KILLEEN:**

SECTION I. That the zoning classification of part of approximately 8.5 acres out of the W. H. Cole Survey, Abstract No. 150, from “R-1” (Single-Family Residential District), “R-3” (Multifamily Residential District) and “B-5” (Business District) to Planned Unit Development (PUD) with “R-3A” (Multifamily Apartment Residential District). The project site is located on an undeveloped tract of land, south of E. Central Texas Expressway, east of O.W. Curry Drive and west of Cunningham Road.

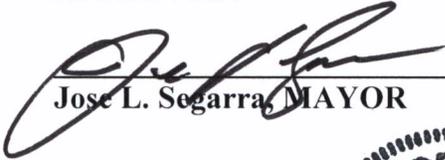
SECTION II. That should any section or part of this ordinance be declared unconstitutional or invalid for any reason, it shall not invalidate or impair the validity, force, or effect of any other section or parts of this ordinance.

SECTION III. That all ordinances and resolutions, or parts thereof, in conflict with the provisions of this ordinance are hereby repealed to the extent of such conflict.

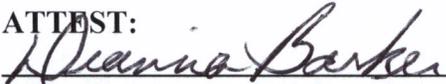
SECTION IV. That this ordinance shall take effect immediately upon passage of the ordinance.

PASSED AND APPROVED at a regular meeting of the City Council of the City of Killeen, Texas, this 28th day of March 2017, at which meeting a quorum was present, held in accordance with the provisions of V.T.C.A., Government Code, §551.001 et seq.

APPROVED:


Jose L. Segarra, MAYOR

ATTEST:


Dianna Barker, CITY SECRETARY
APPROVED AS TO FORM


Kathryn H. Davis, City Attorney



Case #17-05

Ord. #17-__



Date Paid:	8/3/17
Amount Paid:	\$ 200.00
Cash/MO #/Check #:	# 21004
Receipt #:	421

CASE #: 217.05

City of Killeen Zoning Change Application

General Zoning Change \$300.00 [] **Conditional Use Permit \$500.00**

Name(s) of Property Owner: Franklin Harris, LLC

Current Address: P.O. Box 794055

City: Dallas State: TX Zip: 75379 - 4055

Home Phone: () _____ Business Phone: (972) 896-0032 Cell Phone: () _____

Email: hytken@sbcglobal.net

Name of Applicant: Payton Senior, LLC
(If different than Property Owner)

Address: 421 West 3rd Street – Suite 1504

City: Austin State: TX Zip: 78701

Home Phone: () _____ Business Phone: (832) 330-0762 Cell Phone () _____

Email: megan@pinrocllc.com

Address/Location of property to be rezoned: Located between O.W. Curry Road and Cunningham Road

Legal Description: 8.5 Acres out of the W.H. Cole Survey, Abstract 150 in Bell County, Texas

Metes & Bounds or Lot(s) Block Subdivision

Is the rezone request consistent with the Comprehensive Plan? YES NO
If NO, a FLUM amendment application must be submitted.

Type of Ownership: _____ Sole Ownership _____ Partnership _____ Corporation limited liability co. _____ Other

Present Zoning: R1, R3, ~~R3~~ R5 Present Use: Vacant

Proposed Zoning: PUD R3-A Proposed Use: Senior Housing

Conditional Use Permit for: _____

This property was conveyed to owner by deed dated July 31, 2014 and recorded in Volume _____
Page _____, Instrument Number 2014-00028264 of the Bell County Deed
Records. (Attached)

Is this the first rezoning application on a unilaterally annexed tract?
Yes _____ (Fee not required) No X (Submit required fee)

APPOINTMENT OF AGENT

As owner of the subject property, I hereby appoint the person designated below to act for me, as my agent in this request.

Name of Agent: Consort, Inc.

Mailing Address: 3600 Bee Caves Road, Suite 100

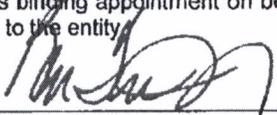
City: West Lake Hills State: Texas Zip: 78746 - _____

Home Phone: (____) _____ Business Phone: (512) 469-0500 Email: bturner@consortinc.com

I acknowledge and affirm that I will be legally bound by the words and acts of my agent, and by my signature below, I fully authorize my agent to:

be the point of contact between myself and the City: make legally binding representations of fact and commitments of every kind on my behalf; grant legally binding waivers of rights and releases of liabilities of every kind on my behalf; to consent to legally binding modifications, conditions, and exceptions on my behalf; and, to execute documents on my behalf which are legally binding on me. This authorization only applies to this specific zoning request.

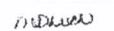
I understand that the City will deal only with a fully authorized agent. At any time it should appear that my agent has less than full authority to act, then the application may be suspended and I will have to personally participate in the disposition of the application. I understand that all communications related to this application are part of an official proceeding of City government and, that the City will rely upon statements made by my agent. Therefore, **I agree to hold harmless and indemnify the City of Killeen, its officers, agents, employees, and third parties who act in reliance upon my agent's words and actions from all damages, attorney fees, interest and costs arising from this matter.** If my property is owned by a corporation, partnership, venture, or other legal entity, then I certify that I have legal authority to make this binding appointment on behalf of the entity, and every reference herein to 'I', 'my', or 'me' is a reference to the entity.

Signature of Agent  Title President

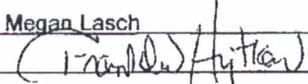
Printed/Typed Name of Agent Ben Turner Date _____

Signature of Agent _____ Title _____

Printed/Typed Name of Agent _____ Date _____

Signature of Applicant  Title Project Manager

Printed/Typed Name of Applicant Megan Lasch Date _____

Signature of Property Owner  Title Managing Member

Printed/Typed Name of Property Owner Franklin Harris, LLC Date Jan. 1, 2017

Signature of Property Owner _____ Title Managing Member

Printed/Typed Name of Property Owner _____ Date _____

Signature of Property Owner _____ Title _____

Printed/Typed Name of Property Owner _____ Date _____

*Application must be signed by the individual applicant, by each partner of a partnership, or by an officer of a corporation or association.



**PLANNING AND
DEVELOPMENT SERVICES**

ZONING CASE:

Z17-05

ZONING FROM:

R-1, R-3 AND B-5 TO
PUD w/R3-A

APPLICANT:

PAYTON SENIOR, LLC

PROPERTY OWNER:

FRANKLIN HARRIS, LLC

LEGAL DESCRIPTION:

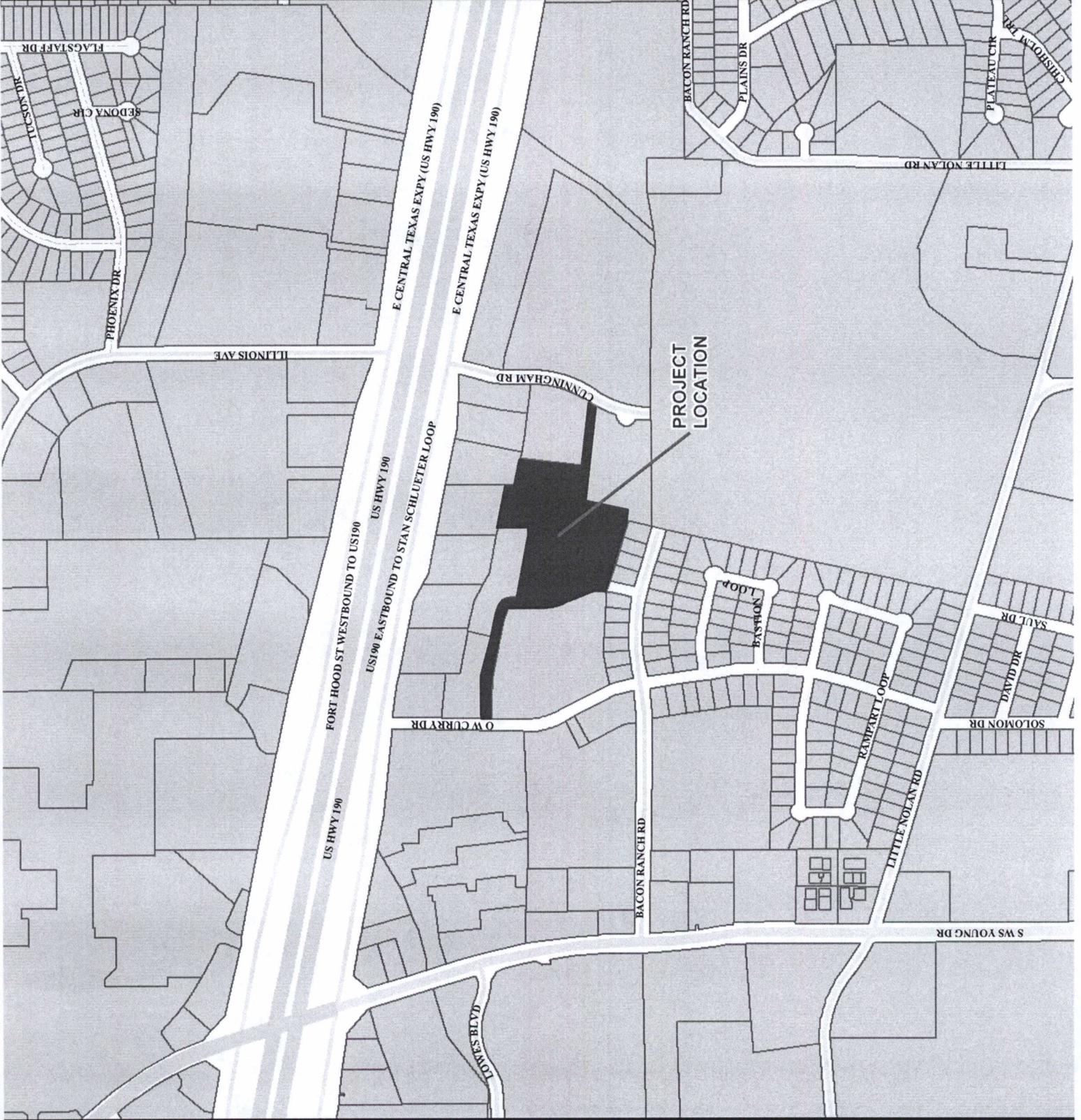
A0150BC W H COLE,
ACRES 11.382

Legend

-  Zoning Case
-  Parcel
-  City Limits



Date: 2/17/2017





**PLANNING AND
DEVELOPMENT SERVICES**

ZONING CASE:

Z17-05

ZONING FROM:

R-1, R-3 and B-5 To
PUD w/ R-3A

APPLICANT:

PAYTON SENIOR, LLC

PROPERTY OWNER:

FRANKLIN HARRIS, LLC

LEGAL DESCRIPTION:

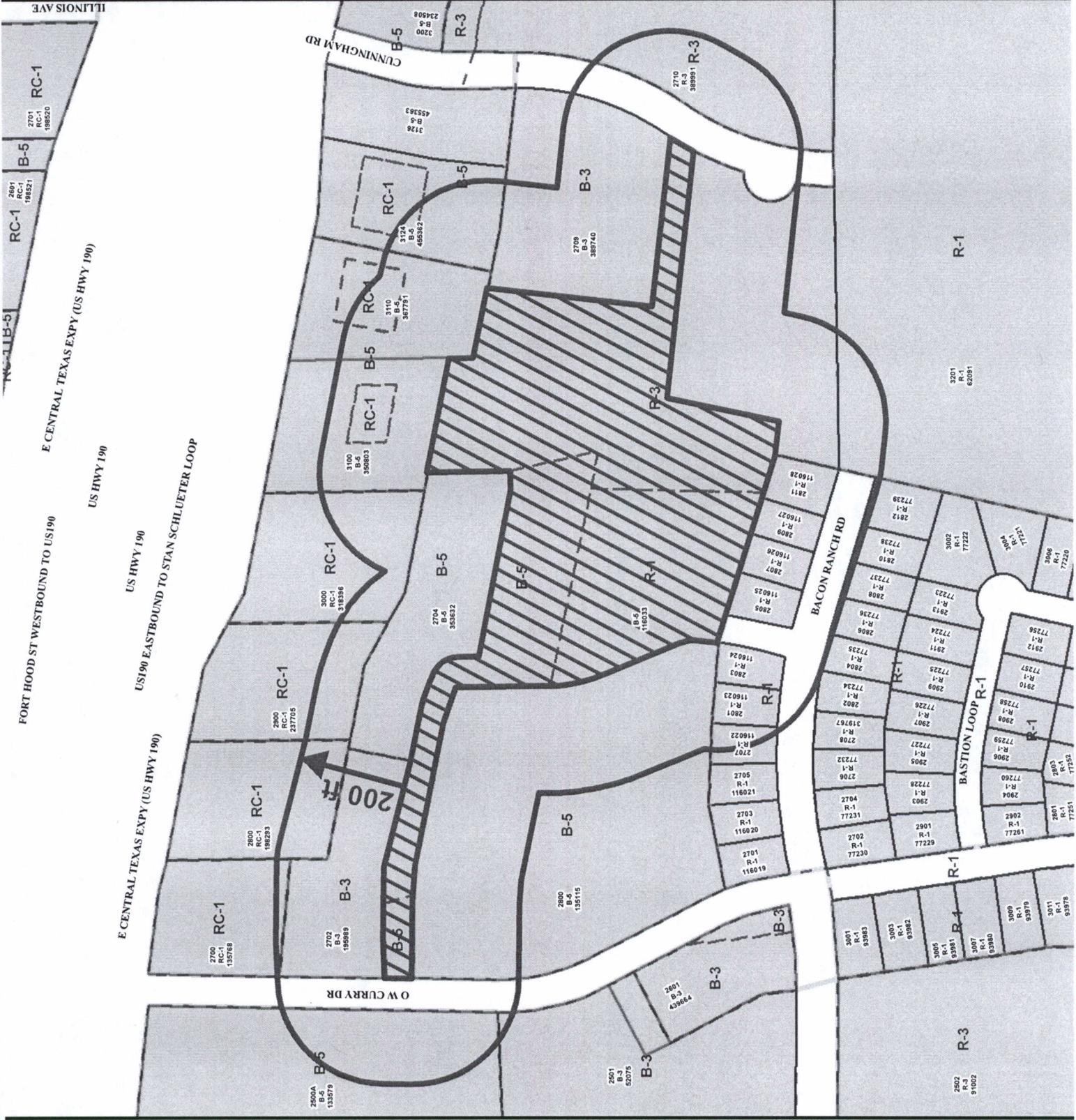
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ACRES 11.382

LEGEND

-  200' Buffer
-  Zoning Case
-  Current Zoning
-  Subdivision
-  Parcel
-  City Limits



Date: 2/17/2017



CONSIDERATIONS

Texas Supreme Court in Pharr v. Tippitt, 616 S. W 2nd 173 (Tex 1981) established general guidelines which the Planning and Zoning Commission and City Council should take into consideration when making their respective recommendation and decision on a zoning request.

A. General Factors to Consider:

Is the request in accordance with the comprehensive plan?

Is the request designed to lessen congestion in the streets; secure safety from fire, panic or other dangers; promote health and the general welfare; provide adequate light and air; prevent the overcrowding of land; avoid undue concentration of population; or facilitate the adequate provision of transportation, water, sewers, schools, parks and other public requirements?

What if any, is the nature and degree of an adverse impact upon neighboring lands?

The suitability or unsuitability of the tract for use as presently zoned.

Whether the amendment bears a substantial relationship to the public health, safety, morals or general welfare or protects and preserves historical and cultural places and areas.

Whether there is a substantial public need or purpose for the new zoning.

Whether there have been substantially changed conditions in the neighborhood.

Is the new zoning substantially inconsistent with the zoning of neighboring lands? (Whether the new zoning is more or less restrictive.)

The size of the tract in relation to the affected neighboring lands – is the tract a small tract or isolated tract asking for preferential treatment that differs from that accorded similar surrounding land without first proving changes in conditions?

Any other factors which will substantially affect the health, safety, morals or general welfare.

B. Conditional Use Permit (if applicable)

Whether the use is harmonious with and adaptable to buildings, structures and use of abutting property and other property in the vicinity of the premises under construction.

C. Conditions to Consider

1. Occupation shall be conducted only by members of family living in home.
2. No outside storage or display
3. Cannot change the outside appearance of the dwelling so that it is altered from its residential character.
4. Cannot allow the performance of the business activity to be visible from the street.
5. Cannot use any window display to advertise or call attention to the business.
6. Cannot have any signs
7. No off-street parking or on-street parking of more than two (2) vehicles at any one time for business related customer parking.
8. No retail sales.
9. Length of Permit.

CITY COUNCIL MEMORANDUM FOR ORDINANCE

AGENDA ITEM

ZONING CASE #Z17-05 "R-1" (SINGLE-FAMILY RESIDENTIAL DISTRICT), "R-3" (MULTIFAMILY RESIDENTIAL DISTRICT) AND "B-5" (BUSINESS DISTRICT) TO PLANNED UNIT DEVELOPMENT (PUD) WITH "R-3A" (MULTIFAMILY APARTMENT RESIDENTIAL DISTRICT)

ORIGINATING DEPARTMENT

PLANNING & DEVELOPMENT SERVICES

Payton Senior L.L.C. submits this request on behalf of Franklin Harris, L.L.C. to rezone approximately 8.5 acres out of the W. H. Cole Survey, Abstract No. 150, from "R-1" (Single-Family Residential District), "R-3" (Multifamily Residential District) and "B-5" (Business District) to Planned Unit Development (PUD) with "R-3A" (Multifamily Apartment Residential District) uses for a project named *Payton Senior Housing*. The project site is located on an undeveloped tract of land, south of E. Central Texas Expressway, east of O.W. Curry Drive, and west of Cunningham Road. The developer is proposing to construct a 92 dwelling unit project with three (3) apartment buildings, one common building, a pool and 161 parking spaces. The proposed building heights are as follows:

- Building 1: 20'
- Building 2: 32' 6"
- Building 3: 13' 2"
- Building 4: 32' 6"

It shall be noted that the applicant's plan is to construct Building 3 as a one story building since it will be located adjacent to an existing single-family neighborhood.

District Description:

A building or premises in an "R-3A" Multifamily Apartment Residential District shall be used only for the following purposes:

- (a) Uses. A building or premises in an "R-3A" multifamily apartment residential district shall be used only for the following purposes:
 - (1) Any use permitted in the "R-1" or "R-2" districts
 - (2) Multifamily structures containing five (5) or more separate dwelling units, including large apartment complexes with high rise structures
 - (3) Boarding and lodging houses
 - (4) Fraternity or sorority houses
 - (5) Licensed group or community homes housing six (6) or more persons
 - (6) Dormitories for educational or employment purposes as a primary use

- (7) Any group housing activity not otherwise identified in another multifamily or business district
- (8) Accessory buildings and uses, customarily incident to the above uses and located on the same lot therewith, not involving the conduct of a business
- (b) Planned unit development required. Rezoning applications requesting zoning under this division shall be subject to the requirements of 31-256.9 of this division, if applicable

A planned unit development (PUD) is a land use design incorporating the concepts of density and common open space. Common open space shall include, but is not limited to, community amenities such as parks, gardens, pedestrian trails, recreation areas, and usable undisturbed, natural areas. The PUD designation serves as an "overlay zoning and development classification." In this capacity, the designation permits specific negotiated development regulations to be applied to the base land use zoning district(s) in which the property is located. When a parcel of land receives a PUD designation, the entire parcel must be assigned one or more standard zoning district classifications. However, the added PUD overlay classification enables the developer of the site to request that specific land use development regulations be applied to his development site. Such specific land use and development regulations shall not take effect until they are reviewed and public hearings held and approved by both the Planning and Zoning Commission and the City Council. The PUD classification is an overlay designation to provide the flexibility to permit development projects which may include multiple land uses. This classification serves the following purposes:

- (a) Establish a procedure for the development of a parcel of land under unified control to reduce or eliminate the inflexibility that might otherwise result from strict application of land use standards and procedures designed primarily for individual lots;
- (b) Ensure structured review and approval procedures are applied to unique development projects that intended to take advantage of common open space and promote pedestrian circulation;
- (c) Allow developers greater freedom to be innovative in selecting the means to provide access, light, open space and amenities; and
- (d) Provide flexibility from the strict application of existing development regulations and land use standards and allow developers the opportunity to take advantage of special site characteristics and location.

The regulatory provisions of this classification are intended to achieve the above purposes while maintaining the spirit of the current City of Killeen Development Regulations, as amended. As such, these provisions represent the governing body's minimum quality of life standard and no variance or exception shall be granted thereto.

Property Specifics

Applicant/Property Owner: Franklin Harris, L.L.C.

Property Location: The property is located on an undeveloped tract of land, south of E. Central Texas Expressway, east of O.W. Curry Drive and west of Cunningham Road.

Legal Description: 8.5 acres out of the W. H. Cole Survey, Abstract No. 150, Killeen, Texas.

Zoning/ Plat Case History:

- There is no recent zoning activity for the property.
- The subject property is not platted.

Character of the Area

Existing Land Use(s) on the Property: The project area is undeveloped. The surrounding land uses are single-family (south); the Arbors of Killeen apartment complex is located to the west and various commercial uses to the north. Additionally, there is a dense multifamily residential apartment complex (Bridgemoor at Killeen Apartments) across the Cunningham Road right-of-way.

Historic Properties: None

Figure 1. Zoning Map

See attachment.

Infrastructure and Community Facilities

Water, Sewer and Drainage Services:

Provider: City of Killeen

Within Service Area: Yes

Feasibility Study or Service Commitment: The applicant shall extend water and sewer service to the property. Upon approval of a future development permit application, the developer would be required to extend public water mains across the property to provide adequate domestic and fire flows in accordance with the City of Killeen Code of Ordinances and other applicable development criteria. A permit applicant is solely responsible for, and shall perform and submit the results of, all required testing of the public water mains to confirm adequate flow and pressure exists to support any Code-mandated fire protection measures.

Various scenarios are available for retail potable water supply to a multifamily development:

- a master meter (with backflow/crossflow isolation) set at a tap on a public water main, with a multi-service-unit-equivalent yard line with or without (owner-side) sub-metering
- a looped dedicated public water main (the means of water distribution required per the City's adopted Infrastructure Development & Design Standards Manual) internal to the complex with one or more service connections
- individual service connections from an abutting public water main to individual buildings, and in some cases individual units

Please note that transmission of potable water to individual "customers" through a private potable water transmission system that does not conform with 30 TAC 290 and Killeen Code of Ordinances Chapter 30 rules would result in regulation of the supplier as a retail water purveyor by the TCEQ. Public sanitary sewer utility service is immediately available to the property. An existing 12-inch diameter gravity sanitary sewer interceptor that serves the entire contributing wastewater drainage basin crosses the full extent of the eastern portion of the subject tract.

Upon approval of a future development permit application, the developer would be required to extend a public sanitary sewer main to provide adequate collection capacity in accordance with City of Killeen Code of Ordinances and other applicable development criteria.

According to section 31-804 of the Killeen Code of Ordinances, the PUD concept plan shall be accompanied with the topography (2-foot contours), existing and proposed drainage patterns, and existing and proposed drainage areas. The submitted PUD application does not contain any of these items. Based on the existing contours illustrated on the City's website, this existing site appears to drain in two locations. The first is onto the remainder tract to the southeast of the proposed PUD area. The second point is directly onto Cunningham Road to the east. From both of these discharge points, the runoff will flow east into Little Nolan Creek via drainage easements, private infrastructure, and existing concentration areas. Little Nolan Creek flows into Nolan Creek prior to leaving the City. Both Little Nolan Creek and Nolan Creek are listed on the TCEQ's current 303(d) water quality list for impairment due to bacteria and concerns for near non-attainment for nutrients.

Transportation:

Existing Conditions: Ingress/egress to and from Cunningham Road and O.W. Curry Drive will be disciplined through the policies of the City's Thoroughfare Development Manual when the property is developed. Cunningham Road and O.W. Curry Drive are classified (respectively) as a 70' collector street and 60' local street on the City's adopted Thoroughfare Plan.

Proposed Improvements: No proposed improvements to either right-of-way are contemplated as part of this zoning request.

Projected Traffic Generation: Significant upon build out

Environmental Assessment

Topography/Regulated Floodplain/Floodway/Creek: The property ranges in elevation from 834' to 858' above sea level. This parcel is not located within a FEMA regulatory Special Flood Hazard Area (SFHA). The Little Nolan Creek Watershed is located east of the subject area, but does not encroach onto the property.

Land Use Analysis

Land Use Plan: This area is designated as 'Suburban Residential' and 'General Commercial' on the Future Land Use Map (FLUM) of the Comprehensive Plan.

Plan Recommendation: The 'Suburban Residential' character encourages detached residential dwellings, planned developments to provide for other housing types (e.g., townhouse, patio) in a suburban character setting, public/institutional, parks, and public spaces. The characteristics of this designation include:

- Larger baseline minimum lot sizes to allow for larger front yards, building setbacks, and side yard separation
- Less noticeable accommodation of vehicles
- Encourages smaller lot sizes in exchange for greater open space set asides
- Encourages conservation design or cluster development

The 'General Commercial' character encourages a wide range of commercial, retail, and service uses, at varying scales and intensities depending on the site.

Consistency: The zoning request is not consistent with the intent of the Comprehensive Plan; therefore, the applicant has submitted a FLUM amendment request to 'Multi-Family Residential' (MFR) to align this project with the existing adjacent area that is already designated as MFR.

Public Notification

The staff notified twenty-nine (29) surrounding property owners within a 200' notification boundary regarding this request. Staff has received no responses.

Recommendation

The Planning and Zoning Commission recommended approval of the applicant's PUD request by a vote of 7 to 0. The approval is subject to adherence to the submitted site plan and a maximum impervious area calculation of no more than 47%. The 92 units are less than the 148 units allowed under the City's current "R-3A" density ratio and the PUD concept plan provides ample open space. These factors combined with the City's architectural design, landscaping, and screening requirements will yield an attractive development.

Figure 1. Aerial Map



MINUTES
PLANNING AND ZONING COMMISSION MEETING
MARCH 6, 2017

CASE #Z17-05
R-1, R-3 AND B-5 TO PUD W/R-3A

B. HOLD a public hearing and consider a request submitted by Franklin Harris, L.L.C. to rezone 8.5 acres out of the W. H. Cole Survey, Abstract No. 150, from “R-1” (Single-Family Residential District), “R-3” (Multifamily Residential District) and “B-5” (Business District) to Planned Unit Development (PUD) with “R-3A” (Multifamily Apartment Residential District). The property is located south of E. Central Texas Expressway, east of O.W. Curry Drive and west of Cunningham Road.

Chairman Frederick requested staff comments.

City Planner, Tony McIlwain, stated that this request is for a project named *Payton Senior Housing*. The project site is located on an undeveloped tract of land, south of E. Central Texas Expressway, east of O.W. Curry Drive and west of Cunningham Road. The developer for the project is proposing to construct a 92 dwelling unit project with three (3) apartment buildings, one common building, a pool and 161 parking spaces. The proposed building heights are as follows:

Building 1: 20’
Building 2: 32’ 6”
Building 3: 13’ 2”
Building 4: 32’ 6”

It shall be noted that the applicant’s plan is to construct Building 3 as a one story building since it is located adjacent to an existing single-family neighborhood.

The staff notified twenty-nine (29) surrounding property owners regarding this request. Staff has received no responses.

Staff recommends approval of the applicant’s PUD request subject to adherence with the submitted site plan and a maximum impervious area calculation of no more than 47%. This development is not dense site as the acreage allows a total of 148 units under the City’s density ratio and the PUD concept plan is sensitive to the surrounding single-family residential neighborhood. These factors combined with the City’s architectural design, landscaping and screening requirements will yield an attractive development. If approved, the applicant shall meet all applicable city requirements for drainage.

Ms. Megan Lasch, 421 W. 3rd Street, Austin, Texas, was present to represent this request.

Chairman Frederick opened the public hearing. With no one requesting to speak, the public hearing was closed.

Vice Chair Dorroh motioned to recommend approval of the request. Commissioner Harkin seconded the motion. The motion passed unanimously.

Chairman Frederick stated that this request will be forwarded to City Council with a recommendation to approve.