

**PLANNING AND ZONING COMMISSION
SEPTEMBER 26, 2018
CITY HALL'S COUNCIL CHAMBERS @ 5:30 P.M.**

P&Z PRESENT

Ned Sheats
Marisela Marin
Raquenel Austin
Jaime Gutierrez
Hector Moreno
Diana Izaguirre
Carlos Lopez

P&Z ABSENT

STAFF PRESENT

Jaime Acevedo
Virgil Gonzalez
Maribel Quintanilla
Joel Chapa, Jr.

GUESTS PRESENT

Charlie Mischel
Dr. Norma Cavazos
Ruben Arcaute
Charlie Brown
Shadi Farasin
B. Moreno
Kyle Elliott
Victor Trevino
Rick Venecia
Richard A. Garza
Ramiro Garza
Alex Moreno
Pat McCarty
Yolanda B. McCarty
Leslie Eichelberger
Corey Eichelberger
Carol Skloss
Dr. Jose M. Marina

CALL TO ORDER

Chairman Ned Sheats called the meeting to order at 5:30 p.m.

CITIZENS PARTICIPATION

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

There was none.

APPROVAL OF MINUTES FOR SEPTEMBER 12, 2018

Chairman Sheats asked if there were any corrections to the minutes for September 12, 2018. Mr. Carlos Lopez moved to approve the minutes as presented. Mr. Jaime Gutierrez seconded the motion. Upon a vote, the motion passed unanimously.

Started: 5:32 p.m.

Ended: 5:56 p.m.

Item #1.1

Rezoning:

All of Lot 1, Bodine Subdivision
R-1 to C-3
Dr. Norma L. Cavazos

Mr. Jaime Acevedo went over the write-up stating the property is located at the NW corner of E. Griffin Parkway and Bryan Road. The tract has 200' of frontage to E. Griffin Parkway (F.M. 495) and 270' frontage to Bryan Road. Griffin Parkway is a 5-lane major thoroughfare and Bryan Road is designated as a major thoroughfare.

SURROUNDING ZONES: N: R1-A – Large Lot Single Family
E: R1-A – Large Lot Single Family
W: R-1 – Single Family Residential
S: C-1 – Office Building

EXISTING LAND USES: N: Residential
E: Vacant Residential
W: Residential
S: Medical Offices & Related
Site: Mixture of Commercial & Multi-Family

FLUM: Lower Density Residential (LDA)

REVIEW COMMENTS: The land uses reflect the zonings shown above. The Future Land Use Map reflects a Lower Density Residential (LDA) land use. Although the FLUM shows a Lower Density Residential (LDA) designation, staff notes the FLUM can be amended to reflect the C-3 use. Staff mailed notices to property owners within a 500' radius of the site to solicit comments in favor or against this request. As of the date of this write-up, staff has received several calls from abutting neighbors along Bryan. The major complaint is against the additional traffic will bring if this rezoning is to be approved. In talking to residents, they would support this rezoning when Bryan Road gets widened but not at this time.

RECOMMENDATION: Denial of C-3.

Mr. Acevedo expressed he has received numerous comments and concerns prior to the meeting from neighbors with respect to the increased traffic, congestion, and overall change if a C-3 were to be imposed.

Chairman Sheats asked if there were any questions or comments from the commissioners.

Mrs. Marisela Marin asked staff if a C-1 was being recommended.

Mr. Acevedo explained the rezoning request was for a C-3 which he is recommending denial of; but a C-1 may be able to work in this particular site location. If the board would like to consider a C-1 that is up to the board.

Mr. Jaime Gutierrez asked if a C-1 had been discussed with the applicant.

Mr. Acevedo stated he had not spoken to the applicant; but has met with her representatives about the C-1, and giving up additional ROW if and when Bryan Road is widened. The applicant is present today.

Dr. Norma L. Cavazos, applicant, was able to answer any questions the board might have, and handed the floor over to her representative to answer on her behalf.

Mr. Richard A. Garza, representative for the applicant, stated there have been several inquiries to the property, and are trying to market the property as a C-3. The future land use for the City of Mission shows C-3 in the area with the exception of the site location. He stressed that the City of Mission is growing. Mr. Garza showed the board examples of super imposed images of business possibilities at the site location.

Chairman Sheats replied that just because the city is growing, it does not necessarily warrant the need for a gas station.

Mr. Ramiro Garza, additional representative for applicant expressed the applicant is willing to work with the city to meet all necessary standards for the rezoning.

Chairman Sheats asked if there was any audience opposition.

Dr. Jose M. Marina, owner of the Advance Medical Center directly across the street from the site location as well as other acreage surrounding the area. He expressed the best use for the subject property is commercial.

Mr. Corey Eichelberger who lives just directly east of the subject property expressed the reason he moved into the area was because it was predominately family oriented and not a business area such as Conway. He agreed that Mission is growing, but should not grow at the expense of the families with a business that would run 24-7. It would affect the lives of the families in the entire subdivision just to the north of the site location including the children (i.e., traffic volume at night, accessibility in and out of the subdivision, etc.). Whatever is going to be done with that property should not just be looked at from the seller's point of view because a C-3 use would have a negative impact to the persons living around there.

Mr. Ruben Arcuate, additional representative for the applicant explained the traffic is the same going east and west as it is north and south.

Chairman Sheats asked if there was further opposition.

Mrs. Leslie Eichelberger approached the board asking if the property were to be zoned commercial what would happen to the only rear access to go to the back of her property via the alley? Her concern would be trucks loading and unloading in the alley.

Chairman Sheats asked if the commissioners had any further questions to staff.

Ms. Diana Izaguirre asked when is the anticipated widening of Bryan Road?

Mr. Acevedo stated for the widening of Bryan Road to the curb the city will need to acquire the additional ROW from all of the property owners up and down Bryan. It is a major thoroughfare so we need at least 80' of ROW.

Ms. Izaguirre asked, "What is the current ROW?"

Mr. Acevedo replied, "Currently, 40' or 60'. It is not that much." He added that one of the calls he received was from a citizen who works at the central school district less than a mile away, and it takes her no less than 15 minutes to get from her house to her job site which is less than a mile away because traffic backs up all the way to the canals.

Mrs. Marisela Marin moved to deny the Item. Ms. Diana Izaguirre seconded the motion. Upon a vote, the motion was denied unanimously.

Started: 5:56 p.m.

Ended: 6:03 p.m.

Item #1.2

Conditional Use Permit:

Drive-Thru Service Window
Brick Fire Pizza & More
704 E. Griffin Parkway Ste. 130
1.24 acre tract out of Lot 24-8,
West Addition to Sharyland Subdivision
C-3
Brick Fire Pizza & More, LLC, c/o Steven Alaniz

Mr. Jaime Acevedo went over the write up stating the site is located within a commercial plaza between Mayberry Avenue and Augusta along the south side of E. Griffin Parkway. The applicant is requesting a CUP for a drive-thru service window at the existing pizzeria. This establishment has been in existence for almost 1 year now and would like to offer customers the option to pick up orders via a drive-thru. Drive-thru access would be from wrapping around the south side of the building and driving along the east side back of restaurant and then back out to the front driveway.

- **Hours of Operation:** Sunday through Thursday from 11:00 AM to 10:00 PM, and Friday through Saturday from 11:00 AM to 12:00 AM.
- **Staff:** 5 Employees during a shift
- **Parking:** The applicant is proposing 68 total seating spaces, which requires 23 parking spaces (68 seats/1 space for every 3 seats = 23 parking spaces). It is noted that the parking area is held in common (70 existing parking spaces) with existing adult day care.
- Landscaping is existing at this commercial plaza.
- Must continue to comply with Fire and Health Codes.

REVIEW COMMENTS: Staff mailed notices to property owners within a 500' radius of the site to solicit comments in favor or against this request. As of the date of this write-up, staff has not received any calls or written complaints on the proposed conditional use permit.

RECOMMENDATION: Approval subject to:

1. 1-year re-evaluation.
2. CUP is not transferable to others.
3. Continued compliance with Building, Fire, Sign, and Health Codes.

Chairman Sheats asked if there were any questions or comments from the commissioners.

Mrs. Marisela Marin commented the item should be more of a pick-up window rather than an actual drive-thru.

Mr. Acevedo agreed stating, "There is no speakers or menu board."

Chairman Sheats asked about the amount of traffic that utilizes the drive-thru.

Mr. Acevedo stated it is probably a car or two a day that utilizes the drive-thru.

Mr. Rick Venecia, representative for the applicant was able to answer any questions the board might have. Mr. Venecia clarified that about 17% of the business comes from the drive-thru from online orders or call in orders.

There was no public comment or opposition.

Mrs. Raquene Austin moved to approve the Item. Mr. Jaime Gutierrez seconded the motion. Upon a vote, the motion passed unanimously.

Started: 6:03 p.m.

Ended: 6:22 p.m.

Item #1.3

Conditional Use Permit:

The Installation of a 100' Monopole Wireless Communications Facility with Associated Ground Equipment for T-Mobile on property zoned C-3 (General Business)
2306 E. Expressway 83
A 3.29 Ac. tract of land out of the Unplatted Commercial Reserve of Cimarron County Club Phase 1, Section 1 C-3
APC Towers, LLC, c/o T-Mobile

Mr. Jaime Acevedo went over the write-up stating the property is located at the SW corner of J.R. Drive and US Expressway 83 Frontage just south of Treme Subdivision. The applicant is proposing to construct a 40' x 40' pad site on the irregular 3.29 acre or 143,412.40 sq. ft. lot. The site is currently vacant but does abut Barton Creek newly constructed a commercial plaza to the north. Access to the site is provided through a 40' driveway off of J.R. Drive. T-Mobile Wireless is proposing to lease a 40' x 40' (1,600 sq. ft.) area located west of J.R. Drive of the property to install a 100' monopole in order to provide better wireless service to its customers. The area will be fenced in and have an access easement to the site from J.R. Drive west to the lease area. An equipment shelter with diesel generator is proposed within the lease area as well.

REVIEW COMMENTS: Since the tower is in a highly visible area, a separate landscaping plan will be required in addition to the opaque fence required to buffer the site.

RECOMMENDATION:

Staff recommends approval of the CUP for life of use subject to:

1. Must install an 8' opaque fence around the lease area,
2. Must allow for co-location by others and,
3. The CUP shall not be transferable to others.

Mr. Acevedo clarified that he would like to see the tower be constructed on the northwest side of the property if at all possible. He did receive a call from a citizen around the Cimarron Country Club area who had similar concerns about the proposed tower. The tower will be similar to the tower next to Spike's Ford with multiple towers. In talking to the resident it was suggested that staff recommend something a little more aesthetically appealing such as a stealth tower. Mr. Acevedo has not had a chance to speak to the applicant thus far to make changes. His recommendation at this time is for denial of the tower at the proposed location, and would recommend approval should they change the location and the type of the tower to be constructed.

Chairman Sheats asked if there were any questions or comments from the commissioners.

Mrs. Marin asked if the whole property was a C-3

Chairman Sheats asked if the city has a right to request to move the location. The reason he is asking is because he wants to make sure that if the tower falls it will not fall onto any public road, residential or commercial buildings.

There was discussion between Chairman Sheats and staff regarding placement of the tower and a 150' radius in case of falling.

Mrs. Raquanel Austin asked how much of that tower will affect that persons living at Cimarron?

Mr. Acevedo stated that was a good question. That is why he is recommending to push to tower back towards the expressway in the corner furthest away from the street because it will be highly visible.

Mr. Charlie Mischel (sic), representative for applicant, was available to answer any questions the board might have. Mr. Mischel addressed the issue of the tower collapsing within itself versus falling over since the placement will also be 142' from the nearest road. Landscaping will be placed around the compound.

Chairman Sheats wanted to make sure that the tower will be moved away from the residences.

Mr. Mischel went over T-Mobile and Metro PCS specifics identifying statistics of cell phone usage in the area.

Chairman Sheats asked if there was any audience opposition.

There was none.

Ms. Diana Izaguirre moved to approve the conditional use permit as long as the applicant works with staff to locate the tower as close to northwest corner as possible. Mr. Carlos Lopez seconded the motion. Upon a vote, the motion passed unanimously.

Started: 6:22 p.m.

Ended: 6:41 p.m.

Item #1.4

Conditional Use Permit: Drive-Thru Service Window for Snowball Express
1712 W. Griffin Parkway
Lot 22, Block 4, Oakwood Estates Subdivision
C-3
Snowball Express, LLC, c/o Elgin Xavier

Mr. Jaime Acevedo went over the write-up stating the site is located approximately 64' west of Kristi Lane along the north side of Griffin Parkway. The applicant obtained a CUP for a sno-cone stand with two drive-thru service windows in 2013. Access to the site is provided off of Griffin Parkway with a 24' driveway. The most recent renewal came on April 25, 2018 at which time a 1-year renewal was awarded with hours until 10:00 pm for the entire operation. However, the owner of the operation would now like to extend his hours of operation for the drive-thru windows. The applicant is proposing to be open 24 hours a day thus requiring reconsideration of his CUP permit.

- **Hours of Operation:** Every day 24 hours a day
- **Staff:** 12 employees
- **Parking:** The building measures approx. 830 sq. ft. The number of parking spaces required for this size building is 5. The applicant is providing 4 spaces along the front and 2 parallel spaces located on the west side of the lot. There is also stacking for approximately 4 cars when placing orders.

- **Landscaping and Buffering:** The applicant has two shade trees along the front of the lot. There is also 3' continuous landscape hedges and a 6' cedar fence to provide a buffer from the commercial and residential uses.

REVIEW COMMENTS: The snow cone business has been in operation for over 5 years now. Recently, we were made aware by neighbors that the drive-thru business was staying open until 2:00 a.m. without PNZ or City Council consideration. The applicant claimed he was not aware that he needed to notify the City of any hour changes. The complaints received by Staff are that Snow Ball Express customers using the drive thru windows will idle waiting for their orders with loud exhaust mufflers and loud music playing from their vehicles.

Staff supports this local business and would like the applicant to continue his use of his drive-thru windows. However, Staff also recommends keeping the hours of the drive-thru windows until 10:00 p.m. The long-established residential community directly north of this newly established business is being impacted by the noise being created by the late hour traffic. The City has a noise ordinance and an obligation to protect these citizens who have been there long before this new business. There are documented calls to police on noise and long lines of customers using Griffin Parkway F.M. 495 for stacking. Since nothing has changed since the last time this CUP was considered, Staff cannot support the drive-thru business being open 24 hours a day.

RECOMMENDATION: Denial of the request for extended hours past 10:00 p.m.

Mr. Acevedo added that one of the neighbors did submit a letter to the P&Z Board for consideration of this item.

Chairman Sheats read the letter out loud during the P&Z meeting.

Chairman Sheats asked if there were any questions from the commissioners to Staff.

There was none.

Chairman Sheats asked if the applicant was present.

Mr. Patrick Kennedy, Attorney at Law, acted as a representative for the applicant and his attorney Mr. Alex Moreno who fell ill. Mr. Kennedy was present to answer any questions the board might have.

Mr. Kennedy asked the board if he could read a few prepared statements by Mr. Moreno. In April 2018 the applicant applied to extend his operational hours until 2:00 a.m. which was denied. Mr. Kennedy went on to state the applicant has complied with all conditions the city has imposed including building of a fence and directing traffic at its location. Snowball's position is it does close at 10:00 p.m., however, people do park their cars and pick up orders using the driveway to drive around. Furthermore, the applicant feels that a conditional use permit does not apply to him and that he may

operate past the 10:00 pm operational hours. The applicant would like to be treated like a Whataburger or McDonald's in being allowed to operate on a 24 hours a day basis.

Chairman Sheats stated the board's position is treating each applicant, and in this particular situation the main issue is noise. The board has to look at the issues from both standpoints from the community and the applicant. The board is asking for the applicant to conform to a city ordinance. There was no problem with the applicant until he violated the city ordinance by operating past conditional hours. It is a cause and effect. He stays open late. The city receives complaints, and the residents do not sleep. Chairman Sheats as the representative, "How do you solve the noise complaints?"

Mr. Kennedy asked if there were any recorded noise complaints with Mission Police Department. "Noise could come from anywhere. "I guess the business owner would have the option of kicking anyone out of the property and law enforcement has the option of enforcing the city's noise ordinance." Mr. Kennedy added.

Chairman Sheats reiterated that Mr. Acevedo did state quite clearly that there have been complaints to the police department about the stacking. There are no complaints against Whataburger or McDonalds who are opened 24 hours. The problem is the sno-cone stand generates complaints. This is not serving our citizens.

Chairman Sheats asked if there any in the audience in support of the item.

There was none.

Chairman Sheats asked if there was any audience opposition.

There was none.

Mr. Carlos Lopez moved to deny Item #1.4 for extended hours. Mrs. Raquanel Austin seconded the motion. Upon a vote, the motion passed unanimously.

Started: 6:41 p.m.

Ended: 6:55 p.m.

Item #1.5

Conditional Use Permit:

4 Drive-Thru Service Windows-Snow Ball Express #2
3124 N. Mayberry Road
Being 1.27 acres of land out of the West
310' of the North 224' of Lot 28-9,
West Addition to Sharyland Subdivision
C-3
Snowball Express, LLC, c/o Elgin Xavier

Mr. Jaime Acevedo went over the write-up stating the subject site is located at the SE corner of Mayberry Road and E. 2 Mile Road. The most recent renewal came on April

25, 2018 at which time a 1-year renewal was awarded with hours until 10:00 pm for the entire operation. However, the owner of the operation would now like to extend his hours of operation for the drive-thru windows. The applicant is proposing to be open 24 hours a day thus requiring reconsideration of his CUP permit.

- **Hours of Operation:** Every day 24 hours a day
- **Staff:** 12 employees
- **Parking:** There are a total of 20 striped parking spaces and a drive-thru lane that allows for that stacking of 9 vehicles for a total of 29 parking spaces at Snow Ball Express #2. For a snack stand of this size a total of 6 parking spaces are required, thus exceeding code.
- **Landscaping:** Landscaping needs to meet City Code.

REVIEW COMMENTS: The snow cone business has been in operation for 1 year now. Recently, we were made aware by neighbors that the drive-thru business was staying open until 2:00 a.m. without PNZ or City Council consideration. The applicant claimed he was not aware that he needed to notify the City of any hour changes. The complaints received by Staff are that Snow Ball Express customers using the drive thru windows will idle waiting for their orders with loud exhaust mufflers and loud music playing from their vehicles.

Staff supports this local business and would like the applicant to continue his use of his drive-thru windows. However, Staff also recommends keeping the hours of the drive-thru windows until 10:00 p.m. The long-established residential community directly south and residential lot just east of this newly established business is being impacted by the noise being created by the late hour traffic. The City has a noise ordinance and an obligation to protect these citizens who have been there long before this new business. In addition, the landscaping that was installed has died out and the business needs landscaping to meet City's landscaping ordinance.

RECOMMENDATION: Denial of the request for extended hours past 10:00 p.m.

Mr. Acevedo stated that he has suggested and offered to the applicant to control the noise issue to hire the services of an off-duty police officer. This is what Whataburger and other similar type services do. The applicant has not done anything to go in that direction which could be a fix for the noise issue or traffic issues that arise. Again, it has been mentioned to the applicant, but he has not gone in that direction to hire security services.

Chairman Sheats asked if there were any questions from the commissioners to Staff.

Mrs. Marisela Marin clarified the difference between the applicant's establishment and a 24 hour restaurant is the restaurant has places to actually go in, sit down, and eat.

Mr. Acevedo did mention that this particular site location there is a little patio.

Ms. Diana Izaguirre pointed out that those larger types of businesses such as Whataburger are located in a commercial zone and not adjacent to neighborhoods.

Chairman Sheats said as far as noise control Mr. Acevedo made a good point of suggesting security services to the applicant. Mr. Sheats then asked if the applicant was present.

Mr. Patrick Kennedy, acting as representative for the applicant was present to answer any questions the board might have. Mr. Kennedy just wanted to reiterate the comments he made to the commissioners on the previous item.

Chairman Sheats asked if there was anyone for this conditional use permit.

There was none.

Chairman Sheats asked if there was anyone against this conditional use permit.

A citizen did not want her name or address made part of the record because of applicant's retaliation on Facebook. She will be hereinafter referred to as "the citizen". The citizen stated that 10:00 p.m. is a respectable time to close for a sno-cone stand. In doing her own research, she personally went to other sno-cone vendors who close at 10:00 p.m. The citizen expressed the applicant advertises on Facebook that he is open past 10:00 p.m. The noise of the revving engines at 1:00 a.m. and 1:30 a.m. is a concern she did not know that she could complain about.

Ms. Diana Izaguirre inquired of staff if the applicant was ever asked to construct sound barriers walls?

Mr. Acevedo replied, "No, that is something that is not typical."

Ms. Izaguirre added the last time the CUP was heard in April and the board denied the extended hours at that time, the applicant still did not close operations at 10:00 p.m. She personally lives in the area and knows first-hand that sno-cone stand remains open until 1:00 a.m. to 2:00 a.m.

Mrs. Marisela Marin moved to deny item as per staff's recommendation. Ms. Diana Izaguirre seconded the motion. Upon a vote, the motion passed unanimously.

Started: 6:55 p.m.

Ended: 6:59 p.m.

Item #2.0

Preliminary & Final

Plat Approval:

Camino De Abram Subdivision Phase II

A 58.65 acre tract of land situated in Nicolas Zamora Survey, A-76, Porcion 48

Rural ETJ

Developer: Everman Development, Inc.
Engineer: South Texas Infrastructure Group

Mr. Jaime Acevedo went over the write-up stating the proposed subdivision is located near the NE corner of 3 Mile Road and Abram Road. The developer is proposing 99 Single Family Residential lots all exceeding area requirements.

WATER: The water CCN belongs to Agua Special Utility District. The developer is proposing an 8" water system within the subdivision to provide water service to each lot. This is in the rural ETJ thus fire hydrants are not required.

SEWER: Sanitary sewer service for this subdivision will be addressed by individual on-site sewage facilities (OSSF) of a standard design septic tank and drain field on each lot. Each lot meets or exceeds the County's typical ½ acre standard where septic tanks are permitted. This area is not within the City of Mission's Sewer CCN. (NOTE: Mission sewer is 2.30 miles away).

STREETS & STORM DRAINAGE: The subdivision has frontage to Abram Road a paved county road with a future 120' ROW. The internal lots will be fronting a 50' ROW 32' B/B paved street built to the County's construction specifications. Drainage for the subdivision is proposed via an internal storm sewer system with inlets I the street to collect surface runoff from lots and street. This system will be sized as per calculations with 24" and 36" pipes, and will have one outfall located in Lots 30, 31, 32, 33, and 34, of Block 1, Texan Gardens Subdivision. The peak rate for runoff for this development will be mitigated to the existing 25-year storm preliminary HCDD #1 drainage report.

RECOMMENDATION: Staff recommends approval subject to:

1. Must meet the Model Subdivision Rules;
2. Comply with the street alignment policy; and
3. Comply with comments from the County Planning Department.

Chairman Sheats asked if the applicant was available.

Ms. Diana Izaguirre moved to approve the subdivision plat as per staff's recommendation. Mrs. Marisel Marin seconded the motion. Upon a vote, the motion passed unanimously.

Started: 6:59 p.m.

Ended: 7:00 p.m.

Item #3.0

**Preliminary & Final
Plat Approval:**

Gilberto Gutierrez Subdivision
Being a 4.00 acres, more or less, out of
Lot 42, Bell-Woods CO's Subdivision "C"
R-2 & C-2
Developer: Gilberto Gutierrez
Engineer: SAM Engineering & Surveying

Mr. Acevedo explained to the Board no action needed to be taken on this item.

Mr. Carlos Lopez moved to take no action on the item. Mr. Jaime Gutierrez seconded the motion. Upon a vote, the motion passed unanimously.

**ITEM #3.0
OTHER BUSINESS**

There was no other business.

**ITEM #4.0
ADJOURNMENT**

There being no further items for discussion, Mrs. Marisela Marin moved to adjourn the meeting. Mr. Jaime Gutierrez seconded the motion. Upon a vote, the motion to adjourn passed unanimously at 7:00 p.m.

Ned Sheats, Chairman
Planning and Zoning Commission