

**PLANNING AND ZONING COMMISSION
JUNE 14, 2017
CITY HALL'S COUNCIL CHAMBERS @ 5:00 P.M.**

P&Z PRESENT

Ned Sheats
Jaime Gutierrez
Marisela Marin
Carlos Lopez
Julio Cerda

P&Z ABSENT

Diana Izaguirre
John Guerra

STAFF PRESENT

Jaime Acevedo
Virgil Gonzalez
Susana De Luna
Joel Chapa
Monica Marin

GUESTS PRESENT

John Young
Wade Wiese
Marty Risley
Pam Fullmer
Sylvia S. Vasquez
Joe Quiroga

Valdemar Cantu
Betty J. Korthaus
Victor Treviño
Janet Stanford
Lowell Hudsonpillar

Loris & Olaguer Bauza
Marcus A. Barbosa
John Watkins
Kandy Reed
Fred Kurth, P.E.

CALL TO ORDER

Chairman Ned Sheats called the meeting to order at 5:00 p.m.

CITIZENS PARTICIPATION

Chairman Sheats asked if there was any citizen's participation.

There was none.

APPROVAL OF MINUTES FOR MAY 24, 2017

Chairman Sheats asked if there were any corrections to the minutes for May 24, 2017. Mrs. Marisela Marin moved to approve the minutes as presented. Mr. Julio Cerda seconded the motion. Upon a vote, the motion passed unanimously.

Started: 5:48 p.m.

Ended: 6:07 p.m.

Item #1.1

Rezoning:

**A 1.258 acre tract of land, more or less
out of the South 10 acres of the North 20
acres of Lot 254, John H. Shary Subdivision
C-1 to C-2
Villa Kapital, LLC**

Mr. Jaime Acevedo went over the write-up stating that the property is located at the SW corner of Shary Road and Fox Run Drive.

SURROUNDING ZONES: N: C-1 – Office Building
E: R-1 – Single Family Residential
W: R-1 – Single Family Residential
S: AO-I – Agricultural Open Interim

EXISTING LAND USES: N: Office Building
E: Residential
W: Residential
S: Agricultural
Site: Vacant

FLUM: General Commercial (GC)

REVIEW COMMENTS: The land uses reflect the zonings shown above. The Future Land Use Map reflects a General Commercial (GC) land use, too; thus, C-2 is directly consistent to the GC designation.

RECOMMENDATION: Approval.

Mr. Acevedo stated that the Board may recall this item was last seen and discussed in length a couple of weeks ago. During that meeting in the Community Room it was agreed by the engineer representing the developer and the residents from the neighborhood that the property would stay as a C-1, however the following day the developers had remorse and asked to pursue the C-2 request and have the City Council act on this item. Mr. Acevedo stated that nothing had change and staff's recommendation was still for approval.

Mr. Julio Cerda asked Mr. Acevedo to explain to him what happened in the last meeting.

Mr. Acevedo stated that there was a misunderstanding because the Board thought that what was allowed in a C-2 zone would be allowed in a C-1 zone with a conditional use permit and that it not the case. He added that after carefully reviewing the zoning code more thoroughly there are certain things that are allowed in a C-1 with a conditional use permit but there are a lot of things are not such as a daycare, retail setting. He added that you can't have a retail setting in a C-1 it is more an office setting such as doctors, attorneys, insurance office, etc. Mr. Acevedo mentioned that the applicant want to have several retail outlets in this tract of land that was why he wanted a C-2 zone.

Chairman Sheats asked if there were any comments in favor or against the request.

Mr. Fred Kurth who resides at 2310 Fox Run stated that the subdivision was developed in the late 70's and all of the homes there relied on the fact that what was in front of them was a C-1 piece of property and not a C-2 in which by the way there is a big difference between the two. He mentioned that the most affected would be his

neighbors the once that were right up against it because it would affect the use of their back yard. He added that everybody that was present was against the C-2 request.

Mr. Cerda stated that if he recalled correctly there were some concerns in regards to the landscaping, driveway cut off of Fox Run and there were others.

Mr. Acevedo stated that the previous proposal had a driveway cut off of Fox Run and all the residents wanted all the traffic circulating off of Shary Road.

Mr. Cerda stated that at the time the owner agreed to address that concern although he was not sure if it was during or after the public hearing.

Mr. Acevedo stated that actually it was the engineer representing the applicant that agreed to work something out to have the traffic off of Shary and it was during the public hearing.

Mr. Fred Kurth stated that other concerns were the land use and anything that would be 2-story would be detrimental to the two neighbors abutting the property. Mrs. Reed would not be able to swim in her pool without having anybody watching which he believed it would be important and needed to be considered.

Mr. Cerda stated that there was a concern from the owner that the reason he wanted a C-2 was in order for him to provide a business that would be C-2.

Mr. Acevedo stated that originally the owner wanted to have a restaurant and a restaurant would be allowed in a C-2 with a conditional use permit but since then he has ceased his idea of the restaurant and he would put a condition that not restaurant would be allowed nor that they would be 2-story buildings. Mr. Acevedo stated that he just wanted to have a retail environment at this location, which requires a C-2 zone.

Mr. Cerda stated that anything he wants in a C-2 he could have as long as he applies for a conditional use permit.

Mr. Acevedo stated that was the impression they had but after looking at the zoning code more carefully there are some things that would be allowed in a C-1 with a conditional use permit but not all of them such as retail. He added that he would be limited to what he could do in a C-1.

Mr. Cerda asked why is staff recommending approval.

Mr. Acevedo stated that it was based on the future land use map and most of the areas on Shary Road were destined to be general business. He added that recently they just approved a C-3 for a Gold's Gym ¼ north of this property.

Chairman Sheats stated that general business was a C-1 zone.

Mr. Acevedo stated that a General Business would allow a C-1, C-2, and C-3 zone.

Mrs. Kandy Reed stated that this property used to have a home in it so they all assumed the land would always stay the same because they thought it was part of a subdivision. She added that they are willing work with a C-1 but not a C-2 and they understand why he wants to do it but we are just hoping the Board takes their concerns in consideration.

Mr. Marcus Barbosa who resides at 2125 Fox Run Drive stated that he was a little confused he currently had a C-1 and wanted a C-2.

Mr. Acevedo stated that was correct.

Mr. Barbosa stated that this person could promise that while he is the owner no restaurants would be allowed but if he sells anybody else buy they would be allowed to have a restaurant if they had a C-2 zone.

Mr. Acevedo replied, that would be correct.

Mr. Cerda stated that in a rezoning there are not conditions.

Mr. Barbosa stated that he would not want a C-2 in that area he has small children and he needs to take them into consideration.

Mr. Lowell Hudsonpillar who resides at 2308 Fox Run stated that they met with the engineer during the last meeting and it was understood that they would come back to the residents with at least 5 different proposals to consider and they would allow them as long as they applied for a conditional use permit. He added that the good thing about a conditional use permit is that it is limited to a certain period of time, had certain conditions they would need to comply with and once the use was no longer there then conditional use permit would no longer be valid nor transferable to others and the zoning of the property would change. He mentioned that another concern he had was the value of his property would be depreciated. Mr. Hudsonpillar stated that he was not in favor of a C-2 zone.

Chairman Sheats stated that as far as I am concerned, this commission has done more than its part in trying to resolve a difference between the applicant and the Fox Run residents. Although it worked for the property directly across Fox Run, this time it didn't. My opinion, there are five others up here that may differ, is that leaving the zoning at C-1 places no restriction on the applicant in any appreciable way shape or form. This is because just about any type of business that requires a C-2 zone can apply for a conditional use permit to open that business in a C-1 zone.

Additionally the property directly north has been successful and I see no major difference in the area, which has not changed since that property was constructed, that would indicate the necessity of a zoning change. I see no additional benefit to the City

of Mission. I do not agree with some who think that every property abutting a four lane street should be C-2 or above and I would note that there are many existing, vacant, more commercially oriented properties in Mission that would not change appreciably.

What I do see is a neighborhood with residents who, over 20 years ago, made an investment in Mission, as did thousands of other families, with reasonable expectations that their neighborhoods would not change appreciably.

Unfortunately Mission is no longer a city of wide open spaces without zoning and therefore must now try to carefully fill in the holes left by speculators. It is clear we won't be able to please everyone.

There being no further discussion, Chairman Sheats entertained a motion. Mrs. Marisela Marin moved to deny the rezoning as presented. Mr. Julio Cerda seconded the motion. Upon a vote, the motion to deny the request passed unanimously.

Started: 5:03 p.m.

Ended: 5:20 p.m.

Item #1.2

Rezoning:

**A 0.65 acre tract of land out of Meadow
Creek Country Club Phase II-A Subdivision
PUD (AO-P) to PUD (C-2)
Olague Bauza**

Mr. Jaime Acevedo went over the write-up stating that the subject site is located at the SE corner of 1 Mile South Road and Inspiration Road. The irregular corner lot has a total square footage of 28,327 sq. ft.

SURROUNDING ZONES: N: R-3 – Multi Family Residential
E: PUD (AO-P) – Planned Unit Development (Agricultural Open)
W: PUD – Planned Unit Development
S: PUD (R-5) – Planned Unit Development (High Density Manufactured Residential)

EXISTING LAND USES: N: Multi-Family Residential
E: Golf Course
W: Vacant PUD
S: Residential
Site: Vacant

FLUM: Planned Unit Development (PUD)

Mr. Acevedo stated that this item was last seen in October 2016 at which time no action was taken on this item and since then the applicant has reduced the area being rezoned about 20' so that the neighbors that are abutting this tract could have a little scenic view

to the golf course. Mr. Acevedo stated that based on that nothing has changed and that it's on a corner staff's recommendation was still for approval. Mr. Acevedo mentioned that staff had received one letter in opposition to this request of a resident who was not able to attend the meeting.

Chairman Sheats asked if there were any comments in favor or against the request.

Mr. Victor Treviño stated that he was the engineer engaged in this project and was representing Mr. Olaguer Bauza. He mentioned that the only change that was made as per Mr. Bauza's request was an offset of 20' for the residential lots behind the property. Mr. Treviño mentioned that Mr. Bauza wanted to give the residents a little separation before the buffer that would divide the residential property from the commercial.

Chairman Sheats asked if they had gone to the members of the association to advise them of their new proposal.

Mr. Treviño stated that not to all but they did speak to some of the lot owners who would be most affected I believe were asking for 30'. He added that Mr. Bauza wanted to work with them and agreed only to 20'.

Representing the residents in Meadow Creek, Mr. John Young whose address is 600 Lakeview Drive stated that he had a list of 102 people from Meadow Creek that were in opposed to this request as well as a list of the people that were within the 200' radius that were also in opposition. He mentioned that everybody on this lists have paid extra money to be along the golf course without any obstructions of houses. He added that with those 20' they are proposing to leave all he would see is a 6' concrete wall and hole #7. Mr. Young also mentioned his concern for the vehicles being hit by golf balls, accidents happening as they are trying to get to the school, new business creating noise very early in the morning due to the new donut shop and later in the evening due to the other proposed restaurants.

Mrs. Marin asked if the ROW on Inspiration Road has already been acquired or factored in their new proposal.

Mr. Acevedo stated that it was already factored in.

Mrs. Marin mentioned that there was no doubt that Inspiration Road was going to be a big road and TXDoT would have to look at the traffic and the crossway to make sure it's in compliance.

Mr. Acevedo stated that in looking at the property TXDoT would probably only allow on street cut on each side and it will probably be where Mr. Young lives.

Mrs. Marin asked why this item was declined the first time it was seen.

Mr. Acevedo stated that this item was not declined it was seen by P&Z and no action was taken the City Council level. He mentioned that since there had been a slight modification they reduced it 20' it needs to be reconsidered by P&Z and then City Council. Mr. Acevedo added that Meadow Creek PUD component did allow some areas for commercial. He mentioned that he felt bad for the residents.

Chairman Sheats stated that he felt more than bad for the residents as well because they were promised that this area would never change but the reality is that the applicant bought the property and he is entitled to develop his property as best as possible as he can and he has done his best to try to work with the surrounding neighbors. He added that if any of the Meadow Creek residents felt they were cheated out or not treated correctly at any point please not to blame the applicant nor the city because it was not their fault they would need to find the person who sold them the lot or promised them that they would be no change and make them accountable for what they promised them.

There being no further discussion, Chairman Sheats entertained a motion. Mrs. Marisela Marin moved to approve the rezoning as per staff's recommendation. Mr. Carlos Lopez seconded the motion. Upon a vote, the motion passed unanimously.

Started: 5:20 p.m.

Ended: 5:30 p.m.

Item #1.3

**Conditional Use Permit: 3 Drive-Thru Service Lanes and 1- ATM for
Banking Services for Texas National Bank
501 N. Shary Road
Lot 1, Hofland Subdivision
C-4
Texas National Bank**

Mr. Jaime Acevedo went over the write-up stating that the site is located 250' north of E. 4th Street along the north side of Shary Road. The applicant is proposing to build a new bank. The new bank will have primary access off of Shary Rd. They are currently asking for a CUP for 3 drive-thru lanes for banking services and 1 ATM lane.

- **Hours of Operation:** The building hours are Monday – Thursday from 9 a.m. to 5 p.m., Friday from 9 a.m. to 6 p.m. and Saturdays from 9 a.m. to 1p.m. The drive-thru hours are Monday – Friday from 7:30 a.m. – 6 p.m. and Saturday from 7:30 a.m. – 1 p.m.
- **Staff:** 8 employees
- **Parking & Landscaping:**
- Must comply with the City's Building and Fire codes.
- A business license is required prior to occupancy

REVIEW COMMENTS: This new bank will be a great asset to the area and should help create additional commercial uses along Shary Rd. The drive-thru lanes have enough

stacking to accommodate over five vehicles per lane. The traffic from the lanes will face south away from the residential uses to the west. Notices were sent out to property owners within the 200' radius of the site. Staff has not received any comments for or against this request.

RECOMMENDATION: Staff recommends approval for 1 year subject to:

1. Compliance with Landscaping, Building, and Fire codes;
2. Must acquire a business license; and
3. CUP not transferable to others.

Chairman Sheats asked if there were any comments in favor or against the request.

President of Texas National Bank, Joe Quiroga stated that they were willing to comply with all of staff's recommendations and look forward to any suggestions the Board might have to improve and hopefully be able to open for business on Monday, June 19th.

Chairman Sheats asked how many branches they had in the Rio Grande Valley.

Mr. Quiroga stated that they had 5 branches in total. He added that they had one in Mercedes, Weslaco, Edinburg, McAllen, and now Mission. He mentioned that the first bank was established in the 1920's. and they were the oldest bank in the valley.

Chairman Sheats asked if there was any opposition to this request.

Mr. Acevedo stated that they didn't receive any opposition just some concerns when they received the notices. He added that some residents from Valley View had some concerns along the fence. Mr. Acevedo stated that what happen was the when they submitted the building permit they cited the entire lot and they are actually only using probably 1/3 of the lot and rest would be subdivided in the future.

Mr. Martin Risley who resides at 2110 Loker Street stated that they were not opposed to the drive-thru lanes but they were very concern for the back portion of the property. He mentioned that the property on the back needed to be maintained. Mr. Risley asked if they had any future plans of opening the street to connect to Amy or Vernon Street.

Mr. Acevedo stated that they were no plans of extending any of those streets.

Mr. Quiroga stated that he would make sure they maintained the property.

Mr. Risley asked if they knew what would be constructed on the back portion of the lot.

Mr. Quiroga stated that they were in the process of subdividing that property but was not aware what they had proposed for the land currently they just wanted to keep it as access land.

There being no discussion, Chairman Sheats entertained a motion. Mr. Julio Cerda moved to approve the conditional use permit as presented. Dr. John Guerra seconded the motion. Upon a vote, the motion passed unanimously.

Started: 5:30 p.m.

Ended: 5:35 p.m.

Item #1.4

Conditional Use Permit:

**Sale & On-Site Consumption of Alcoholic
Beverages – La Michelada Mission
200 N. Bryan Road, Ste. 105
Being the W. 425' of Lot 1,
Storage Depot Bryan Road Subdivision
C-3
Del Norte Business Ventures, LLC**

Mr. Jaime Acevedo went over the write-up stating that the site is located near the corner of Bryan and E. 1st Street along the east side of Bryan Road. The property currently has a commercial building with a various types of commercial establishments within. The applicant has a takeout food and snack establishment at this location and is proposing to the sale and on-site consumption of alcoholic beverages to be allowed. Primary access to this commercial establishment is off of Bryan Road.

- **Hours of Operation:** Monday – Sunday - 10:00a.m. to 9:00p.m.
- **Staff:** 2 employees
- **Parking:** Viewing the floor plan, there are 16 total seating spaces, which require parking spaces (16 seats/1 space for every 3 seats = 5.3 parking spaces). It is noted that the parking area is held in common (47 existing parking spaces) and will be shared with other businesses.
- **Sec. 6-4:** This request is compliant to Sec. 6-4 which requires that no alcoholic beverages be sold within 300' of a church, public or private school, or public hospital. There are none of these land uses within the above radius (measured *door to door* for church or hospital; measured *lot line to lot line* for schools.)

REVIEW COMMENTS: The applicant has alerted staff that most of the business is for takeout. The site-plan also shows only 4 tables which supports this. The applicant also claims that only a small percentage of her business is for alcohol sales, most of their business is for food or snack items. The primary reason for this CUP is to have a safeguard with TABC should someone open a beer at this family establishment. The menu includes mainly seafood items and cocktails, salads, and snacks such as nachos and hot Cheetos. The alcohol component is that they offer micheladas cocktails.

RECOMMENDATION: Staff recommends approval subject to a 1 year re-evaluation.

Chairman Sheats asked if there were any comments in favor or against the request.

There were no comments.

There being no discussion, Chairman Sheats entertained a motion. Mr. Julio Cerda moved to approve the conditional use permit as presented. Dr. John Guerra seconded the motion. Upon a vote, the motion passed unanimously.

Started: 5:35 p.m.

Ended: 5:38 p.m.

Item #1.5

Conditional Use Permit:

**Sale & On-Site Consumption of Alcoholic
Beverages – Mariscos La Chivis
600 N. Shary Road, Ste. D
Lot 1, Esdras Vega Subdivision
C-3
Zamantha Zaray Guzman**

Mr. Jaime Acevedo went over the write-up stating that the 1,488 sq. ft. restaurant site is located at the Northeast corner of Shary Road and 6th Street within Lot 1 of Esdras Vega Subdivision. The applicant was awarded a CUP at this location for Suite D by the PNZ on April 8, 2015. However, the restaurant next door closed down and the applicant renewed their CUP on June 8, 2016 to expand the restaurant including Suite C. The applicant is now requesting a CUP under the original plans downsizing to only Suite D.

- **Hours of Operation:** Monday – Sunday - 6:00a.m. to 12:00a.m.
- **Staff:** 6 employees
- **Parking:** Viewing the floor plan, there are 88 total seating spaces, which require parking spaces (88 seats/1 space for every 3 seats = 29.3 parking spaces). It is noted that the parking area is held in common (56 existing parking spaces) and will be shared with other businesses.
- **Sec. 6-4:** This request is compliant to Sec. 6-4 which requires that no alcoholic beverages be sold within 300' of a church, public or private school, or public hospital. There are none of these land uses within the above radius (measured *door to door* for church or hospital; measured *lot line to lot line* for schools.)

RECOMMENDATION: Staff recommends approval subject to a 1 year re-evaluation.

Chairman Sheats asked if there were any comments in favor or against the request.

There were no comments.

There being no discussion, Chairman Sheats entertained a motion. Mrs. Marisela Marin moved to approve the conditional use permit as per staff's recommendation. Mr. Jaime Gutierrez seconded the motion. Upon a vote, the motion passed unanimously.

Started: 5:38 p.m.

Ended: 5:42 p.m.

Item #1.6

Conditional Use Permit:

**To Place a Portable Structure
for the Sale of Food – Fiesta Grocery
208 N. Inspiration Road
Lot 1, Madrigal Subdivision
C-2
Valdemar Cantu**

Mr. Jaime Acevedo went over the write-up stating that the site is located 130' north of W. 2nd Street along the east side of Inspiration Road within the Fiesta Grocery site. The applicant has operated at this location since 2013. On June 27, 2016 the City Council approved the renewal of this CUP for 1 year. The applicant wishes to retain a food cart for the sale of hot dogs on the west side of the Fiesta Grocery store. He is also the person operating the Fiesta Grocery store. Access to the site is from an existing driveway along Inspiration Road. The existing restroom facilities located within the grocery store will be available.

- **Hours of operation:** Every day from 5p.m. to 10p.m.
- **Staff:** Only the applicant will be running the stand.
- **Parking:** There are approx. 9 spaces available for the grocery store which would be shared with the hot dog cart. There is also plenty of room along the north side of the property, which could be utilized as additional parking if it were properly striped.

REVIEW COMMENTS: Mr. Cantu has alerted staff that he will transition from the portable structure to the building within the next 2-3 years. On May 8, 2017 the City Council passed an ordinance prohibiting the use of mobile food carts or trailers. Since Mr. Cantu was in operation prior to the ordinance, he is permitted to continue with this operation as per a clause of Ord. # 4515.

RECOMMENDATION: Staff recommends approval for 3 years at which time the applicant will transition his operation to interior of building.

Chairman Sheats asked if there were any comments in favor or against the request.

There were no comments.

Mrs. Marin recommended that the conditional use permit request be approved for 2 years instead of the 3 years recommended by staff to help the applicant transition inside the building.

There being no discussion, Chairman Sheats entertained a motion. Mrs. Marisela Marin moved to approve the conditional use permit for 2 years instead of the 3 years

recommended by staff. Mr. Julio Cerda seconded the motion. Upon a vote, the motion passed unanimously.

Started: 5:42 p.m.

Ended: 5:47 p.m.

Item #2.0

**Homestead Exemption Variance: A 1.30 acre tract of land out of Lot 17-1,
West Addition to Sharyland Subdivision
1907 S. Mile 1 Road
AO-I
Ricardo Salazar**

Mr. Jaime Acevedo went over the write-up stating that this 1.03 acre tract of land is located approximately 1200' east of Inspiration Road along the north side of 1 Mile South. The proposed lot measures 219' x 258'. The project engineer is now requesting for reconsideration of this plat under the new homestead exemption variance (HVE) ordinance recently approved by the City. On 11-10-14, the City Council passed the HEV ordinance which allows for homesteads to be granted various waivers to the City's subdivision requirements if and only if, the lot is being proposed for the applicant's personal single family home.

WATER – The applicant is proposing to connect to an existing 10” water line located along the north side of 1 Mile South to provide water service to the lot.

SEWER – The applicant is proposing to connect to existing 8” sanitary sewer line located along the north side of 1 Mile South to provide sewer service to the lot. The capital sewer recovery fee is waived via the HEV.

STREETS & STORM DRAINAGE – The subject site has frontage to 1 Mile South which has a 100’ ROW with a future 65’ B/B paved street. An addition of 20’ ROW will need to be dedicated. Drainage will be onsite.

OTHER COMMENTS

- Must comply with Model Subdivision Rules;
- Must dedicate water rights;
- The street light requirement is also waived via the HEV.
- The park fees are also waived

RECOMMENDATION

Staff recommends approval subject to dedication of additional 20’ ROW along 1 Mile South and compliance with all homestead exemption variance requirements (i.e., affidavit, etc.).

SAVINGS ESTIMATE

Engineering Fees	\$5,000 - \$12,000 est.
Park Fees	\$300
Sewer Capital Recovery Fees	\$200

Street Widening Fee	\$78.73/lf * 219 ft. = \$17,241.87
Street Light	N/A
Total	\$22,714.87 - \$29,741.87 est.

Chairman Sheats asked if there was any input in regards to this request.

There were no comments.

There being no discussion, Chairman Sheats entertained a motion. Mrs. Marisela Marin moved to approve the homestead exemption variance as presented. Mr. Julio Cerda seconded the motion. Upon a vote, the motion passed unanimously.

**ITEM #3.0
OTHER BUSINESS**

**ITEM #4.0
ADJOURNMENT**

There being no further items for discussion, Mr. Julio Cerda moved to adjourn the meeting. Mrs. Marisela Marin seconded the motion. Upon a vote, the motion to adjourn passed unanimously at 6:07 p.m.

Ned Sheats, Chairman
Planning and Zoning Commission