

PLANNING & ZONING COMMISSION
November 17, 2008

COMMISSIONERS PRESENT

James Duggan, Chairman
Jim Norton, 1st Vice Chair
Maggie Armstrong, 2nd Vice Chair
Jeff Bulla
Christopher Caso
Michael Coleman
Tracey Dry
Craig Perry

STAFF PRESENT

Phyllis M. Jarrell, Director of Planning
Tom Elgin, Development Review Manager
Tina Firgens, Sr. Planner
Kate Perry, Sr. Planner
Paige Mims, Assistant City Attorney
Dee Sarver, Planning Technician
Doris Carter, Sr. Administrative Assistant
Evelyn Trull, Technical Administrative Assistant

The Planning & Zoning Commission meeting was called to order by Chairman Duggan at 7:00 p.m., Monday, November 17, 2008.

Commissioner Perry made a motion to approve the agenda as presented. Commissioner Bulla seconded the motion, which passed 8-0.

Commissioner Caso made a motion to approve the minutes of the November 3, 2008, Planning & Zoning Commission meeting. Second Vice Chair Armstrong seconded the motion, which passed 7-0.

Commissioner Norton made a motion to approve the minutes of the October 10, 2008 Plano City Council and Planning & Zoning commission Worksession. Commissioner Perry seconded the motion, which passed 8-0.

Commissioner Caso made a motion to approve the consent agenda. Second Vice Chair Armstrong seconded the motion, which passed 6-0.

CONSENT AGENDA

AGENDA ITEM NO. 5A - PRELIMINARY PLAT 69/DOUGLAS OTTO MIDDLE SCHOOL, BLOCK A, LOT 1 APPLICANT: PLANO ISD

Public secondary school on one lot on 23.3± acres located on the east side of North Star Road, 2,040± feet south of Plano Parkway. Zoned Research/Technology Center. Neighborhood #69.

Approved as submitted.

END OF CONSENT AGENDA

PUBLIC HEARINGS

AGENDA ITEM NO. 6 PUBLIC HEARING: ZONING CASE 2008-72 APPLICANT: CITY OF PLANO

Ms. Tina Firgens, Sr. Planner, stated this is a request to amend Section 6.200 (Board of Adjustment) of Article 6 (Procedures and Administration) and related sections of the Zoning Ordinance pertaining to the duties and administrative procedures of the Board of Adjustment. Staff recommended approval subject to the following stipulations: (Additions are indicated in italicized and underlined text; deletions are indicated in strikethrough text.)

6.200 Board of Adjustment

~~**6.201** — There is hereby created a Board of Adjustment consisting of five members, each to be appointed by City Council for a term of two years and removable for cause by the appointing authority upon written charges and after public hearing. There shall be at least one member and one alternate member appointed who is employed in either the retail or advertising business, and at least one member and one alternate member who is employed in the real estate or development business. (ZC 92-46; Ordinance No. 92-9-13)~~

~~**6.202** — City Council may appoint four alternate members of the Board of Adjustment who shall serve in the absence of one or more of the regular members. The alternate members, when appointed, shall serve for the same period as the regular members, which is for a term of two years expiring on October 31 of the appropriate year, and any vacancy shall be filled in the same manner as for regular members, and alternate members shall be subject to removal under the same provisions as regular members. (ZC 2007-30; Ordinance No. 2007-10-39 and ZC 92-46; Ordinance No. 92-9-13)~~

~~**6.203** — The Board of Adjustment shall adopt rules to govern its proceedings provided, however, that such rules are not inconsistent with this ordinance or statutes of~~

~~the State of Texas. Meetings of the Board of Adjustment shall be held at the call of the chairman and at such other times as the Board of Adjustment may determine. The chairman, or in his absence, the acting chairman, may administer oath and compel the attendance of witnesses. All meetings of the Board of Adjustment shall be open to the public. The Board of Adjustment shall keep minutes of its proceedings showing the vote of each member upon each question, or if absent or failing to vote, indicate such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the Board of Adjustment and shall be a public record.~~

6.2041 Appeals

(1) The composition and appointment of the Board of Adjustment shall be in compliance with Chapter 16 of the Code of Ordinances.

(2) The Board of Adjustment may take action in accordance with 6.202 of this ordinance. Appeals to the Board of Adjustment can be taken by any person aggrieved or by an officer, department, or board of the municipality affected by any decision of the Building Official. Such appeal shall be taken made within 15 days after the decision has been rendered by the administrative officer, by filing with the officer from whom the appeal is taken and with the Board of Adjustment, a Notice of Appeal specifying the grounds thereof. The officer from whom the appeal is taken shall ~~forthwith transmit~~ forward to the Board of Adjustment all the documents constituting the record upon which the action appealed from was taken.

~~6.205(3)~~ An appeal shall stay all proceedings of the action appealed from unless the officer from whom the appeal is taken certifies to the Board of Adjustment, after the Notice of Appeal shall have been filed with him, that by reason of facts stated in the certificate, a stay would, in his opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed, otherwise than by a restraining order which may be granted by the Board of Adjustment or by a court of record on petition, upon notice to the officer from whom the appeal is taken and on due cause shown.

~~6.206~~ The Board of Adjustment shall fix a specific time for the hearing of an appeal, give the public notice thereof as well as due notice to the parties in interest, and decide the same within a reasonable time. At the hearing, any party may appear in person or by attorney or by agent.

~~6.207~~ No appeal to the Board of Adjustment for the same variance, on the same piece of property, shall be allowed prior to the expiration of two years from a previous ruling by the Board of Adjustment on any appeal to such body, unless other property in the immediate vicinity has within the said two year period been changed or acted upon by the Board of Adjustment or City Council so as to alter the facts and conditions on which the previous Board of Adjustment action was based. Such change of circumstances shall permit

~~the rehearing of an appeal by the Board of Adjustment prior to the expiration of a two year period, but such conditions shall in no way have any force in law to compel the Board of Adjustment, after a hearing, to grant a subsequent appeal. Such subsequent appeal shall be considered entirely on its merits and the peculiar and specific conditions related to the property on which the appeal is brought.~~

6.2082 Jurisdiction (ZC 2007-30; Ordinance No. 2007-10-39)

- ~~(1) Each case must be heard by at least four 75% of the members of the Board of Adjustment. The ~~concurring vote of four members of the Board of Adjustment is necessary to:~~~~

 - ~~(a) Reverse an order, requirement, decision, or determination of an administrative official.~~
 - ~~(b) Decide in favor of an applicant on a matter on which the Board of Adjustment is required to pass under a zoning ordinance.~~
 - ~~(c) Authorize a variance from the terms of a zoning ordinance.~~

- (2) When in its judgment, the public convenience and welfare will be substantially served and the appropriate use of the neighboring property will not be substantially or permanently injured, the Board of Adjustment may, in specific cases, after written notice and public hearings, and subject to appropriate conditions and safeguards, authorize or order the following:
 - (a) Hear and decide appeals where it is alleged there is error on any order, requirement, decision, or determination made by the Building Official in the enforcement of this ordinance. (ZC 92-46; Ordinance No. 92-9-13)
 - (b) Permit the reconstruction, extension, or enlargement of a building occupied by nonconforming uses, on the lot or tract occupied by such building, provided such reconstruction does not prevent the return of such property to a conforming use.
 - (c) Require the discontinuance of nonconforming uses of land or structure under any plan whereby the full value of the structure and facilities can be amortized within a definite period of time, taking into consideration the general character of the neighborhood and the necessity for all property to conform to the regulations of this ordinance. All actions to discontinue a nonconforming use of land or structure shall be taken with due regard for the property rights of the persons affected when considered in the light of the public welfare and the character of the area surrounding the designated nonconforming use and the conservation and preservation of property. The Board of Adjustment shall, from time to time, on its own motion or upon cause presented by

interested property owners, inquire into the existence, continuation, or maintenance of any nonconforming use within the city.

- (d)** Permit such variance from the terms of the Zoning Ordinance that will not be contrary to the public interest and where, because of special conditions, the enforcement of this ordinance or its amendments would result in an unnecessary hardship, except as provided in (ii), (iii) and (iv) below. A variance shall not be granted to relieve a self-created or personal hardship, nor shall it be based solely on economic gain or loss, nor shall it permit any person a privilege in developing a parcel of land not permitted by this ordinance to other parcels of land in the district. No variance may be granted if it results in an unnecessary hardship, as herein defined, on another parcel of land.
- (i)** In order to make a finding of hardship and to grant a variance from this ordinance, the Board of Adjustment must determine that: (ZC 92-46; Ordinance No. 92-9-13)
1. The requested variance does not violate the intent of the ordinance or its amendments.
 2. Special conditions of restricted area, shape, topography, or physical features exist that are peculiar to the subject parcel of land and are not applicable to other parcels of land in the same zoning district.
 3. The hardship is in no way the result of the petitioner's own actions.
 4. The interpretation of the provisions in this ordinance or its amendments would deprive the petitioner of rights commonly enjoyed by other properties in the same zoning district that comply with the same provisions.
- (ii)** No variance may authorize a use other than those permitted in the district for which the variance is sought.
- (iii)** A petition or request for a variance shall not be heard or granted with regard to any parcel of property or portion thereof upon which a preliminary site plan, site plan, preliminary plat, or final plat, when required by this ordinance or the Subdivision Ordinance for any parcel of property or portion thereof, has not been finally acted upon by both the Planning & Zoning Commission and, where required, by the City Council.
- (iv)** The administrative procedures and requirements of this ordinance and the Subdivision Ordinance, with regard to both Planning & Zoning Commission and the City Council

consideration and action, on preliminary site plans, site plans, preliminary plats, and final plats, must be exhausted prior to requesting a variance from the terms of this ordinance.

6.2093 Action of the Board of Adjustment

- (1) In exercising its powers, the Board of Adjustment may, in conformity with the provisions of Articles 1011-a through 1011-j of Section 211.009 (b) of the Texas Local Government Code, reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from and make such order, requirement, decision, or determination as ought to be made and shall have all the powers of the officer from whom the appeal is taken, including the power to impose reasonable conditions to be complied with by the petitioner.
- (2) The concurring vote of ~~four~~ 75% of the members of the Board of Adjustment shall be necessary to revise any order, requirement, decision, or determination of any such administrative official, or to decide in favor of the petitioner on any matter upon which it is required to pass under this ordinance or to approve any variance in said ordinance.
- (3) An appeal of the Board of Adjustment's decision must be in accordance with Chapter 211 of the Texas Local Government Code as the same may be amended from time to time. ~~Any person or persons jointly or severally aggrieved by any decision of the Board of Adjustment, or any taxpayer, or any officer, department, board, or bureau of the municipality may present to a district court, county court, or county court at law a petition, duly verified, setting forth that such decision is illegal, in whole or part, specifying the grounds of the illegality. Such petition shall be presented to the court within ten days after the filing of the decision in the office of the Board of Adjustment and not thereafter. The date of filing of the decision in the office of the Board of Adjustment shall be the date the Board of Adjustment announces its decision either orally or in writing to the petitioner. (ZC 99-56; Ordinance No. 99-11-19)~~
- (4) No appeal to the Board of Adjustment for the same variance, on the same property, shall be allowed prior to the expiration of two years from a previous ruling by the Board of Adjustment unless other property in the immediate vicinity has within the said two year period been rezoned, granted a similar variance request by the Board of Adjustment, or such that the physical conditions have changed. These circumstances shall permit the rehearing of an appeal by the Board of Adjustment prior to the expiration of the two year period, but shall not compel the Board of Adjustment, after a hearing, to grant a variance.
- (5) If the court reverses or modifies the Board of Adjustment's decision, the board of Adjustment may elect to appeal that decision.

The public hearing was opened. No one spoke for or against the item. The public hearing was closed.

There being no discussion, Commissioner Bulla made a motion to approve the item as submitted by staff. Commissioner Caso seconded the motion, which passed 8-0.

AGENDA ITEM NO. 7
PUBLIC HEARING: ZONING CASE 2008-73
APPLICANT: CITY OF PLANO

Mr. Tom Elgin, Development Review Manager, stated this is a request to amend Subsection 3.1108 (Special Off-Street Parking Regulations) of Section 3.1100 (Off-Street Parking and Loading) of Article 3 (Supplementary Regulations) and related sections of the Zoning Ordinance regarding definitions and standards for special vehicle storage.

Tom Elgin requested that the item be tabled until the December 1, 2008 meeting.

The public hearing was opened. No one spoke for or against the item. The public hearing was closed.

Commissioner Coleman made a motion to table the item. Commissioner Caso seconded the motion, which passed 8-0.

Chairman Duggan stepped down for the next item.

AGENDA ITEM NO. 8A
PUBLIC HEARING: ZONING CASE 2008-80
APPLICANT: HW SPRING CREEK PARTNERS, L.P.

Mr. Elgin stated this is a request to rezone 6.1± acres located at the northwest corner of Bourbon Street and Cousteau Court **from** Single-Family Residence Attached and Patio Home **to** Single-Family Residence-9. Zoned Single-Family Residence Attached and Patio Home with Specific Use Permit #594 for Private Street Development. Staff recommended approval as submitted.

The public hearing was opened. Cheryl Williams, representing the applicant, was available for questions. Matt Lopez, a student in Public Affairs at The University of Texas at Dallas, spoke in favor of the item. The public hearing was closed.

There being no discussion, Commissioner Caso made a motion to approve the item as submitted. Commissioner Bulla seconded the motion, which passed 7-0.

**AGENDA ITEM NO. 8B - REVISED PRELIMINARY SITE PLAN
14/NORMANDY ESTATES
APPLICANT: HW SPRING CREEK PARTNERS, L.P.**

Mr. Elgin stated this is a Three Single-Family Residence-9 lots and three open space lots on 9.4± acres located at the northwest corner of Bourbon Street and Cousteau Court. Zoned Single-Family Residence Attached and Patio Home with Specific Use Permit #594 for Private Street Development. Neighborhood #14. Staff recommends approval subject to City Council approval of Zoning Case 2008-80

The public hearing was opened. No one spoke for or against the item. The public hearing was closed.

There being no discussion, Commissioner Perry a motion to approve the item as submitted. Commissioner Bulla seconded the motion, which passed 7-0.

Chairman Duggan returned to his seat.

**AGENDA ITEM NO. 9
PUBLIC HEARING: ZONING CASE 2008-81
APPLICANT: CITY OF PLANO**

Ms. Kate Perry, Sr. Planner, stated this is a request to amend Section 1.600 (Definitions) of Article 1 (General Regulations) and related sections of the Zoning Ordinance regarding minor and major automobile repair. Staff recommends that the definition for "Automobile Repair - Minor/Service Station" be changed to read as follows: (Additions are in underlined text.)

Automobile Repair - Minor/Service Station - An establishment used for the retail dispensing or sales of automobile fuels, lubricants, and automobile accessories; the minor repair or replacement of parts, paintless dent repair, and performing state inspections and making minor repairs necessary to pass said inspection. Uses listed under Automobile Repair - Major or any other similar uses are not included. Vehicles, which are inoperative or are being repaired, may not remain parked outside for a period greater than seven days.

The public hearing was opened. No one spoke for or against the item. The public hearing was closed.

After some discussion, Chairman Caso made a motion to approve the item as submitted. Second Vice Chairman Armstrong seconded the motion, which passed 8-0.

AGENDA ITEM NO. 10A
PUBLIC HEARING: ZONING CASE 2008-75
APPLICANT: CITY OF PLANO

Ms. Firgens stated this is a request to rescind Specific Use Permit #259 for Private Club on 0.1± acre located at the southwest corner of U.S. Highway 75 and Enterprise Drive. Zoned Corridor Commercial. Staff recommends approval as submitted.

The public hearing was opened. No one spoke for or against the item. The public hearing was closed.

There being no discussion Commissioner Perry made a motion to approve the item as submitted. Commissioner Bulla seconded the motion, which passed 8-0.

AGENDA ITEM NO. 10C
PUBLIC HEARING: ZONING CASE 2008-77
APPLICANT: CITY OF PLANO

Ms. Firgens stated this is a request to rescind Specific Use Permit #279 for Private Club on 0.1± acre located 130± feet east of Independence Parkway and 485± feet north of Parker Road. Zoned Retail. Staff recommends approval as submitted.

The public hearing was opened. No one spoke for or against the item. The public hearing was closed.

There being no discussion, Commissioner Perry made a motion to approve the item as submitted. Commissioner Bulla seconded the motion, which passed 8-0.

AGENDA ITEM NO. 10D
PUBLIC HEARING: ZONING CASE 2008-78
APPLICANT: CITY OF PLANO

Ms. Firgens stated this is a request to rescind Specific Use Permit #282 for Private Club on 0.1± acre located 90± feet west of Preston Road and 370± feet north of Plano Parkway. Zoned Planned Development-457-Retail/General Office. Staff recommends approval as submitted.

The public hearing was opened. No one spoke for or against the item. The public hearing was closed.

There being no discussion, Commissioner Perry made a motion to approve the item as submitted. Commissioner Bulla seconded the motion, which passed 8-0.

AGENDA ITEM NO. 10E
PUBLIC HEARING: ZONING CASE 2008-79
APPLICANT: CITY OF PLANO

Ms. Firgens stated this is a request to rescind Specific Use Permit #360 for Private Club on 3.8± acres located on the east side of Dallas North Tollway, 470± feet north of Democracy Drive. Zoned Commercial Employment. Staff recommends approval as submitted.

The public hearing was opened. No one spoke for or against the item. The public hearing was closed.

There being no discussion, Commissioner Perry made a motion to approve the item as submitted. Commissioner Bulla seconded the motion, which was approved 8-0.

ITEM FOR INDIVIDUAL CONSIDERATION

Commissioner Perry stepped down for this item

AGENDA ITEM NO. 10B
PUBLIC HEARING: ZONING CASE 2008-76
APPLICANT: CITY OF PLANO

Ms. Firgens stated this is a request to rescind Specific Use Permit #278 for Private Club on 0.1± acre located 180± feet north of Park Boulevard and 550± feet west of Ohio Drive. Zoned Retail. Staff recommends approval as submitted.

The public hearing was opened. No one spoke for or against the item. The public hearing was closed.

There being no discussion, Second Vice Chair Armstrong made a motion to approve the item as submitted. Commissioner Caso seconded the motion, which passed 7-0.

END OF ITEM FOR INDIVIDUAL CONSIDERATION

Commissioner Perry returned to his seat.

AGENDA ITEM NO. 11 - PUBLIC HEARING - REPLAT
3/ESTANCIA AT RIDGEVIEW RANCH, BLOCK A, LOT 1R
APPLICANT: ESTANCIA AT RIDGEVIEW RANCH, L.P.

Ms. Firgens stated this is a 500 multifamily units on one lot on 36.3± acres located at the southeast corner of State Highway 121 and Independence Parkway. Zoned Planned Development-476-Regional Employment. Neighborhood #3. Staff recommends approval as submitted.

The public hearing was opened. Nicholas Sulkowski, representing the owner, was available for questions. The public hearing was closed.

There being no discussion, Commissioner Coleman made a motion to approve the item as submitted. Commissioner Caso seconded the motion, which passed 8-0.

**AGENDA ITEM NO. 12 - PUBLIC HEARING - REPLAT
3/MCDERMOTT SQUARE ADDITION, BLOCK A, LOT 1R
APPLICANT: MCDERMOTT SQUARE, L.P.**

Mr. Elgin stated this is retail on one lot on 6.5± acres located at the northeast corner of Independence Parkway and McDermott Road. Zoned Planned Development-400-Retail. Neighborhood #3. Staff recommends approval as submitted.

The public hearing was opened. Arlyn Samuelson, the engineer, was available for questions. The public hearing was closed.

There being no discussion, Commissioner Perry made a motion to approve the item as submitted. Commissioner Bulla seconded the motion, which passed 8-0.

**AGENDA ITEM NO. 13 - PUBLIC HEARING - REPLAT
40/CARRINGTON PARK ADDITION, BLOCK B, LOT 1R
APPLICANT: BIDKA PLAZA, L.P.**

Ms. Firgens stated this is medical and general offices on one lot on 3.4± acres located at the northeast corner of Communications Parkway and Wedgewood Drive. Zoned Regional Employment. Neighborhood #40. Staff recommends approval as submitted.

The public hearing was opened. No one spoke for or against the item. The public hearing was closed.

There being no discussion, Commissioner Bulla made a motion to approve this item as submitted. Commissioner Dry seconded the motion, which passed 8-0.

END OF PUBLIC HEARINGS

**AGENDA ITEM NO. 14 - REVISED PRELIMINARY SITE PLAN
3/MCDERMOTT SQUARE ADDITION, BLOCK A, LOTS 1R-7
REVISED CONVEYANCE PLAT
3/MCDERMOTT SQUARE ADDITION, BLOCK A, LOTS 6R & 7
APPLICANT: MCDERMOTT SQUARE, L.P.**

Mr. Elgin stated this is a retail, office, and restaurant use on seven lots on 14.8± acres located at the northeast corner of Independence Parkway and McDermott Road. Zoned Planned Development-400-Retail. Neighborhood #3. Staff recommends approval as submitted.

Arlyn Samuelson, representing the owner and buyer, was available for questions.

There being no discussion, Second Vice Chair Armstrong made a motion to approve as submitted. Commissioner Caso seconded the motion, which passed 8-0.

**AGENDA ITEM NO. 15 - PRESENTATION
FUTURE DIMENSIONS REPORT
APPLICANT: CITY OF PLANO**

Ms. Perry made a presentation of the Future Dimensions Report, which was prepared by the Transition and Revitalization Commission and recently adopted by City Council resolution.

**AGENDA NO. 16 -
APPEAL OF THE DIRECTOR OF PLANNING'S INTERPRETATION OF THE ZONING
ORDINANCE
APPLICANT: MATTHEW TWYMAN**

Phyllis Jarrell, Director of Planning, presented an Appeal of the Director of Planning's Interpretation of the Regulations for Fences in the Estate Development Zoning District.

Chairman Duggan stated that this item was not a public hearing, but invited Matt Twyman, the applicant, to discuss his view with the commission.

After much discussion, Commissioner Caso made a motion to uphold the interpretation. Second Vice Chair Armstrong seconded the motion, which passed 8-0.

**AGENDA ITEM NO. 17 - DISCUSSION AND DIRECTION
SELECTION OF 2009 WORK SESSION MEETING DATES
APPLICANT: CITY OF PLANO**

Mr. Elgin opened a discussion and direction on the selection of Planning & Zoning Commission work session dates and times for 2009. The Commission asked that the Tuesdays following the Commission meetings be reserved for work session. Generally, work sessions, if held, will be on the Tuesday following the first Commission meeting of the month. The start time for work session will be 6:00pm

**AGENDA NO. 18 -
NOMINATION OF 1ST AND 2ND VICE CHAIR
APPLICANT: CITY OF PLANO**

Nomination of the 1st and 2nd Vice Chairs.

Commissioner Perry made a motion to nominate First Vice Chair Norton for First Vice Chair. Commissioner Bulla seconded the motion.

Commissioner Coleman made a motion to nominate Second Vice Chair Armstrong for Second Vice Chair. Commissioner Caso seconded the motion.

AGENDA ITEM NO. 19 - ITEMS FOR FUTURE DISCUSSION

The Commission had no items they wished to discuss.

There being no further discussion, Chairman Duggan adjourned the meeting at 8:30 p.m.

Planning & Zoning Commissioner

xc: Honorable Mayor and City Council
Thomas H. Muehlenbeck, City Manager