

AGENDA ITEM

TO: Planning and Zoning Commission

THROUGH: Brandon Opiela, Senior Planner

FROM: Anthony Satarino, Planner

SUBJECT: Conduct a Public Hearing to Consider/Discuss/Act on the Request by Francisco Gomez, for Approval of a Request to Rezone Approximately 0.35 Acres from “PD” – Planned Development District to “PD” – Planned Development District, Generally to Modify the Development Standards, Located on the Southwest Corner of Josephine Street and Kentucky Street.

APPROVAL PROCESS: The recommendation of the Planning and Zoning Commission will be forwarded to the City Council for final action at the April 5, 2011 meeting.

STAFF RECOMMENDATION: Staff recommends denial of the proposed rezoning request due to the applicant’s inability to comply with the regulations of the City of McKinney Zoning Ordinance.

APPLICATION SUBMITTAL DATE: January 10, 2011 (Original Application)
February 18, 2011 (Revised Submittal)
February 25, 2011 (Revised Submittal)

ITEM SUMMARY: The applicant is proposing to rezone approximately 0.35 acres of land, located on the southwest corner of Josephine Street and Kentucky Avenue from “PD” – Planned Development District to “PD” – Planned Development District, generally to modify the development standards. The subject property has an existing 2,250 square foot shopping center (tenants are a beauty salon and Frank’s Upholstery).

The applicant originally met with Planning Department staff in November of 2009, after receiving a Stop Work Order from the Code Department for pouring a foundation adjacent to the existing structure, without an approved building permit. During the meeting, Staff outlined the Zoning Ordinance provisions that could not be met due to the location of the new foundation in terms of parking, screening and buffering, and landscaping requirements, as the building addition was greater than 30 percent (approximately 38 percent) of the original floor area.

In December of 2010, the Code Department issued a second Stop Work Order for the continuation of a 990 square foot addition, which was constructed without an approved

building permit or proper Planning approvals. Staff met with the applicant again, reiterating that short of taking down the unauthorized addition, the only way for the Planning Department to approve a site plan for the expansion would be for the applicant to modify the zoning on the property to reduce the site requirements for landscaping, parking, and screening and buffering between the adjacent residential use.

The applicant has indicated in the letter of intent that the contractor that was hired after the first Stop Work Order was supposed to coordinate permits with the City; however, this did not take place and the applicant is now seeking proper approvals to allow the building to be finished without having to tear it down. It is important to note that although a rezoning request could allow for the proposed footprint and reductions in screening, buffering, and landscaping; the addition was constructed without a building permit, and therefore has not been inspected. Whether or not the building or portions thereof will need to be taken down for proper inspections by City Staff has yet to be determined.

ZONING NOTIFICATION SIGNS: The applicant has posted zoning notification signs on the subject property, as specified within Section 146-164 (Changes and Amendments) of the City of McKinney Zoning Ordinance.

SURROUNDING ZONING AND LAND USES:

Subject Property: “PD” – Planned Development District Ordinance No. 2004-06-058
(commercial uses)

North	“BN” – Neighborhood Business District	Single-family residence
South	“BN” – Neighborhood Business District	Single-family residence
East	“BN” – Neighborhood Business District	Single-family residence
West	“RS-60” - Singly-family residential District	Single-family residence

Discussion: The property was rezoned (04-107Z) in 2004 to allow for the additional use of an upholstery use on the subject property.

PROPOSED ZONING: The applicant is requesting to rezone the subject property from “PD” – Planned Development District generally for neighborhood business uses to “PD” - Planned Development District, generally to modify development standards.

The applicant is requesting to maintain the base zoning district of “BN” – Neighborhood Business under the proposed planned development district. The applicant has submitted a proposed layout which shows a building expansion requiring additional parking, screening and buffering, and landscaping since the addition is greater than 30 percent of the original floor area. The proposed layout does not meet several provisions of the Zoning Ordinance as detailed below.

Parking Requirements: The existing building totals 2,550 square feet for retail uses, which requires a total of 11 parking spaces. The site is currently under-parked with only 9 parking spaces, but is allowed to continue operating with a legal non-conforming status with regard to parking. Per Section 146-130 of the Zoning Ordinance, whenever a building or use is changed or enlarged in floor area by less than 50 percent, parking spaces shall be provided on the basis of the enlargement or change. The proposed addition of 990 square feet enlarges the floor area by approximately 38 percent. Under the current parking requirements for retail uses, the applicant is required to provide an additional four (4) parking spaces, totaling 13 spaces for the site.

As shown on the attached zoning exhibit, the applicant is not providing any additional parking to accommodate a building expansion. Due to the limited size of the site prior to the illegal building expansion, coupled with the regulations set forth by the Zoning Ordinance as minimum standards for new construction, Staff is not comfortable supporting the elimination of the four (4) parking spaces required by the building expansion.

Residential Adjacency Screening and Buffering: Current Zoning Ordinance regulations are in place to minimize any potential negative impacts the non-residential use on the subject property will have on the existing residential uses to the south and west of the subject property. These regulations include: approved screening devices (6' tall masonry wall or wrought iron fence with masonry columns and evergreen shrubs) along any shared property line between a single family residential use and a non-residential use, coupled with a landscaped area of a least ten (10) feet in width along the common property line planted with one canopy tree for each forty (40) linear feet or portion thereof of adjacent exposure.

Although the existing permitted portion of the structure maintains its legally non-conforming status with regard to current screening and buffering regulations, any new addition to the existing structure must be brought up to meet all current regulations with regard to the screening and buffering between adjacent uses. The building addition is approximately four (4) feet from the common property line, thus disabling the applicant from providing a ten (10) foot wide landscape buffer requirement along the entire southern property line. Furthermore, the applicant has chosen not to provide an appropriate screening device (currently a wood fence) or the required canopy trees within the landscape buffer along the west and south property lines where adjacent to residential uses.

As stated previously, the new addition was built without the proper permits in place and has been located too close to the adjacent property line to provide adequate room for the installation of required trees. It is important to note that a tree survey has not been submitted for the existing trees on the property making it difficult for Staff to evaluate whether or not the two existing trees on the site could be used toward a partial credit for the required buffer trees where adjacent to the residential uses. Nonetheless, the applicant has indicated to Staff that they are not willing to provide any additional trees

towards this requirement where there is adequate room to install them along the rest of the southern and western property lines.

Staff is not comfortable supporting the elimination of appropriate screening and buffering between the subject property and adjacent residential uses, as the illegal building expansion has created the inability to meet minimum standards for new construction, and may negatively impact the compatibility of the subject property with the adjacent residential uses.

Street Trees: The Zoning Ordinance also requires that all non-residential parcels have one canopy tree per 40 linear feet, or portion thereof, of street frontage. The applicant is not proposing any new trees along Josephine Street (4 trees required) and wishes to utilize only the two existing trees. As stated above, without a tree survey submitted, Staff is unable to evaluate whether or not the existing trees near the Josephine Street frontage could be used towards a credit for the required street trees. The applicant is also not proposing any street trees along Kentucky Street (3 trees required) as the existing parking will not allow for the placement of new trees. Staff is not comfortable supporting a reduction of the street tree requirement along Josephine Street; however, the applicant is unable to provide street trees along Kentucky Street, due to the existing parking row, and is therefore not a determining factor for the denial of the rezoning request.

Terminus Trees: The Zoning Ordinance states that a landscape island must be located at the terminus of every parking row and should contain at least one canopy tree (minimum of four-inch caliper and twelve feet in height at the time of planting). The applicant is requesting a reduction of this requirement to provide only one landscape island with a terminus tree at the north end of the existing parking row. The applicant is unable to provide a landscape island with a terminus tree at the south end of the existing parking row, due to the existing pavement, and is therefore not a determining factor for the denial of the rezoning request.

Perimeter Landscape Buffer: The subject property is also required by the Zoning Ordinance to provide a perimeter landscape area of at least five feet between the edges of parking or vehicular use areas and adjacent property lines. The southernmost parking space is approximately two (2) feet from the southern property line (although the pavement extends all the way to the property line) which the applicant intends to leave as pavement without providing at least two (2) feet of landscaped area. The applicant is unable to provide a perimeter landscape buffer along the southern property line, due to the existing pavement, and is therefore not a determining factor for the denial of the rezoning request.

Josephine Street Landscape Buffer: The Zoning Ordinance requires a minimum ten (10) foot landscape buffer adjacent to the Josephine Street frontage (a minor thoroughfare). The applicant is only able to provide a six (6) foot landscape buffer along Josephine Street as the existing structure is located within six (6) feet of the right-of-way. The applicant is unable to provide a landscape buffer along Josephine Street, due to an

existing condition, and is therefore not a determining factor for the denial of the rezoning request.

Kentucky Street Landscape Buffer: The Zoning Ordinance requires a minimum 10-foot landscape buffer adjacent to the Kentucky Street frontage (a minor thoroughfare). However, the existing parking spaces are along Kentucky Street within the area typically utilized for a landscape buffer. The applicant is unable to provide a landscape buffer along Kentucky Street, due to an existing condition, and is therefore not a determining factor for the denial of the rezoning request.

Corner Clip Landscape Buffer: The Zoning Ordinance states that all non-residential parcels located at the intersection of two dedicated public streets (rights-of-way) must have a 30-foot landscape buffer parallel to the corner clip right-of-way dedication. Due to the existing parking and legally non-conforming structure, the applicant is unable to provide a corner clip landscape buffer at the intersection of Kentucky Street and Josephine Street, and is therefore not a determining factor for the denial of the rezoning request.

Staff feels that a rezoning request allowing the expansion of a legal non-conforming structure on a property with existing space limitations is not appropriate given the applicant's inability to meet the minimum standards required of the new construction. Therefore, Staff recommends denial of the proposed rezoning request.

CONFORMANCE TO THE COMPREHENSIVE PLAN: The Future Land Use Plan (FLUP) designates the subject property for Neighborhood Business uses. The FLUP modules diagram designates the subject property as Town Center within a significantly developed area. The Comprehensive Plan lists factors to be considered when a rezoning request is being considered within a significantly developed area:

- Comprehensive Plan Goals and Objectives: The proposed rezoning is consistent with some of the goals and objectives of the Comprehensive Plan and at odds with others. In this case, the Comprehensive Plan does recognize the need for an "Attractive Hometown that Promotes McKinney's Character" through the stated objective of providing "Homes and Buildings Complying with City Standards and Codes" and also calls for "Land Use Compatibility and Mix" by providing "Land uses patterns that complement one another." Staff is of the opinion that the proposed rezoning request is in direct conflict with these stated objectives of the Comprehensive Plan.
- Specific Area Plans or Studies: The Town Center Study Initiative is a sector study of the oldest part of McKinney, called for as part of the 2004 Comprehensive Plan. McKinney's Town Center contains residential neighborhoods and commercial districts that are well established, eclectic and historic. These places collectively form the core of the City and include some of the oldest developments in McKinney.

During Phase 1 (August 2006 through March 2008), City staff, a consultant team and more than 300 stakeholders, residents and property owners worked together to establish a bold, community-based vision for strategic and sustainable revitalization of McKinney's Town Center over the long-term (5 to 30+ years).

In March 2008, the Town Center Study Phase 1 Report, Shared Vision, and Illustrative Master Plan were approved and adopted by reference into the Comprehensive Plan and now serve as a meaningful policy guide for city officials, staff, property owners, and private developers when considering decisions in the Town Center.

The Town Center Study Initiative is currently in Phase 2. The purpose of Phase 2 is to analyze, craft, select, relate and phase the appropriate implementation components (e.g. policies, ordinances, fiscal tools) into a comprehensive action package that will truly allow the Vision and revitalization of the Town Center to be achieved and sustained over the long-term.

The subject property is located within the Town Center Study area along the North Kentucky Street corridor, which primarily has a residential character. The vision for the North Kentucky Street corridor (and specifically the west side of Kentucky Street) is to maintain the residential character while continuing to allow for the compatible coexistence of existing single-family residential uses with small scale neighborhood service uses.

In Staff's professional judgment, expansion of the built portion of the subject property by more than 30% will result in a non-residential building that is no longer at an appropriate scale and massing for the adjacent properties and would, therefore, have a negative impact on the residential character of the west side of the North Kentucky Street corridor.

- Impact on Infrastructure: The water master plan, sewer master plan, and master thoroughfare plan are all based on the anticipated land uses as shown on the Future Land Use Plan. The proposed rezoning request should have a minimal impact on the existing and planned water, sewer and thoroughfare plans in the area since it does not change the use of the subject property.
- Impact on Public Facilities/Services: The proposed rezoning request should have a minimal impact on public services, such as schools, fire and police, libraries, parks and sanitation services since it does not change the use of the subject property.
- Compatibility with Existing and Potential Adjacent Land Uses: The properties located adjacent to the subject property are being used for single family residences. As stated above, current Zoning Ordinance regulations are in place to minimize any potential negative impacts the non-residential use on the subject property will have on the existing residential uses to the south and west of the

subject property. Since the applicant has not provided an approved screening device or canopy trees along the west and south property lines, or an appropriate landscape buffer along the entire southern property line, Staff feels that the building expansion may negatively impact the compatibility of the site with the adjacent residential uses.

- Fiscal Analysis: Staff feels that there will not be a significant change in the economic impact associated with the proposed rezoning since it does not alter the land use. Staff did not perform a fiscal analysis for this case because the rezoning request does not propose to alter the land use from what is existing on the subject property.
- Concentration of a Use: The proposed rezoning request should not result in an over-concentration of commercial land uses in the area. Currently, the surrounding properties are generally zoned for residential and commercial uses.

CONFORMANCE TO THE MASTER PARK PLAN (MPP): The proposed rezoning request does not conflict with the Master Park Plan.

CONFORMANCE TO THE MASTER THOROUGHFARE PLAN (MTP): The proposed rezoning request does not conflict with the Master Thoroughfare Plan.

OPPOSITION TO OR SUPPORT OF REQUEST: Staff has received no comments or phone calls in support of or opposition to this request.

ATTACHMENTS:

- Location Map
- Aerial Exhibit
- Letter of Intent
- Property Owner Notice
- Property Owner Notification List
- Existing “PD” – Planned Development District Ordinance No. 2004-06-058
- Proposed Zoning Exhibit
- Pictures of Building Expansion
- PowerPoint Presentation

Action: