

**MINUTES
CITY OF MCKINNEY, TEXAS
PLANNING & ZONING COMMISSION
TUESDAY, MARCH 8, 2011
6:30 P.M. – COUNCIL CHAMBER – CITY HALL**

The Planning and Zoning Commission of the City of McKinney, Texas, met in regular session in the Council Chambers of the Municipal Building on Tuesday, March 8, 2011 at 6:30 p.m.

Commission Members present were Robert S. Clark, Darrell Tate, Ray Eckenrode, Sean Lingenfelter, George Bush, Jack Radke and Larry Thompson. Commission Member Sean Lingenfelter was absent. Staff members present were Director of Planning Jennifer Cox, Senior Planners Brandon Opiela and Michael Quint, Planners Abra Nusser and Anthony Satarino, and Administrative Assistant Terri Ramey.

There were 15 guests present.

Chairperson Clark presided.

Chairperson Clark explained the format and procedures of the meeting, as well as the role of the Commission. He announced that some of the items considered by the Commission on this date would be further considered by City Council at its regularly scheduled meeting of April 5, 2011, unless otherwise indicated, and that all required revisions should be submitted to the Planning Department for its review by March 15, 2011. He requested that applicants and Staff limit their remarks to ten minutes each and that guests limit their remarks to five minutes and speak only once. Chairperson Clark explained that there is a timer located on the podium, and when one minute of the speaker's time is remaining, the light will switch from yellow to red and a buzzer will sound. He asked that everyone treat others with respect, be concise in all comments, and avoid over talking issues.

Chairperson Clark began the agenda with the Consent Items.

**Consider/Discuss/Act on the Minutes of the
February 22 2011 Planning and Zoning
Commission Regular Meeting.**

**09-085PF Consider/Discuss/Act on the Request of
Sun Holdings for Approval of a Preliminary-
Final Plat for Lot 1 and 2, Block A, of the
Denton Loop Addition, Approximately 12.58**

Acres, Located on the North Side of State Highway 121 (Sam Rayburn Tollway) and Approximately 200 Feet West of Stacy Road.

11-032PF Consider/Discuss/Act on the Request by C & C Development I, L.L.C., on Behalf of McKinney Seven Stacy, for Approval of a Preliminary-Final Plat for Lots 1-5, Block A and Lot 1, Block B, of the McKinney Seven Stacy Addition, Approximately 108.41 Acres, Located on the Northeast Corner of Stacy Road and Custer Road.

On a motion by Commission Member Radke, seconded by Commission Member Bush, the Commission voted 6-0 to approve the Consent Items.

Chairperson Clark began the agenda with the Regular Items.

11-018Z Conduct a Public Hearing to Consider/Discuss/Act on the Request by Ringley & Associates, Inc., on Behalf of Andrew B. and Ann S. Harris, for Approval of a Request to Rezone Approximately 0.37 Acres, of the McKinney Original Donation, from "PD" – Planned Development District to "PD" – Planned Development District, Generally to Modify the Development Standards, Located on the East Side of Wood Street and on the West Side of Kentucky Street.

Mr. Anthony Satarino, Planner for the City of McKinney, explained that there are currently two existing single family residences on the subject property, with which the applicant has separate deeds for; however, the property is currently platted as a single lot in the McKinney Original Donation Addition. He stated that the applicant is proposing to formally subdivide the lot into two separate lots and has submitted an associated minor replat for approval. Mr. Satarino stated that due to the existing configuration of the structures on the lot, the applicant is proposing to reduce the front yard setback to a minimum of 23 feet for Lot 1 and a minimum of 14 feet for Lot 2. He stated that the applicant is proposing a minimum lot depth of 73 feet for Lot 2. Mr. Satarino stated that the current filed deed for Lot 2 shows a lot depth of approximately 69 feet. He stated that the applicant has proposed to increase the lot depth approximately 4 feet in order to meet the minimum lot area of the "RS-60" Zoning District, but is still only able to meet the minimum lot depth of 100 feet on one of the lots. Mr. Satarino stated that the applicant is requesting to keep a special ordinance provision from the

existing PD that would allow one small advertising sign to be attached to each structure. He stated that these special ordinance provisions are necessary for the applicant to be able to plat the single family homes on their own lot and maintain a provision from the governing ordinance allowing a small amount of signage. Mr. Satarino stated that Staff recommends approval of the proposed rezoning request.

Mr. Lawrence Ringley, Ringley & Associates, Inc., 410 N. Tennessee Street, McKinney, TX 75069, explained the application. He stated that owner would like to subdivide the lot into two lots, so they can sell one or both of the houses.

Chairperson Clark opened the Public Hearing and called for comments.

Mr. Andrew Harris, 514 W. Hunt Street, McKinney, TX 75069, stated that when they purchased the property they believed it was two separate lots. He stated that they also found several errors in the lot measurements and demarcation. Mr. Harris stated that they are planning to correct some other issues as well.

On a motion by Commission Member Radke, seconded by Commission Member Thompson, the Commission voted 6-0 to close the public hearing and recommend approval of the proposed rezoning request as conditioned in the staff report.

Chairperson Clark stated that the recommendation of the Planning and Zoning Commission will be forwarded to the City Council meeting on April 5, 2011.

11-030Z Conduct a Public Hearing to Consider/Discuss/Act on the Request by Cross Engineering Consultants, Inc., on Behalf of David Russell, for Approval of a Request to Rezone Approximately 1.60 Acres, from "PD" – Planned Development District to "PD" – Planned Development District, Generally to Allow for the Additional Use of a Dance Studio, Located on the South Side of Virginia Parkway and Approximately 1,500 Feet East of Ridge Road. THIS ITEM HAS BEEN WITHDRAWN.

Ms. Abra Nusser, Planner for the City of McKinney, stated that the proposed rezoning request has been withdrawn per the applicant's request. She stated that there is no further action required.

11-007Z 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.

Mr. Anthony Satarino, Planner for the City of McKinney, explained that the applicant is proposing to modify the development standards of the subject property. He stated that over the course of about a year, the Code Department has issued two stop work orders on the subject property, one in 2009 for pouring a foundation without a building permit and one in 2010 for the construction of the addition without a building permit. Mr. Satarino stated that both times, Staff met with the applicant to outline the Zoning Ordinance provisions that could not be met due to the size and location of the building expansion. He stated that of the many Zoning Ordinance regulations that the proposed zoning exhibit does not meet, there are two regulations that Staff is not comfortable supporting. Mr. Satarino stated that the first zoning regulation is parking. He stated that using the current parking requirements for retail uses, the proposed addition requires an additional four parking spaces. Mr. Satarino stated that the applicant is not providing any additional parking to accommodate the building expansion. He stated that the second zoning regulation that Staff is not comfortable supporting is the elimination of the adjacent residential screening and buffering requirement. Mr. Satarino stated that the building addition is approximately four feet from the common property line, thus hindering the applicant from providing the required ten foot wide landscape buffer along the entire southern property line. He stated that the applicant has chosen not to provide an appropriate screening device or the required trees within the landscape buffer along the west and south property lines where adjacent to residential uses. Mr. Satarino stated that some of the slides being presented during the meeting show the built expansion of the shopping center. He stated that the left side of the building with the two arched windows is the expanded portion of the shopping center. Mr. Satarino stated that 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. He stated that Staff recommends denial of the proposed rezoning request.

Commission Member Thompson asked if there is room on the property for additional parking. Mr. Satarino stated that there is some room in the back of the property; however, he would need to research into whether or not it would meet the City's parking standards. Mr. Satarino stated that the applicant originally proposed parking off of Josephine Street; however that would not meet the ordinance.

Commission Member Thompson asked to clarify the property line between the subject property and the house next door. Mr. Satarino stated that the property line is approximately four feet to the west of the structure. He stated that the house next door is being used as residential; however, is zoned Commercial.

Chairperson Clark asked if there are existing parking lots along Kentucky Street that allow cars to back out into the street to exit the parking area. Mr. Satarino stated yes; however, he believes that those are considered legal non-conforming uses. Mr. Satarino stated that the applicant was proposing to add additional parking spaces. He stated that parking spaces along Josephine Street would not be allowed per current ordinance.

Commission Member Tate asked for clarification on what would need to take place for this project to be approved by Staff. Mr. Brandon Opiela stated that if a rezone were to be approved to allow the structure to be located where it currently is, then the applicant would still need to go through the building permit process since it has not been permitted. He stated that Staff has not been on the site to inspect the work yet, so some of the building might need to come down in order to inspect everything to ensure it meets current code.

Commission Member Thompson asked if the applicant has received any permits after the stop work order was issued on the foundation back in 2009. Mr. Opiela stated that no permits had been issued on the work done.

Mr. Joe F. Gomez and Mrs. Gloria Gomez, Frank's Custom Upholstery, 809 N. Kentucky Street, McKinney, TX 75069, explained the application and the

history behind the work done on the property. Mr. Gomez stated that they had hired a man to build the addition and thought that he had pulled all of the necessary permits; however, that turned out not to be the case. He stated that it was never their intent to do the work without proper authorization. Mr. and Mrs. Gomez discussed the money that they had already spent on the project. Mrs. Gomez described her experience with working with the City of this project. She stated that she felt there were some communication issues. Mrs. Gomez also stated that none of the documents on the website are in Spanish for the Spanish speaking residents. She stated that they were planning on using the addition to the building for storage space. Mrs. Gomez stated that there would not be an increase in customers with this addition, so she did not understand the need for additional parking spaces.

Commission Member Thompson asked the applicant about the current condition of the interior of the addition. Mr. Gomez stated that the interior had not been sheetrocked.

Ms. Jennifer Cox gave a summary of what has already taken place regarding the property. She stated that in November 2009, the Code Department issued a stop work order for the pouring of a foundation on the subject property. Ms. Cox stated that at that time a meeting was held with different members of City staff, the applicant, and their son to explain that the foundation did not meet current requirements and that they would need to rezone to move forward on the project. She stated that the applicant did not submit a rezoning request. Ms. Cox stated that the Code Department went back to the property a year later and noticed that the applicant had begun the building addition, so they issued another stop work order. She stated that Staff had another meeting with the applicant to explain that we could not issue a building permit because it did not meet the code and that they would need to rezone the property to modify the development standards. Ms. Cox stated that Staff can not issue a permit for any of the work, because it does not meet the current requirements.

Commission Member Thompson asked Staff why they are recommending denial of the proposed zoning request. Mr. Brandon Opiela stated that if this addition had not already been built, then Staff would still not recommend

approval of a rezone to remove the screening and buffering that is required and the reduction in parking that is required for that use.

Chairperson Clark opened the Public Hearing and called for comments. There were no public comments.

The following neighbors turned in Speaker's Cards in favor of the zoning request; however, they did not speak during the meeting:

Rodoifo Perales, 803 N. Kentucky Street, McKinney, TX 75069

Juan Murioz, 803 N. Kentucky Street, McKinney, TX 75069

A motion by Commission Member Tate to close the public hearing and deny the proposed rezoning request died due to lack of a second.

On a motion by Commission Member Tate, seconded by Commission Member Thompson, the Commission voted 6-0 to close the public hearing and table consideration of the proposed rezoning request indefinitely so that the applicant may work with Staff to address the presented issues.

11-017SP Conduct a Public Hearing to Consider/Discuss/Act on the Request by Cross Engineering Consultants, Inc., on Behalf of Uptown Custer Partners, L.P., for Approval of a Site Plan for AutoZone, Approximately 0.88 Acres, Located on the West Side of Custer Road and Approximately 1,100 Feet South of U.S. Highway 380 (University Drive).

Ms. Abra Nusser, Planner for the City of McKinney, explained that the applicant is proposing to construct an AutoZone auto parts sales store. She stated that an overhead bay door is proposed on the west side of the building which is required to be screened from view from the public right-of-way and from adjacent non-residential property per the Zoning Ordinance. Ms. Nusser stated that the applicant is requesting approval of a living plant screen consisting of Nellie R. Stevens evergreen shrubs to satisfy the aforementioned requirement. She stated that since living plant screens are proposed, the Planning and Zoning Commission must approve them through the site plan process or approved screening device must be provided instead. Ms. Nusser stated that Staff feels that the proposed living plant screen adequately screens the bay door as required and should not have a negative impact on the adjacent properties. She stated that Staff recommends approval of the living plant screen as proposed by

the applicant. Ms. Nusser stated that the site plan is being considered concurrently with the associated minor replat which is next on the agenda. She stated that although Staff is recommending denial of the associated minor replat, the Zoning Ordinance requires minimum standards for parking, loading, and landscaping, and the proposed site plan meets these minimum requirements. Ms. Nusser stated that Staff recommends approval of the proposed site plan as conditioned in the Staff Report.

Mr. Jonathan Hake, Cross Engineering Consultants, Inc., 106 W. Louisiana Street, McKinney, TX 75069, stated that that he had read the staff report and agreed with the comments.

Chairperson Clark opened the Public Hearing and called for comments. There were none.

On a motion by Commission Member Bush, seconded by Commission Member Radke, the Commission voted 6-0 to close the public hearing and recommend approval of the proposed site plan as conditioned in the staff report.

Chairperson Clark stated that the Planning and Zoning Commission is the final approval authority for the proposed site plan.

11-016MRP Conduct a Public Hearing to Consider/Discuss/Act on the Request by Cross Engineering Consultants, Inc., on Behalf of Uptown Custer Partners, L.P., for Approval of a Minor Replat for Lots 1R and 2, Block A, of the Shops at Eagle Point Addition, Approximately 15.32 Acres, Located on the West Side of Custer Road and Approximately 1,100 Feet South of U.S. Highway 380 (University Drive).

Ms. Abra Nusser, Planner for the City of McKinney, explained that the applicant is proposing a minor replat to subdivide one large, existing lot into two lots. She stated that proposed Lot 1R, Block A includes the existing Shops at Eagle Point, and the associated site plan for proposed Lot 2, Block A for an AutoZone was just approved by the Planning and Zoning Commission as the previous item on the agenda (11-017SP). Ms. Nusser stated that proposed Lot 1R is configured as a large rectangular shape on its west side, where the existing two buildings are, but heading eastward, the lot shrinks down to one foot in width along proposed Lot 2, Block A, then expands to approximately 33 feet wide

where the existing monument sign is located, then shrinks down to one foot again as it heads southward along Custer Road in order to provide a minimum of 100 feet of frontage to keep an existing, multi-tenant monument sign. Ms. Nusser stated that Section 142-99 (Lots) of the Subdivision Ordinance states that "Lots should be rectangular insofar as is practical. Sharp angles between lot lines should be avoided. The ratio of depth to width should not ordinarily exceed 2 ½ to one." She stated that even though Staff has interpreted that the flag lot configuration of proposed Lot 1R does not meet the intent of the Subdivision Ordinance's lot shape requirements and is recommending denial of the proposed minor replat due to nonconformance with the Subdivision Ordinance, the applicant and the developer have requested that the Planning and Zoning Commission consider their case and make their own interpretation of whether or not the proposed plat and the proposed lots' configurations are acceptable. Ms. Nusser stated that Staff recommends denial of the proposed minor replat.

Commission Member Thompson asked Staff what the applicant can do with the property if it is not replatted. Ms. Nusser stated that Staff has discussed several options with the applicant that are listed in the staff report. She stated these options would allow the applicant to keep the monument sign and allow the AutoZone to go in.

Commission Member Eckenrode asked Staff about the proposed signage. Ms. Nusser stated that the existing sign is a detached, multi-tenant, monument sign. Mr. Michael Quint stated that the proposed lot configuration would be in conformance with the sign ordinance; however, it would not be in conformance with the Subdivision Ordinance. Ms. Nusser discussed the various options suggested to the applicant.

Commission Member Bush asked Staff to clarify the location of the proposed one-foot section of property. Ms. Nusser explained that the one foot section is located on the north and east side of the subject property.

Mr. Jon David Cross, Cross Engineering Consultants, Inc., 106 W. Louisiana Street, McKinney, TX 75069, briefly explained the proposed application and stated that he felt it was unfortunate that some of the details of the proposed platting appeared to be in contrast with some of the intents of the Subdivision

Ordinance. He stated that he felt that with this proposal the sign and landscaping would be located where it needs to be, and the City would be proud of this project.

Mr. Herb Goodman, Uptown Custer Partners, L.P., 3401 Armstrong, Dallas, TX 75205, stated that the situation was due to a simple failure to communicate. He distributed handouts to the Commissioners and Staff. Mr. Goodman gave a brief investment history on the property and gave a brief history of his meetings with Staff. Mr. Goodman stated that he asked Staff how the monument sign could be preserved so that it would not be considered off-site later. He stated that he was trying to be very proactive on the signage. Mr. Goodman discussed the various e-mails contained in the handouts he distributed. He stated that he felt that he had followed Staff's recommendations and now faces a Staff recommendation of denial. Mr. Goodman stated that the other options were not presented to him until last week. He discussed the four options that Staff suggested. Mr. Goodman stated that the AutoZone site plan was just approved and the monument sign was previously approved. He stated that he felt that all of the physical structures on the ground that citizens see when they drive by could be exactly the same no matter which option was followed. Mr. Goodman stated that in 2009, he was given one option and then two years later he was told there were three other options available. He stated that all of the things that the ordinances were designed to achieve might still have been achieved with the exact same scenario, just by a different route.

Chairperson Clark opened the public hearing and called for comments. There being none, on a motion by Vice-Chairperson Tate, seconded by Commission Member Radke, the Commission voted 6-0 to close the public hearing.

Commission Member Eckenrode stated that he would like to see a way that the applicant could keep the current sign but did not want to set a poor platting precedent.

Commission Member Bush and Chairperson Clark discussed the meritorious exception option for the signage issue.

Chairperson Clark stated that Staff has to make a recommendation of denial based upon their interpretation of the Subdivision Ordinance. He stated that the

Commission may not make the same interpretation. Chairperson Clark stated that the shape of the property in this instance might be practical.

Mr. Michael Quint, Senior Planner for the City of McKinney, stated that regardless of the outcome of tonight's case that the property is currently platted so the applicant can still move forward with their construction documents, seeking approval from the Building Inspections Department, civil plans through the Engineering Department, etcetera while this signage issue is being resolved.

Commission Member Eckenrode asked Staff to give some examples of options if something like this was seen again. Mr. Quint stated that one option is to have 100 feet of lot frontage on Custer Road. He stated that another option is to rezone for a comprehensive sign package. Mr. Quint discussed issues with each option available.

Ms. Jennifer Cox, Director of Planning for the City of McKinney, stated that if the Commission approves the proposed minor replat in this case, that Staff would not be in a position to interpret the ordinance provision differently in the future should a similar situation come up again.

On a motion by Commission Member Thompson, seconded by Vice-Chairperson Tate, the Commission voted 6-0 to approve the proposed minor replat as submitted by the applicant based upon the Commission's interpretation of the Subdivision Ordinance.

Chairperson Clark stated that the Planning and Zoning Commission is the final approval authority for the proposed minor replat.

There being no further business, Chairperson Clark declared the meeting adjourned at 7:45 p.m.

ROBERT S. CLARK, CHAIRPERSON