

**PLANNING AND ZONING COMMISSION
APRIL 25, 2012
CITY COUNCIL CHAMBERS @ 5:00 P.M.**

P&Z PRESENT

Ned Sheats
Mario Garza
Carlos Lopez
Abiel Flores
Rene Flores

P&Z ABSENT

Marisela Marin
Diana Izaguirre

STAFF PRESENT

Sergio Zavala
Bobby Salinas
Susana De Luna

GUESTS PRESENT

Arnoldo Cadena
Julio C. Acebo
Carlos Ayala
Maria A. Loera
Bernardino Mata
Laura Rodriguez

CALL TO ORDER

Acting Chairman Ned Sheats called the meeting to order at 5:02 p.m.

CITIZENS PARTICIPATION

Acting Chairman Ned Sheats asked if there was any citizens' participation. There was no response upon inquiry.

APPROVAL OF MINUTES FOR MARCH 28, 2012

Acting Chairman Ned Sheats asked if there were any corrections to the minutes for March 28, 2012. There being no corrections, Mr. Abiel Flores moved to approve the minutes as presented. Mr. Mario Garza seconded the motion. Upon a vote, the motion passed unanimously.

Started: 5:03 p.m.

Ended: 5:24 p.m.

ITEM # 1.1

Rezoning:

**The East 180' of the South ½
Block 8, Citriana Heights Subdivision
C-2 to C-3
Arnoldo Cadena**

Mr. Bobby Salinas went over the write up stating that the site, being 180' x 140', is at the NW corner of Delmar Drive and Eban Avenue, both minor residential streets. The Area Zoning include: R-1 (Single Family Residential) to the north and east, and (C-3) General Business to the west and south. The Area Land Uses include: Single Family Residential to the north and east, and vacant to the west, and Commercial Plaza (Foy's, et.al) to the south. The Future Land Use Map shows this area as Low Density Residential (LD) designation. Though the subject property adjoins a C-3 zone on its west

side, zoning should generally transition, or stair-step, downward when going eastward and away from the major roadways/commercial centers.

This transition is currently the case, e.g., C-3 at the properties nearest Conway, then step downward to C-2 when going further away from Conway. There are SF residences to the north and across the alley, to the NE, and to the east. There'd need to be a compelling reason to increase the C-2 to C-3, and there doesn't appear to be any compelling justification to amend it at this time. Staff recommended denial, retain C-2.

Acting Chairman Ned Sheats asked if there was any public opposition to the request.

There was no response.

Acting Chairman Ned Sheats asked if the applicant or representative were present.

Mr. Arnaldo Cadena who resides at 347 S. 83rd Street in Edinburg was present to address any questions that the Board might have.

Mr. Mario Garza asked Mr. Cadena what type of business he was proposing on this property because the current land uses established were perfect for the area already.

Mr. Arnaldo Cadena stated that he was proposing to do an Auto Parts Store. He mentioned that he currently owns an Auto Parts Store in Mission. He added that he wanted to build another Auto Parts Store with a warehouse to store the merchandise but was told by the Planning Department that it would be more convenient for him to change the zone of the property.

Mr. Mario Garza asked Mr. Sergio Zavala if a C-2 zone would allow the type of business Mr. Cadena was proposing.

Mr. Zavala stated that he was proposing to have a retail business and needed a C-3 zone. He added that a C-2 zone would only allow neighborhood business.

Mr. Arnaldo Cadena stated that he was proposing to sell only new auto parts.

Mr. Mario Garza stated that his proposal was good but he needed to look for a different location because a C-3 zone was a little more aggressive than a C2.

Acting Chairman Ned Sheats mentioned that this Board needed to consider the residential neighborhood surrounding the property but was not against the proposal.

Mr. Arnaldo Cadena stated that he didn't think he would have a problem rezoning the property because there was a similar type of business nearby and he was next to a C-3 zone.

Mr. Zavala stated that he was referring to Elizondo Tires. He added that Elizondo Tires was fronting Conway and his site was not.

Mr. Arnaldo Cadena stated that the lot next to the proposed site was already zoned C-3 and if he bought it he would be able to have the business he wanted but the reason he was trying to rezone this property was because the price was more reasonable and the owner was financing it.

Acting Chairman Ned Sheats stated that if the Board decided to rezone the property to C-3 they would be moving the entire C-3 zone a block away from Conway. He asked how and when did the property next to his get rezoned to C-3.

Mr. Mario Garza stated that property was grandfathered it has been rezoned C-3 for a long time.

Mr. Abiel Flores asked Mr. Zavala what would be a good compelling reason.

Mr. Zavala stated that if there were some mixed uses in between the C-2 and C-3 like Mr. Sheats had indicated. He added that there were some mixed land uses on the north side as well the problem was that they had residential on the north side and north east and even to the immediate east as well. Mr. Zavala stated that if there would have been some changes then they would have been legal nonconforming or grandfathered use. He added that they could have factored that in because it looks like a natural evolution of nonresidential lots that are residentially zoned and that might have helped him but the problem is there are homes all around it.

Mr. Abiel Flores asked how they could justify the lots on the west side of Conway.

Mr. Zavala stated that those four lots were rezoned in 1981. He added that this happened when the City of Mission hired a consultant from Austin which did the easy thing of going just a couple of hundred feet and then zoning C-3. He mentioned that maybe they should have just gone two lots deep from Conway and not four lots. Mr. Zavala stated that his recommendation to the

Council if this was seen now to consider going four lots deep his answer would be "NO" if anything he would suggest going 1 or at the most 2 lots deep. He mentioned that if there was additional desire to rezone further away from the line of demarcation then they would be seen on a case by case basis.

Acting Chairman Ned Sheats stated that he didn't think it would be a good idea to change the zone to C-3 which was based on the Zoning and Future Land Use Maps.

Mr. Rene Flores walked in at 5:15 p.m.

Acting Chairman Ned Sheats briefed Chairman Rene Flores on the item.

Mr. Mario Garza stated that he didn't want to discourage the business especially when they had a C-3 zone right next to his property.

At this time, Acting Chairman Ned Sheats handed the gavel to Chairman Rene Flores.

Chairman Rene Flores asked what type of business he was proposing.

Mr. Mario Garza stated that he wanted to have an Auto Parts Business.

Mr. Arnaldo Cadena stated that this land has been vacant for a very long time.

Chairman Rene Flores stated he believes this land has been vacant because there is not too much traffic that could actually go into the street and because it was not very visible either.

Mr. Arnaldo Cadena stated that he believes that if they allow him to put his business in this property it would be more productive for the City because it would generate sales tax.

Chairman Rene Flores asked if he was the owner of the property.

Mr. Arnaldo Cadena stated that he was not the owner but had obtained written permission from the current owner to rezone the property and if the rezoning was approved then he would purchase the property.

Chairman Rene Flores stated that the City had a Zoning and Future Land Use Map that would help staff to determine where to have commercial zones that would be able to work with the surrounding neighborhoods without disrupting

the neighborhood. Unfortunately the type of business Mr. Cadena is proposing would not be allowed because, if allowed, it would set precedence to others.

Mr. Cadena stated that he just didn't understand why they would allow businesses on the west side of Conway and not on the east.

Chairman Rene Flores stated that like he had explained most of the businesses are fronting Conway and also had an alley that would serve as a buffer to the residential neighborhoods and the proposed site does not front Conway.

There being no comments, Chairman Rene Flores entertained a motion. Mr. Mario Garza moved to deny the rezoning as per staff's recommendations. Mr. Ned Sheats seconded the motion. Upon a vote, the motion passed unanimously.

Started: 5:24 p.m.

Ended: 5:29 p.m.

ITEM # 1.2

**Conditional Use Permit: Sale & On-Site Consumption of Alcoholic Beverages – Taqueria Hidalgo Restaurant
307 E. Expressway 83
Lot 6-D, El Pueblo Subdivision
C-3
Julio C. Acebo**

Mr. Bobby Salinas went over the write up stating that the subject site is located between Conway Avenue and Mayberry Road along the north side of Expressway 83. It was previously Burguesa Burger, which has since closed. The applicant is now requesting to open a new *taqueria* restaurant to offer alcoholic beverages with meals. There is no bar component within the restaurant.

- **Days/Hours of Operation:** Everyday from 8:00 a.m. to 11:00 p.m. Alcoholic beverages will only be served during allowable State selling hours.
- **Staff:** 10 employees
- **Parking:** The 1,700 sq. ft. building requires 23 spaces (1,700/ 75 sq. ft. = 22.6 parking spaces). There are 26 existing spaces, thus meeting code.
- **Section 6-4a of the Alcoholic Beverages code states:** "Unless waived by the City Council based on special or extenuating

circumstances, the sale of all alcoholic beverages within 300 feet of any church, public school, private school or public hospital, within the corporate limits of the city, is hereby prohibited. No alcoholic beverages of any kind shall be sold on any premises located within 300 feet of any church, public school, private school or public hospital."

- **Section 6-4d states:** "Unless waived by the City Council based on special or extenuating circumstances, the measurement of the distance between the place of business where alcoholic beverages are sold and the public or private school shall be in a direct line from the property line of the public or private school to the property line of the place of business, and in a direct line across intersections"

The subject site is 208' from the school's property line, however it is 785' from the nearest school building. On 5-25-11, the Alcoholic Beverages code was amended to allow the City council to waive the separation requirement "based on special or extenuating circumstances".

Based on the distance from the nearest school building and how far the students would be from the restaurant, staff believes that the sale of alcohol would not be detrimental to the area. Also, this proposal, like the adjoining Pizza Hut, does not have a "bar" component. Staff recommended approval subject to a 1 year re-evaluation to assess this new operation.

Chairman Rene Flores asked if there was public opposition to the request.

There was no response.

Chairman Rene Flores asked if the applicant or representative were present.

Mr. Julio C. Acebo who resides at 4111 San Roman stated that he would like the Board's consideration to sell only beer with his meals. He added that this was a family owned business. He mentioned that they had over 30 years of experience in this type of business and in Mexico they had obtained an award of Excellence for their food.

Chairman Rene Flores asked if this was like a chain of restaurants.

Mr. Julio Acebo stated that this was not a chain but he would like to have a chain of restaurants in the future. He added that he used to own a similar type of business in Brownsville for about 4 years but had to close it because he got this location and would be better for him and his family.

Chairman Rene Flores stated that he welcomes his business to the City and hoped his business works out because several businesses have tried this

location but have not been successful. He added that the City should fix the holes that are on the feeder road.

There being no comments, Chairman Rene Flores entertained a motion. Mr. Ned Sheats moved to approve the conditional use permit as recommended by staff. Mr. Mario Garza seconded the motion. Upon a vote, the motion passed unanimously.

Started: 5:29 p.m.

Ended: 5:35 p.m.

ITEM # 1.3

**Conditional Use Permit: Drive-Thru Service Window
for Letdin Pharmacy
1510 E. Griffin Parkway, Ste. 1
Lot 1, Stewart Professional Center Subd.
C-3
Carlos Ayala**

Mr. Bobby Salinas went over the write up stating that the subject site is located approximately 100' south of Griffin Parkway along the west side of Stewart Road. A commercial plaza is under construction wherein a new pharmacy with a drive thru service window is being proposed. There will be a maximum stacking capability of 4 vehicles along the perimeter east being the area of the drive-thru service window. Access to the general site is from Stewart Road, Griffin Parkway, and cross-access easements from the Shah complex. The building measures 80' x 30' (2400 sq. ft.).

The number of parking spaces required for this building is 9. There will be 172 common parking spaces within the commercial development.

- Days/Hours of Operation: Monday – Friday from 8 a.m. to 6 p.m.; Saturday – Sunday: Closed
- Must comply with landscaping code.
- Must comply with the City's Sign Ordinance.
- A business License is required prior to occupancy

The pharmacy's service window, again, allows for 4 vehicles to be easily stacked. A **speed bump** should be imposed just prior to the car aligning to the front sidewalk as cars exit north. Also, as cars continue to exit northwesterly, there should be a painted '**YIELD**' marking on the pavement to avoid any conflict with any car that may be backing-up from the pharmacy's front area. Finally, any **wall sign** proposed to this corner suite must comply with the City's Sign Ordinance. Staff recommended approval subject to: 1) Install a speed bump and paint '**YIELD**' marking on pavement

as indicated above; 2) Must comply with landscaping and sign codes; 3) Acquire a business license; 4) CUP not transferable to others; and 5) 1 year re-evaluation.

Chairman Rene Flores asked if there was public opposition to the request.

There was no response.

Chairman Rene Flores asked if the applicant or representative were present.

Mr. Carlos Ayala stated that he was building the finish out and was helping the owner obtain the proper permits.

Mr. Rene Flores asked Mr. Ayala if he was receptive to staff's recommendations.

Mr. Carlos Ayala replied, "Yes".

Mr. Ned Sheats asked what the sign ordinance stated for businesses that have two sides visible from major arterials. Would they be allowed to have one or two signs.

Mr. Zavala stated that they could have one sign not to be more than 10% of the wall.

Mr. Ned Sheats clarified that it was only 1 sign not unless the architect wants to put another sign over the door or someplace else and it could only be 10% of the wall face.

Mr. Zavala replied, "That's correct."

There being no comments, Chairman Rene Flores entertained a motion. Mr. Mario Garza moved to approve the conditional use permit as recommended by staff. Mr. Carlos Lopez seconded the motion. Upon a vote, the motion passed unanimously.

Started: 5:35 p.m.

Ended: 5:44 p.m.

ITEM # 1.4

**Conditional Use Permit: Home Occupation – Aerobics Classes
1608 Corrales Street
Lot 17, Perlas de Naranja Subdivision
R-1A
Maria A. Loera**

Mr. Bobby Salinas went over the write up stating that Perlas de Naranja is at 2.5 miles north Stewart Road (east side); the plat reflects 20 lots intended for residential use (via recorded deed restrictions, i.e., Doc. #11329). The site has the owner's Single Family Residence thereon with the surrounding lots all used for residential purposes, inclusive of the acreage to the south.

As shown on the plat, this is a cul-de-sac development where traffic is minimal & almost exclusively used by the property owners, i.e., it is not linked to other subdivisions where traffic would be naturally increased.

The proposed days/hours of operation would be Monday thru Friday at 9 a.m., 12 p.m., 3 p.m. All Home Occupations are subject to the Zoning Codes' regulations dealing with such business ventures in a residential setting. In assessing the reality of aerobics classes, we posit the following:

- a) Sect. 1.56-(a) says, "The area used in conducting the home occupation will be clearly secondary to the residential use. Such permitted occupations shall not create offensive NOISE, VIBRATION, smoke, dust, odor, heat or glare or require more than 4 parking spaces." In this proposed venture, there will be music at an increased volume at a home that was built with residential standards and not sound-proof commercial material.
- b) Section 1.56-1(f) says, "The permitted use shall NOT create frequent or heavy traffic greater than 10% of the average load per hour, per street." The subdivision has 20 lots where the typical lot usually has 2 cars/lot. It will not take a lot of cars parked on the applicant's property to go over the average 10% threshold on such a cul-de-sac street. (Note: for example, if there are 3 cars at the site for aerobics class, that'd mean that the average # of cars traveling the street would be 30; 4 parked cars = 40 cars/avg. hr; etc.).

It is unknown if there is a maximum attendance per session or if it will be open-ended; the spike in increased parked cars will be difficult to control and may take frequent monitoring by staff. Regarding the noise concern, the 1st session would be at 9 am thus the pounding music will undoubtedly be disturbing to nearby neighbors. Staff recommends denial; aerobics would be in the midst of residences in a low-traffic street.

Mr. Salinas stated that staff had received two letters of opposition to this request.

Chairman Rene Flores asked if there was public opposition to the request.

There was no response.

Chairman Rene Flores asked if the applicant or representative were present.

Mrs. Maria A. Loera who resides at 1608 Corrales stated that since her house was big enough she is proposing to have a gym and aerobic classes from her home. She added that she had enough room for parking to accommodate the cars. She mentioned that she was aware that the neighbors would have to approve the request which she didn't have a problem with any of them.

Chairman Rene Flores stated that the City would need to approve her request first.

Mr. Ned Sheats stated that he needed clarification because in one of the letters of opposition from Mr. Rodriguez it makes reference to subdivision restrictions and it also stated that they don't have a home owners association so do they have a home owners association or deed restrictions.

Mr. Zavala stated that they had recorded deed restrictions.

Mr. Ned Sheats stated that the buyers of the property had the ability to know that they had deed restrictions prior to obtaining the property.

Chairman Rene Flores asked if there were any comments from the Board.

Mr. Ned Sheats stated that it was pretty clear that this was a residential subdivision with deed restrictions.

Chairman Rene Flores stated there were some concerns first there were some neighborhood opposition; second the subdivision has deed restrictions which state that there should be no businesses in the residential neighborhood. Mr. Flores stated that staff and the Board didn't believe this was a good place to open a business therefore he doesn't believe the request would be approved.

Mrs. Maria Loera stated that if her request was approved she would be using the east side of the house to have her business which was bigger and would accommodate the people better.

Chairman Rene Flores stated that the Board would not like to see this type of business in residential areas. There being no comments, Chairman Rene Flores entertained a motion. Mr. Mario Garza moved to deny the conditional use permit as recommended by staff. Mr. Abiel Flores seconded the motion. Upon a vote, the motion passed unanimously.

Started: 5:44 p.m.

Ended: 5:49 p.m.

ITEM # 1.5

**Conditional Use Permit: Carpentry Cabinet-Making Shop
211 E. 9th Street
Lot 10, Block 161, Mission Original Townsite
C-3
Cesar Guillen/Bernardino Mata**

Mr. Bobby Salinas went over the write up stating that the subject site is just east of the Mission Museum along the north side of E. 9th Street. The site has a commercial building where the southernmost room is requested to be approved as a cabinet/furniture-making shop. The days & hours of operation are as follows: Monday – Friday from 9 a.m. to 7 p.m.; Saturday from 9 a.m. to 1 p.m.; and Sunday – Closed.

Being in the central business district, the operation is exempt from parking codes. FYI, the 36' x 36' workshop area would require a minimum of 6 parking spaces. Although the workshop is in the central business district and would be exempt from parking, 6 parking spaces are available for usage, i.e., 4 available along the southern side plus 2 parallel parking spaces along the eastern perimeter of the workshop. (Note: the suites to the north are vacant).

Staff visited the site on Friday, April 20th and discovered that the wood-work service is already occurring. The tenant, Mr. Mata, confessed that they'd been operating for about 2 weeks in hopes that the CUP would be approved. The Fire Marshal's office inspected the site & approved it (exit signs placed/active; 2 fire extinguishers installed; 2 exit doors approved); and the Building Inspector's office has also cleared the workshop. Mr. Mata's small workshop is always self-contained, and there is no work to be done in the exterior of the building. Also, the ventilation of the woodwork's residual air dust is being contained via 2 large vacuums machines that deposit the air dust into vacuum-like bags. Any shavings, left over parts, and bags filled with the dust particles are placed in a commercial container to the east of the building.

Insofar as other improvements to be done, the parking needs to be striped; also, though there is no 'open' areas for landscaping, we recommend that 2 large planters be placed along the southern entrance side (recalling that this is between the Mission Museum and the Texas Citrus Fiesta building). Staff recommended approval subject to: 1) 1 year re-evaluation to assure that full compliance is still evident, 2) acquire a business license, 3) paint the parking

lot's stripes, 4) no exterior storage and/or work, and 5) perpetually place 2 large planters along the southern entrance side.

Chairman Rene Flores asked if there was public opposition to the request.

There was no response.

Chairman Rene Flores asked if the applicant or representative were present.

Mr. Bernardino Mata who resides at 820 Buchanan Street in Alton stated that he was present to address any questions that the Board might have.

Chairman Rene Flores asked Mr. Mata if he was receptive to staff's recommendations.

Mr. Mata replied, "Yes".

Mr. Ned Sheats mentioned that he just liked for the old buildings to be used in the City of Mission.

There being no comments, Chairman Rene Flores entertained a motion. Mr. Mario Garza moved to approve the conditional use permit recommended by staff. Mr. Ned Sheats seconded the motion. Upon a vote, the motion passed unanimously.

Started: 5:49 p.m.

Ended: 5:55 p.m.

ITEM # 2.0

**Single Lot Variance: 4.50 acres of the S. ½
Of the E. 10 Acres, of the
N. 20 Acres, Lot 29-4,
West Addition to Sharyland Subdivision
AO-I
Jorge & Laura Rodriguez**

Mr. Bobby Salinas went over the write up stating that the subject site is at the 1/8 mile north of 2 Mile Road, along the west side of Trosper Road. The intent of this process is for the owners to build their SF residence thereon. Since the tract does front a paved public street & has access to basic utilities, the single lot variance process has been applied for.

In reviewing this as the same equivalent as a 1-lot subdivision, the typical requirements for such are noted below (not listed in any order of preference, i.e., all are minimum requirements):

- 1) Dedicate 40' ROW centerline of Trospers Road.
- 2) Dedicate rear 10' utility easement, and 6' utility easements along the perimeter sides.
- 3) Escrow pro-rata share of Trospers widening at \$55.90/l.f. x lot's frontage.
- 4) Escrow 5' sidewalk at \$11/l.f. x lot's frontage (minus the typical 10' paved driveway).
- 5) Pay the park dedication fee of \$300/single house.
- 6) Pay the \$200 capital sewer recovery fee/single house.
- 7) Exclude the property from the water district (or for one housing unit equivalent).
- 8) Escrow 1/2 cost of a future 8" water line (Note: City likely to over-size to 12").
- 9) There was no reimbursement contract filed by MCISD on their 30" storm line installation; thus, no reimbursement fees apply; there are no other reimbursements applicable, either.

Staff recommended approval subject to complying with format findings 1 through 8 as mentioned above.

Chairman Rene Flores asked if the owner wanted to purchase the property and subdivide the property into several lots.

Mr. Salinas stated that the applicant just wanted to construct a single family dwelling.

Chairman Rene Flores asked if there was any input from the Board in regards to the request.

There was no response.

Chairman Rene Flores asked if the applicant or representative were present.

Mrs. Laura Rodriguez whose mailing address is PO Box 1681 in Mission was present to address any questions that the Board might have.

Chairman Rene Flores asked Mrs. Rodriguez if she was receptive to staff's recommendations.

Mrs. Laura Rodriguez replied, "Yes".

There being no comments, Chairman Rene Flores entertained a motion. Mr. Abiel Flores moved to approve the single lot variance as recommended by

staff. Mr. Carlos Lopez seconded the motion. Upon a vote, the motion passed unanimously.

ITEM # 3.0
ADJOURNMENT

There being no further items for discussion, Mr. Carlos Lopez moved to adjourn the meeting. Mr. Ned Sheats seconded the motion. Upon a vote, the motion to adjourn passed unanimously at 5:55 p.m.

Rene Flores, Chairman
Planning and Zoning Commission