

**PLANNING AND ZONING COMMISSION
JUNE 8, 2011
CITY COUNCIL CHAMBERS @ 5:00 P.M.**

P&Z PRESENT

Ned Sheats
Carlos Lopez
Jose G. Vela
Mario Garza

P&Z ABSENT

Marisela Marin
Luann Caudle
Rene Flores

STAFF PRESENT

Sergio Zavala
Bobby Salinas
Sonia Carnes
Irasema Dimas

GUESTS PRESENT

Jaime Valdez
Jose E. Espinoza
Jose A. Hernandez
Claudio Castañeda
Charles Floodine
Clint Eaton
M. De La Fuente
Lee Thalman
Diane Thalman
Carmen Fernandez
Claudio Castañeda
Jaime Sanchez
Katherine Deanda
David Deanda
Ramon Almaguer
Donna Leidner
Lindsey Cavazos
Steven F. Austin
Bill Leidner
Pastor Johnny Mora
Sharon Floodine

CALL TO ORDER

Chairman Ned Sheats called the meeting to order at 5:01 p.m.

CITIZENS PARTICIPATION

A citizen from the audience asked if this was the only time that the public could speak in reference to an item on the agenda.

Chairman Sheats replied that this is the time where any citizen could speak in reference to something that is not on the agenda.

Another citizen asked if the meeting could be translated to Spanish, cause he only knew little English and he wouldn't understand it.

Mr. Bobby Salinas stated that the citizen was the applicant for Item # 1.2.

Chairman Sheats stated that staff would only translate his item.

Mr. Espinoza asked if the city had the earphones where they could hear the whole meeting in Spanish.

Mr. Zavala replied that the city is not equipped with that technology yet.

APPROVAL OF MINUTES FOR MAY 18, 2011

Chairman Sheats asked if there were any corrections to the minutes for May 18, 2011. There being no corrections, Mr. Garza moved to approve the minutes as presented. Mr. Lopez seconded the motion. Upon a vote, the motion passed unanimously.

Started: 5:04 p.m.

Ended: 5:08 p.m.

ITEM # 1.1

Rezoning:

**S. 160' out of Lot 37,
Bell-Wood Co's Subdivision "C"
AO-I to C-1
Jaime Valdez**

Mr. Salinas went over the write up stating that the subject site is located at the NW corner of the soon to be widened Mile 2 Road and Compton Drive. The surrounding zones include Agricultural Open Interim (AO-I) to all directions. The existing land uses include single-family homes to the west and east; there is an open ditch directly south of the property with a home south of the ditch and open acreage to the north. The Future Land Use Map shows the area as a Low Density Residential (LD) designation.

In our assessment of the C-1 proposal, we've observed the following:

- The property fronts 2 Mile Road, a future arterial with an ultimate width of 100' ROW with a pavement section of 65' B-B; such a paved street is more conducive to non-residential uses such as for offices, etc.
- This segment of 2 Mile Road is in the process of being prepared for TXDOT consideration to be similarly widened as it was east of Conway to Taylor Road.
- The C-1 proposal is for office use which is the least congestive zone in our commercial zoning hierarchy; also seeing the limited depth, this will attract a series of small office businesses where there will be no major anchor; in other words, the limited parking will self-restrain it to a small office setting.
- The applicant owns the property to the north where they've filed a conceptual residential component to phase-in, too.
- There are several non-residential uses already along 2 Mile Road that are not necessarily at intersections including offices for United Irrigation District

(UID), the C-3 zoned Hay & Seed Facility, a future Mennonite Church (approved in Dec. 2010 and pending construction), plus a linear open canal along the perimeter south side of 2 Mile Road.

- The owners/applicants have long resided to the north of Compton Road which reflects a normal sense of accountability in conforming that the proposed project will be an upscale development.

Staff recommended approval to the C-1 zone request.

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

There was none.

Chairman Sheats asked if the applicants or representatives were present.

Mr. Jaime Sanchez stated that he was the business partner for Mr. Valdez and that they were there to answer any questions from the board.

Chairman Sheats stated that the C-1 zone seemed to fit in the area and being that it would have to come back to the Planning and Zoning Commission again for the approval on the subdivision, where at that point requirements would be implemented. He stated that the only thing that he could see was that the owner would need to start thinking what he would be doing with trash pick up because using a front loader bin and trying to back up on a 20' alley it would be kind of hard. He also stated that even though there were no residential properties behind them, if the owner could make sure that the parking lot lights wouldn't interfere with the future residential area.

There being no other comments, Mr. Garza moved to approve the rezoning as recommended by staff. Mr. Vela seconded the motion. Upon a vote, the motion passed unanimously.

Started: 5:08 p.m.

Ended: 5:13 p.m.

ITEM # 1.2

Conditional Use Permit:

Home Occupation – Traffic Sign Service

1202 Hunter Street

Lot 93, Northpark Estates Subdivision

R-1

Life of Use

Jose E. Espinoza

Mr. Salinas went over the write up stating that the site is located 103' west of Joyce Dr. along the south side of Hunter Street. The applicant is proposing to

enclose his garage to convert it as a workspace to refinish and clean various types of de-faced traffic signs. The home has a two-car driveway from the alley, thus meeting the minimum requirement of 2 off-street parking spaces for residential areas.

Recently retired from the Mission Streets Department, Mr. Espinoza previously worked on cleaning and maintaining traffic signs. Using the experience, he wishes to offer his services to other Cities as a vendor. He is planning on offering graffiti removal using all natural cleaning products and for excessively damaged signs he is planning on offering the resurfacing of signs by using the same "sticker" material that municipalities use when making new signs. The equipment involved would primarily be a computer and a printer to print out the street names and place it on the old signs. He would also be able to produce new 6" x 12" and 6" x 18" street signs as well. (NOTE: He would not have any poles, concrete, brackets, or any other installation materials, since the Cities would be responsible for the installation of the refurbished signs.) There will be no on-site traffic from clients.

- **Days/Hours of Operation:** Monday – Saturday: 8:00 a.m. to 5:00 p.m.
- **Staff:** Only the applicant and one other employee will be operating the business.
- **Signage:** He will not have any signage.

In staff's assessment, the proposed service will not increase traffic, there will be no signage, and there will be no noise or exterior storage. We do not object to an initiated 1-year approved tenure. Staff recommended approval subject to: **1)** 1 year re-evaluation to assess this new operation, **2)** comply with Sect. 1.56-1 of the Zoning Ordinance, and **3)** acquiring a business license.

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

There was none.

Chairman Sheats asked if the applicant or representative were present.

Mr. Jose E. Espinoza was present to answer any questions from the Board.

Mr. Salinas translated the item and requirements to Mr. Espinoza.

Chairman Sheats asked Mr. Salinas if Mr. Espinoza was willing to comply with all the requirements.

Mr. Salinas replied that Mr. Espinoza would be complying with all the requirements.

Mr. Garza mentioned as long as the applicant understands that it would be for only 1 year he wouldn't have any objection.

There being no other comments, Mr. Garza moved to approve the conditional use permit as recommended by staff. Mr. Lopez seconded the motion. Upon a vote, the motion passed unanimously.

Started: 5:13 p.m.

Ended: 5:35 p.m.

ITEM # 1.3

Conditional Use Permit:

**Sale & On-Site Consumption of
Alcoholic Beverages
117 E. Griffin Parkway
Lot 2-A,
United Drive Inn No. 3 Subdivision
C-3
Life of Use
Jose Alberto Hernandez**

Mr. Salinas went over the write up stating that the subject site is located approximately 250' east of Conway Avenue, the old Advance Auto Parts site. The existing masonry building is 6,783 sq.ft. and is proposed to be remodeled for a new billiards hall with a bar component, very similar to Fast Eddie's Billiards.

- **Hours of Operation:** Everyday from 12:00 p.m. to 2:00 a.m. Alcoholic beverages will only be served during allowable State selling hours.
- **Staff:** 12 employees
- **Parking:** Viewing the floor plan, the 6,783 sq.ft. building requires 20 spaces. The parking area has 29 parking spaces, exceeding code by 9.
- **Noise Code:** the applicant is proposing to also have a Juke Box. The business must comply with Noise Code, however with the building made out of block; staff does not anticipate any noise issues; also, with numerous t.v.s. with various sports displayed, loud music is not conducive to a client's (full) enjoyment.
- **Landscaping and Buffering:** There is an existing 6' cedar fence along the north side of the site, providing a buffer between the residential neighborhoods. There is also existing landscaping that was installed when Advanced Auto Parts was in operation.
- Must acquire a business license, prior to occupancy.

Section 1.56 (3a) of the Zoning Code requires '*such uses to be at least 300' from any residence, church, school, or publicly owned property*'. There is an existing residential subdivision north of the site, thus a wavier of the 300' separation

must be considered. Planning and Zoning may waive the 300' requirement if '*properly buffered and sound insulated*'. It is a masonry building has a 6' fence along the north lot line, and with only a jukebox to play music, no sound should emanate toward the residential area.

Staff recommended approval subject to: **1)** waive 300' separation requirement, **2)** 1 year re-evaluation to assess this new operation, **3)** must comply with the Noise Code, **4)** wet zone the property, and **5)** must acquire a business license. Mr. Salinas also stated that a petition with 8 signatures within the 200' radius was submitted equating to 44% against the conditional use permit, but in the petition there were other signatures from the area neighbors.

Chairman Sheats asked if there was any public opposition to the request, he asked how many people in the audience were against the request, if they could raise their hands.

There were a total of 17 people present against the conditional use permit.

Mrs. Katherine De Anda, from 305 Violet Street stated that she was in opposition because the conditional use permit currently being requested would directly affect her home. She asked the board to act now and unconditionally prevent the sale of alcoholic beverages at 117 E. Griffin Parkway by rejecting any request of a conditional use permit. She stated that this establishment had an entrance/exit that flows directly into her neighborhood and its parking lot is approximately 60' from her daughter's bedroom. Furthermore, people that have been drinking alcohol would be using this exit and would create an unnecessary threat to her family and the entire neighborhood. First and foremost is the proximity of this proposed establishment near the neighborhood and the danger that exposes neighborhood children while driving their bikes. She also stated that according to the Texas Alcoholic and Beverage Commission the legal limit for alcohol is .08, an average person who consumes 3 beers has already exceeded that limit. This source explains that their response time to react becomes inhibited, therefore if her 9, 6, and 2 year olds are taking a walk down the street an individual under the influence of alcohol exiting this establishment has an increase risk of not noticing them, potentially causing detrimental harm. In addition to this, individuals that are under the influence are also more likely to become hostile between one another, this would presumably lead to parking lot fights, yelling, screaming, right outside her daughter's bedroom window. Consequently, it would be impossible for her children to sleep peacefully through out the night without hearing music as well as a great deal of noise. She mentioned that there was a petition that most of her neighbors also signed indicating that they too are appalled to the fact that an establishment like this could even be considered so close to their homes. In conclusion she asked that the board act wisely to

prevent this establishment from serving alcoholic beverages and keeping her neighborhood and all Mission safe.

Mr. Marcelino De La Fuente, from 404 Stacie Lane stated that if the board checks the surrounding areas, they would see that there was nothing else but residential subdivisions. Having a pool establishment with a total of 21 or 22 pool tables with 2 guys playing, that is a total of 44 guys, which equals to at least 30 cars. He asked where they were going to park. He stated that it was extremely unnecessary for a pool hall and the consumption of alcohol in a primary neighborhood that has residences. He mentioned that at 2:00 in the morning everybody sleeps in the subdivision; he believed that the only action that happens at that time would be the people that go and drink coffee at Whataburger. He stated that the only places close to the location that sell alcohol would be Taco Ole and El Patio, but they were mainly restaurants, but there were not that many places where they sell alcohol near the area, consequently the neighborhood has a safe record of what they do in there. He finished by saying that he urges the Commission to vote against the proposal.

Mr. Johnny Mora, from 913 Pamela Drive and the Pastor of Conway Baptist Church located on FM 495 and Conway, he stated that his church does a lot of ministries at the Mission Village Apartments and that it's close proximity to the proposed site. He stated that one of the things that they see at the Mission Village Apartments is that there are addiction problems, which they counsel. The proposed business would only add to the problem if that would occur.

Mr. Lee Thalman, from 408 Rose Marie, stated his wife and himself had signed the petition in opposition but their signature was not showing on the map. He stated that he was sure that there were more people in opposition than the ones reflected on the map. He also stated that they spend a lot of time in Whataburger and they have seen the children at play. He also mentioned that he watches the news and that he hears Mission's name with violence a lot. He stated that these types of establishments are the cause of that violence.

Mrs. Sharon Floodine, from 406 Violet stated that one thing that hasn't been mentioned was that the neighborhood was basically closed off, and a very nice quiet neighborhood to live in. She mentioned that even sober people get confused that they have Dead End Street and in the past people have even gone through the barriers and they have been replaced. She stated that it was a scary to have someone leaving the establishment under the influence at 2:00 in the morning and driving into the street not knowing that it's a closed street. She stated that they would have people driving into other people's yards.

Mr. Bill Leidner, from 1508 Melinda Drive, stated that he didn't live in the neighborhood, but many of his friends did and he was concerned with property

value, if this establishment would go in what would happen to the property value and the City should be doing things to enhance property value not diminish it.

Chairman Sheats asked if the applicant or representative were present.

Mr. Jose Alberto Hernandez, who resides at 1815 Palm Circle, Edinburg, Texas was present to answer any questions the board may have.

Chairman Sheats mentioned to Mr. Hernandez that there have been several objections brought up, one that hasn't been brought up was when the Advanced Auto Store was there, there were very few parking spaces ever used that he could see. He stated that with what the applicant was proposing (having people at the pool tables, people playing darts, people at the bar area) their looking at about 96 people on one night and there are only 29 parking spaces. He mentioned that the issue that he has was the entrance to the residential street and potential [if the entire parking lot is full and Whataburger's parking lot is full] parking along the residential street.

Mr. Hernandez replied that first they would like to convert the green area on the back into more parking spaces, because according to the calculation there were a need of 5 or 8 more parking spaces. He stated that he understood the concern about the backyard but they saw the opportunity to bring this business into Mission especially because there's only one other business in the whole Rio Grande Valley and that is Fast Eddie's, which is located in McAllen along Nolana. He stated that Fast Eddie's was also very close to residential properties. Mr. Hernandez also stated that he was very concerned about the security and if approved he will sign a 5 year lease contract. He stated that he was thinking of fencing the exit on the rear of the property in order to provide more security to the neighborhood and at the same time, he will provide securities.

Mr. Hernandez stated that he was not proposing to have any Karaoke or any loud music; he only wants for people to go and enjoy a beer and play pool. He mentioned that he personally goes every Wednesday night to Fast Eddies' for a tournament and Fast Eddies' has been operating for the past 10 years without any problems.

Chairman Sheats stated that in his past, when he was in Orange County, he used to manage a pool league and first of all, it's hard to say, but mostly if your shooting pool, your shooting pool and drinking beer at the same time. Unfortunately, even though there's an ordinance that gives a number of parking spaces per business, these numbers are an average, some businesses, like the applicant's, might have 25 parking places, but might really need 100 parking spaces. He stated that he agreed that by closing off the rear access, the applicant has answered some questions about the traffic and drunk driving into a

residential neighborhood. However, the applicant hasn't answered the question regarding parking, where people could park on any street and walk into the establishment. He mentioned that personally, he would like to see a good business taking over the empty building that fits the neighborhood. In reference to Fast Eddie's in McAllen, he mentioned that it was located in a mall in an area where there are 100's of parking spaces that are shared and they don't have that type of an issue.

Mr. Garza stated that during Friday night's there's traffic congestion in the area, so if Whataburger runs out of parking spaces and they use this establishment parking spaces, there wouldn't be enough parking spaces for this type of business, so what's going to happen is that people would start parking on the residential streets and walking to this establishment.

Mr. Vela stated that he personally didn't feel that it was the kind of business for the area.

Mr. Lopez mentioned that he felt the same way as Mr. Vela.

There being no other comments, Mr. Garza moved to deny the conditional use permit based on the public input. Mr. Vela seconded the motion. Upon a vote, the motion to deny passed unanimously.

Started: 5:35 p.m.

Ended: 5:39 p.m.

ITEM # 1.4

Conditional Use Permit:

**Sale & On-Site Consumption of Beer
& Wine at Freebirds World**

Burrito Restaurant

2521 E. Expressway 83, Suite 600

Lot 5, Block A, Shary-Taylor Expressway

Commercial Subdivision

C-3

Life of Use

Freebirds World Burrito

Mr. Salinas went over the write up stating that the restaurant will be located within an existing commercial plaza along the expressway and Taylor Road. The restaurant is part of a larger building that is currently being built. Access to the site is provided through existing driveway cuts along Expressway 83 and Taylor Road. There are no churches or public/private schools within 300' of the subject site, thus being compliant to Section 6-4.

- **Hours of Operation:** Monday – Thursday from 11:00 a.m. to 10:00 p.m., Friday and Saturday from 11:00 a.m. to 10:30 p.m., and Sunday from 11:00 a.m. to 9:00 p.m. Alcoholic beverages will only be served during allowable State selling hours.
- **Staff:** 35 employees.
- **Parking:** The applicant is proposing 80 total seating spaces, which require 27 parking spaces (80 seats/1 space for every 3 seats = 26.6 parking spaces). It is noted that the parking area is held in common (71 additional spaces are being provided along with the existing spaces from the overall plaza) and is shared with other businesses.
- The proposed CUP is deemed not to be disruptive to the general commercial area.

Staff recommended approval subject to: **1)** acquisition of a business license, **2)** wet zone the property, and **3)** 1 year re-evaluation to assess this new operation.

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

There was none.

Chairman Sheats asked if the applicant or representative were present.

Mr. Clint Eaton, Regional Manager, representing Freebirds World Burrito was present to answer any questions from the board.

There being no other comments, Mr. Vela moved to approve the conditional use permit as presented by staff. Mr. Garza seconded the motion. Upon a vote, the motion passed unanimously.

Started: 5:39 p.m.

Ended: 5:48 p.m.

ITEM # 2.0

Single Lot Variance:

**A 1.15 ac. tract of land
Out of Lot 203, John H. Shary Subdivision
C-4
Claudio Castañeda**

Mr. Salinas went over the write up stating that the property is located 450' south of Bus. 83 along the west side of Ragland Road. This irregular shaped property has 178' onto Ragland Road and tapers off as it goes west. The site currently has a daycare center. The owner is proposing to build an expansion thus after Staff's review, the need for subdivision compliance via this SLV measure.

There is an existing 8" water line on the east side of Ragland that serves this property. However, 1 new fire hydrant is being required by the Fire Marshal for the child daycare due to the *stretched* 300' distance of the existing hydrant. Consulting with Public Works and Fire, they recommend that a new 8" water line be looped between the 8" line on Ragland and the 8" line off-site to the southwest (270' via alley); this would require the dedication of a perimeter 10' utility easement along the perimeter south.

There is an existing 8" sanitary sewer line on the west side of Ragland that currently serves the property. However, after speaking to the applicant, Mr. Castañeda confessed that the existing daycare facility is still being served by septic tanks. Regardless, if the SLV measures are pursued or not, the property is in required need to connect to sanitary sewer and disengage the septic tanks.

The property fronts Ragland Road a future 50' ROW, 32' B-B paved street. The survey shows 15' from center, thus an additional 10' are required to comply with minimum codes.

In other comments: Capital Sewer Recovery Fee – since it's already an existing business partially connected to sewer, the typical \$750/acre should not be imposed; provide proof of exclusion from Water District; a 6' opaque buffer is required along the south, west and north side of the adjoining residentially used properties.

Staff recommended approval subject to: **1)** installation of a fire hydrant inclusive of the 270' of 8" water line as cited above, **2)** provide proof of exclusion from the water district, **3)** dedicate 10' additional street ROW, **4)** dedicate a 10' utility easement along the perimeter south, and **5)** a 6' opaque buffer along the south and north side of the property.

Chairman Sheats asked if the applicant or representative were present.

Mr. Claudio Castañeda Jr. asked if staff could clarify the last requirement.

Mr. Salinas stated that every time a commercial property adjoins a residential use property, there has to be an opaque fence dividing the uses. In this case there's a mobile home on the south side and apartments on the north and west side.

Mr. Castañeda asked if the fence needed to go all the way to the end of the property, since the only area that would be used would be the front. He also mentioned that this was brought up the first time that they open for business, but being that the noise level was very minimal to the neighbors because of the

distance it was not required. He stated that he understood the requirement on the south side but on the north side the apartments were too far away.

Mr. Zavala stated that was on the table was a single lot variance, which is equal to a 1 lot subdivision. He mentioned that this daycare has been in existence for more than a few years and there has never been one call complaining on noise. Perhaps an alternative that the Planning and Zoning Commission could consider would be to record a buffer deferral document that would be recorded against the property, pursuant to the land use whether is a daycare or any forthcoming commercial in years to come. Mr. Zavala mentioned that all that means is that when the area evolves, to a degree that there are calls due to noise level, then it come into effect.

After a brief discussion, Chairman Sheats entertained a motion. Mr. Garza Moved to approve the single lot variance as recommended by staff and recording the fence agreement. Mr. Lopez seconded the motion. Upon a vote, the motion passed unanimously.

ITEM # 2.0
ADJOURNMENT

There being no further items for discussion, Mr. Vela moved to adjourn the meeting. Mr. Lopez seconded the motion. Upon a vote, the meeting was adjourned at 5:49 p.m.

Ned Sheats, Chairman
Planning and Zoning Commission