

09-080Z Conduct a Public Hearing to Consider/Discuss/Act on the Request by Hillcrest Funeral Home, on Behalf of St. James CME Church, for Approval of a Request to Rezone Approximately 0.44 Acres from “BG” – General Business District to “PD” – Planned Development District, Generally to Modify Development Standards, Located on the East Side of State Highway 5 (McDonald Street) and Approximately 250 Feet South of Watt Street.

Mr. Alex Glushko, Planning Technician for the City of McKinney, stated that the applicant is proposing to rezone the subject property in order to modify several development standards of the Zoning Ordinance. He stated that the applicant is proposing to utilize the existing structure and develop approximately 0.14 acres of the subject property. Mr. Glushko presented a zoning exhibit and stated that it did not satisfy several conditions of the Zoning Ordinance which included the following; required number of parking spaces, screening device material, terminus trees at the end of each parking row, street trees along McDonald Street, and canopy trees adjacent to the single family residences to the east. He stated that the applicant is proposing to utilize gravel for the parking lot as opposed to the required concrete and asphalt material. Mr. Glushko stated that the applicant has proposed a zoning exhibit that provides rudimentary scaling options and stated that Staff finds it difficult to determine if what is proposed on the applicant’s exhibit would actually have the ability to be built, as depicted, on the ground. He stated that Staff worked with the applicant in order to develop a site layout that would enable the applicant to meet all of the aforementioned Zoning Ordinance provisions and in doing so would not have to

go through the rezoning process. Mr. Glushko stated that the applicant has not given Staff a reason as to why he could not develop the subject property and meet all the Zoning Ordinance provisions mentioned. He stated that Staff is recommending denial of the proposed rezoning request as listed in the staff report. Chairperson Clark asked Mr. Glushko how many parking spaces the applicant was short. Mr. Glushko stated that the applicant was short by one or two spaces depending on how the subject property were to be scaled. Chairperson Clark asked how many parking spaces the applicant was supposed to provide. Michael Quint, Senior Planner for the City of McKinney, stated that applicant would need thirteen parking spaces, and the zoning exhibit reflected twelve. He stated that Staff was not sure if the proposed layout could actually accommodate twelve spaces, as it was not possible to get exact architecture or engineering scaled measurements to ensure the parking spaces were nine feet by eighteen feet in size. Chairperson Clark asked what the normal course of events for such a circumstance would be. Mr. Quint stated that the normal course of events would be that Staff would have received an accurately scaled drawing that would provide Staff with confidence that what was proposed could actually be built. Mr. Quint stated that Staff could assume that each block on the graph paper, on which the zoning exhibit was drawn, was four feet by four feet, but that when it gets to fractions of a block, Staff could not be certain of accuracy. Mr. Quint stated that there was confusion in this case, and that the majority of cases presented to the Planning and Zoning Commission have scaled exhibits in which Staff is confident that what is shown on the exhibit, can be built on the

ground. Commission Member Messer asked if the rezoning request was required to have a site plan. Mr. Quint stated that it was not necessarily required but many "PD" – Planned Development Districts that the Planning and Zoning Commission review do have an attached exhibit, which is an attempt to get the Planning and Zoning Commission and City Council comfortable with the development proposal. Mr. Quint stated that submittal of a site plan would follow such a rezoning request, but that because the site is less than an acre, it would be Staff approval. Commission Member Feldt asked if there is was another zoning category aside from a "PD" - Planned Development District that might be appropriate for this case. Mr. Glushko stated that none of the other zoning districts would allow the proposed deviations to take place. Commission Member Feldt asked if the building was currently occupied or if the building had been occupied recently. Mr. Glushko answered that Staff was not aware of such by way of a recent Certificate of Occupancy. Commission Member Feldt stated that he had gone by and saw a sign for a funeral home on the building and stated that he was unaware if it was a current use. Mr. Quint stated that code enforcement has been notified of certain situations going on in the property, and stated that in respect to the current zoning request, there has never been a legal funeral home occupying the subject building. He stated that if the subject property is operating any type of use, it is not legal use because they have not satisfied all the development requirements in order to change the use. Commission Member Feldt asked if health implications for the proposed use have been addressed. Mr. Quint stated that the Planning and Zoning Commission would be acting on

the proposed changes in zoning, and that any health concerns would be addressed when the applicant applies for a building permit. Mr. Will Spencer, 1604 West Street, McKinney, Texas stated that he is leasing 1,750 feet of floor space and stated that is all he needs. He stated that he also leased 50 feet by 40 feet for parking space on the property. Mr. Spencer stated that the first issue was the construction of a fire lane according to the first meeting he had with Staff. He stated that the Fire Marshal had stated that a fire lane was needed since the business was so close to the street. Mr. Spencer stated that the second issue was that Staff recommended the zoning be changed from "BG" – General Business District to "PD" – Planned Development District, because he could not meet the "BG" – General Business District requirements. He stated that he also requested to have a work-in-progress gravel parking lot, and that Staff told him that he could, but they would not recommend approval. Mr. Spencer stated that Staff told him that gravel produces dust which is a hazard to people's health, and that is the reason why they would recommend denial of the gravel parking lot. He stated that the McKinney Independent School District has two gravel parking lots located by two sports centers, which are a hazard to his health. Mr. Spencer asked why the Texas Department of Transportation produced gravel beside the hospital off of U.S. Highway 75. He stated that the third issue was parking spaces, and he read from the parking section of the Zoning Ordinance where it indicates the parking requirement for funeral homes and mortuaries. Mr. Spencer stated that he has only leased 1,750 square feet for the funeral home and is required one asphalt parking space per each 200

square feet, as indicated by the regulations of the Zoning Ordinance. He then divided 200 square feet into 1,750 square feet and indicated that 8.75 parking spaces would be required, which equates to nine parking spaces. He said if he were required to have nine parking spaces, and each were nine feet wide and eighteen feet deep, that would equal 162 square feet per space of parking area he would be required, which equates to a total of 1,458 square feet of parking area. Mr. Spencer then restated that he leased 50 square feet by 40 square feet of area for parking from the church, and indicated that those 2,000 square feet which were available for parking would be able to accommodate the parking spaces he would need. Mr. Spencer stated that the building north of the proposed funeral home has been several businesses and has not been required to meet any of the regulations that he is being asked to meet. Chairperson Clark asked if a funeral home was currently not an allowed use. Mr. Quint stated that a funeral home was an allowable use and stated that the use was not what was in question, rather the question was in the development standards surrounding the use. Chairperson Clark stated that the property does not have to be rezoned in order to accommodate a funeral home. Commission Member Messer asked if the applicant would be rebuilding. Mr. Quint stated that the applicant is proposing to use the existing structure to accommodate an allowed use, and the reason the rezoning request is necessary is because the applicant does not want to meet the minimum requirements for parking, landscaping, screening, and material for parking and maneuverability. Commission Member Feldt stated that he did not understand why the applicant was going through the rezoning process,

and not the owner, considering the applicant was leasing the property. Mr. Quint stated that a fire lane would not be required for this project, and stated that the fire lane referenced in the staff report was merely pointing out that concrete or asphalt surface was a good idea. In regard to the gravel parking lot, Mr. Quint stated that a single site releasing dust would not be a health concern, but Staff's concern would be in the precedent that would be set for future development proposals. Mr. Quint spoke about the Texas Department of Transportation and stated that they have separate requirements and standards than the City of McKinney's, and as such will not allow gravel drive approaches. Mr. Quint went on to explain that a lot of the construction that Mr. Spencer was referring was temporary. Mr. Quint also stated that the school districts were exempt from the City's development standards until a few months ago. He stated that the zoning exhibit provided by the applicant to the Staff references a 2,577 square foot building, and that was the number Staff used to calculate the thirteen parking spaces. Mr. Quint spoke about the required screening device materials and stated that Staff is simply pointing out to Mr. Spencer what the Zoning Ordinance says. He stated that the Zoning Ordinance says that when there is a non-residential use next to single family residential uses a screening device is required, which is required to be masonry, wrought iron with masonry columns with a living screen, or an alternative device approved by the Planning and Zoning Commission. He stated that the applicant is proposing wood fencing, and stated that Staff is not comfortable with that. Commission Member Feldt asked why the property has to go through rezoning if the applicant is leasing the

property and there is no reconstructing or modifying of the building. Mr. Quint stated that each building is required to provide a level of accommodation, such as parking for the public, refuse collection, and stated that these are all requirements of the Zoning Ordinance. Commission Member Feldt stated that if the building had been continuously occupied, there would not be a need for the rezoning process. Mr. Quint stated that it would be a legal non-conforming status and stated that if there was a gravel drive in existence when the current ordinance requirements for concrete drives were adopted, then the use on that property would continue, however, since the property was vacated, they now have to follow the City's standards. Commission Member Messer stated that there is a six month grandfathered clause. Mr. Spencer stated that the parking lot would be a work in progress parking lot. He explained that the parking lot that Staff was proposing would involve a loading and unloading area that would leave peoples' loved ones exposed to street view. Mr. Spencer stated that Staff would not allow him to use unimproved Walker Street for the loading and unloading. Chairperson Clark asked Mr. Spencer how that differed from his plan. Mr. Spencer stated that he spoke to the Texas Department of Transportation about getting gravel along the southwestern part of the property and stated that they were okay with it. He stated that the City wants him to tear out the west part of the property while the Texas Department of Transportation told him there was no need to tear it out. Mr. Spencer stated that the west part of the property is where he planned on loading and unloading caskets. He stated that he would only need nine parking spaces because the building will only have a funeral parlor,

reception area, and arrangement rooms. Chairperson Clark asked Mr. Spencer if he would be leasing any other part of the building. Mr. Spencer stated that he would not be leasing any other space. Chairperson Clark asked Mr. Spencer where people would park if the other space were to be leased. Mr. Spencer answered that he was unaware of where they would park, and stated that at the moment his concern is getting his business open. Chairperson Clark asked if the owner of the property okay with what is being proposed. Mr. Spencer stated that the owner is aware of what is being developed. Mr. Spencer stated that any concerns about sanitation will be handled by way of back flow prevention, and that the only trash they generate are chemicals which would be put in a bag which would be picked up by a contracted company. Chairperson Clark stated that the only issue to deal with at the moment was whether or not to approve the rezoning to a "PD" – Planned Development District. Mr. Spencer stated that in a meeting with the Deputy Director of Development Services Brian James and the Deputy City Manager, Rick Chaffin, they stated that they would tell Staff not to approve the proposed development. Chairperson Clark advised Mr. Spencer that Deputy Director of Development Services, Brian James, is no longer employed with the City of McKinney. Mr. Spencer also stated that he had just received the staff report on Monday and did not have enough time to act on it. Chairperson Clark advised Mr. Spencer the problem is beyond dust issues. Jennifer Cox, Director of Planning, stated that Mr. Spencer has had several meetings with Staff, as well as with former Deputy Director of Development Services, Brian James, as well as with Deputy City Manager, Rick Chaffin, and

they each explained to Mr. Spencer that they could not support a gravel parking surface. She stated that they could not support gravel parking for many reasons such as, dust in the air, the inability to permanently stripe parking spaces, and the potential damage that could be caused to vehicles due to gravel dragged to the main road. Mr. Spencer asked why gravel was allowed on White Street. Ms. Cox stated that the McKinney Independent School District did not have to comply until recently with the City's development standards, they only had to comply with life safety standards. Chairperson Clark stated that any government institution does not have to comply with the City's development standards as well. Mr. Spencer stated that the City of McKinney has double standards. Chairperson Clark stated that government institutions do not have to follow the City's development standards by law. Chairperson Clark opened the public hearing and called for comments. Mr. Winston Douglas, 3349 Woodberry Lane, McKinney, Texas, is the pastor for the church that owns the subject property and stated that the church is in favor of the zoning change to allow Mr. Spencer and his business to get established. He stated that it is a temporary business that is not necessarily going to be permanent. Mr. Douglas stated that the church thought that whatever modifications or upgrades were necessary, would be taken care of by the zoning to "PD" – Planned Development. He also stated he thought the church would benefit from the zoning change due to the fact that it would allow them to better accommodate any future uses for the property. Commission Member Messer asked if the Church would be willing to make changes to the property to get Mr. Spencer as a tenant. Mr. Douglas stated that such an

arrangement was not part of their agreement with Mr. Spencer. He stated that the church allowed Mr. Spencer a portion of the property in order to conduct his business, and that making changes to the property was not addressed with the church. Chairperson Clark asked Mr. Douglas if he would be willing to address this issue with the church. Mr. Douglas stated that he would address this issue with the church. Chairperson Clark told Mr. Douglas that the Planning and Zoning Commission is not trying to rework the agreement between the church and Mr. Spencer, and stated that all they want to see is the property in use, but in the right way, following the right codes. Mr. Douglas stated that the church would like to be in compliance, but that their request was to allow it as a temporary work in progress situation, that whatever was being approved could be done temporarily, and in that way would not be permanent. Chairperson Clark stated that once the applicant gets a Certificate of Occupancy, it is harder for the City to enforce the issues listed. Ms. Cox stated that the funeral home is an allowed use; however the reason they are going through the rezoning process is to modify the development standards. She stated that the applicant wants to reduce the number of parking spaces, gravel parking, and reduce landscaping and screening requirements. Ms. Cox stated that Staff came up with an alternative site plan in order to assist the applicant in a layout that would not require the rezoning process. She stated that the applicant has decided not to go forward with the Staff's proposed layout, and has decided to move forward with his planned development. Chairperson Clark asked for how long had the location been unoccupied. Mr. Quint stated that there had been several

vacancies exceeding six months. Brandon Opiela, Senior Planner for the City of McKinney stated that Staff had driven by and did not find any indication of where a parking lot existed, with the exception of some gravel remnants near the state highway. Mr. Douglas stated that the request for consideration is of a temporary nature, that of a start-up business, but that it may not be there in the future. He commented that it was not a wise idea to invest capital in developing the parking lot because the church was not sure of what the property may end up being or how it would be developed in the future. Chairperson Clark asked if the subject property may be a temporary location for his business. Mr. Douglas answered yes. Commission Member Lingenfelter stated what the Planning and Zoning Commission decides is permanent. Mr. Douglas asked if the "PD" – Planned Development be viable for anything the church may want to use it for. Ms. Cox stated that once zoning is in place, it is with the land, regardless of the ownership. She stated if the applicant were to develop the property as per the "PD" – Planned Development District, such a configuration would need to be followed in the future. Mr. Quint stated that Staff is unaware if the site can accommodate what the applicant is proposing because the exhibit brought to Staff is not definitively scaleable. Mr. Douglas asked for clarification on the change, and asked if the "PD" – Planned Development would stand no matter what business was to be there. Ms. Cox answered yes, unless the applicant would rezone the property again. Commission Member Tate asked Mr. Douglas if adding screening would add value to the property. Mr. Douglas answered yes; however indicated that without having any plans in place for the future use of the

property, it may end up being a wasted investment. Chairperson Clark asked Mr. Spencer to come up and speak. Mr. Spencer stated that the proposed zoning exhibit, Exhibit A, was approved by a Nashla Kalifa, a Planner no longer working for the City of McKinney, and Mr. Alex Glushko, Planning Technician. Mr. Spencer stated that Staff recommended the applicant go through the rezoning process. Ms. Cox stated that what occurred was that Mr. Spencer wanted to develop the property in a certain way, a way which would not comply with the City's standards, and stated that was why Staff recommended that he go through the rezoning process as his only option, which he has every right to do, but that he may or may not get approval of the proposed rezoning request. Mr. Spencer stated that as far as trash he could take it out in a handbag. Chairperson Clark stated that the City has development standards. Mr. Spencer stated that he is asking for a temporary work in progress. Mr. Spencer stated that no one wants a black funeral home in the City of McKinney. On a motion by Commission Member Feldt, seconded by Commission Member Tate, the Commission voted 6-0 to close the public hearing. Commission Member Lingenfelter stated that the decision has nothing to do with the City of McKinney not wanting a funeral home. He stated that if the proposed project met all the standards then the Planning and Zoning Commission would not be able to recommend denial. Commission Member Lingenfelter stated that the problem is that the proposed rezoning request does not meet the City's standards. On a motion by Commission Member Feldt, seconded by Commission Member Messer, the Commission voted 6-0 to recommend denial of the proposed rezoning request as

recommended by Staff, due to inadequate site plan, parking spaces and surface, screening devices, and landscaping plan. Chairperson Clark stated that the recommendation of the Planning and Zoning Commission will be forwarded to the City Council meeting on March 2, 2010.