

**PLANNING AND ZONING COMMISSION
JANUARY 27, 2010
CITY COUNCIL CHAMBERS @ 5:00 P.M.**

P&Z PRESENT

Ned Sheats
Marisela Marin
Jose G. Vela
Mario Garza
Rene A. Flores
Carlos Lopez

P&Z ABSENT

Luann Caudle

STAFF PRESENT

Sergio Zavala
Bobby Salinas
Susana De Luna

GUESTS PRESENT

Javier Soberon
Edwin Cruz
Luis Barbosa
Lupita Ramon
Gloria E. Mata
Jorge Gonzalez

Orlando Margo
Lidia Garcia
Roberto De Leon
Rene De La Cruz
Reynoldo De Leon
Norma Montes

Ernesto & Dora Guevara
Yolanda Villalon
Juan F. Garza
Arturo Rodriguez
Beatriz Rodriguez
Francisco Soberon

CALL TO ORDER

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

CITIZENS PARTICIPATION

There was no response upon inquiry.

APPROVAL OF MINUTES FOR JANUARY 6, 2010

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

Started: 5:02 p.m.

Ended: 5:05 p.m.

Item# 1.1

Rezoning:

**A 1.01 acre tract out of the South 9.25
Acres of the North 18.5 acres of Lot 29-7,
West Addition to Sharyland Subdivision
AO-I to C-3
Rosa Soberon**

Mr. Salinas briefed over the write-up stating that the subject site is located approximately 700' north of Mile 2 North along the east side of Conway (SH 107). The surrounding zones include C-3 (General Business) to the South, and AO-I (Agricultural Open Interim) to all other directions. The surrounding land uses consist of a church to the north and east, a single family residence and a car sales

lot to the west, and a funeral home to the south. The subject tract currently has a vacant gasoline station. The Future Land Use Map reflects a broad General Commercial (GC) designation along the Conway frontage. The subject property should be changed to C-3 due to FLUM compliance; adjoining C-3 zone to the south, frontage to a divided major thoroughfare, and the property has a pre-existing commercial land use. Staff recommended approval.

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

There was no response.

Chairman Sheats asked if the applicant or representative were present.

The applicant, Mr. Francisco Soberon was present to address any questions that the Board might have.

There being no discussion, Chairman Sheats entertained a motion. Mr. Garza moved to approve the C-3 rezoning as recommended by staff. Mr. Lopez seconded the motion. Upon a vote the motion passed unanimously.

Started: 5:05 p.m.

Ended: 5:08 p.m.

Item# 1.2

**Conditional Use Permit: Drive-Thru Convenience Store
1705 W. Griffin Parkway, Unit "B"
Lot B & Lot 74, Las Misiones Subdivision
C-3
Life of Use
Jorge Gonzalez**

Mr. Salinas briefed over the write-up stating that the site is located on the SW Corner of Kirk Avenue and Griffin Parkway. The subject site currently has an existing single family home and an existing block building (old tire shop), which the applicant wishes to utilize as a drive thru convenience store. The existing building does have restroom facilities available for patrons if needed. Access to the site is provided off of Griffin Parkway through an existing 16 concrete driveway. The building measures 40' by 45' for a total of 1,800 square feet. The number of parking spaces required and provided is 8, Lot 74 will be used to provide 3 spaces on the south side of the building and the exit onto Kirk Avenue. The applicant will be required to pave and re-stripe the existing and new parking to the south, inclusive of the exit.

During staff's review, it was discovered that Lot 74 was not owned by the person leasing the property, however it does belong to the owner's two older sons, which have acknowledged and approved the use of their lot for the drive-thru business.

- Days/Hours of operation: Everyday from 7:00 a.m. to 12:00 p.m.
- Staff: 2 employees (applicant and wife)
- Additional landscaping will be required along Griffin Parkway and Kirk Avenue to comply with City codes.
- A 6' cedar fence will be imposed to provide a buffer from the commercial use and the residential use along the west side.
- A 5' sidewalk will be required along Griffin Parkway and Kirk Avenue.
- City Engineer to ensure that the proper drainage calculations are being met as per the plat.
- Comply with City's Sign Ordinance.
- A business license is required prior to occupancy.

Letters were sent to the property owners within 200' radius of the subject tract. Staff has received 1 phone call in opposition to this request. Staff also discovered that the west 60' of Lot B was rezoned back in 2001 from C-3 to R-1, with conditions that when the applicant obtained a building permit a re-subdivision of Lot "B" would be required. **Chapter 98 – Subdivisions, Article I Sec. 98-6 (b) of the Code of Ordinances of the City of Mission** states in part: **No building, repair, plumbing, electrical or business permit shall be issued by the city for any structure on a lot in a subdivision for which a final plat has not been ... filed for record.**

On 11-4-05, the City erroneously issued a commercial remodeling permit without asking for the re-subdivision of Lot "B". Staff recommended that this item be 'Tabled' until the owner re-subdivides Lot "B".

Chairman Sheats stated that since the Board was not going to take action on this item he entertained a motion. Mr. Vela moved to 'Table' the item as recommended by staff. Mr. Garza seconded the motion. Upon a vote the motion passed unanimously.

Started: 5:08 p.m.

Ended: 5:11 p.m.

Item #1.3

**Conditional Use Permit: To Co-locate Antenna on the Existing Self-Support Tower & Install a 10' x 16' Communications Equipment Cabinet
2309B N. Shary Road
Lot 1, R.C. Vacker Subdivision
C-3
Life of Use**

AT&T Wireless

Mr. Salinas briefed over the write-up stating that the site is located near the NW corner of Shary Road and U.S. Expressway 83. AT&T Wireless is in the process of improving their wireless communications network in South Texas and throughout the Rio Grande Valley. As cited above, AT&T Wireless desires to co-locate onto the existing self-support tower and construct a new 10' x 16' cabinet at the fenced-in compound area located on Lot 1, R.C. Vacker Subdivision. Currently there are existing shelters for various communications providers and the 100' high telecommunications antenna. The proposed Cricket Communications shelter is outside any easements and exceeds the applicable building setbacks. Staff recommended approval for life of use.

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

There was no response.

Chairman Sheats asked if the applicant or representative were present.

The applicant, Mr. Larry G. Dussack was present to address any questions that the Board might have.

Chairman Sheats asked where the access was to this antenna.

Mr. Salinas stated that the access was from the bank's parking lot.

Chairman Sheats asked if they had an agreement with the owner of the property to make sure they would always have access.

Mr. Zavala stated that staff did not have a copy of the recorded instrument but it is policy that those antennas should always have access easements. He mentioned that the Board could approve the item subject to the applicant providing the access easement document.

There being no further discussion, Chairman Sheats entertained a motion. Mrs. Marin moved to approve the item as recommended by staff subject to providing proof of an existing access easement. Mr. Carlos Lopez seconded the motion. Upon a vote the motion passed unanimously.

Started: 5:11 p.m.

Ended: 5:14 p.m.

Item #1.4

Conditional Use Permit: Place a 8' x 12' Portable Building for the Sale of Sno-Cones & Snacks

**1723 W. Griffin Parkway
1.24 ac. tract out of Lot 24-1,
West Addition to Sharyland Subd.
C-3
Life of Use
Orlando Margo**

Mr. Salinas briefed over the write-up stating that the site is located approximately 150' east of Inspiration Road along the south side of Griffin Parkway. The subject site currently has an existing daycare center (Las Palmas Montessori) with all appropriate sidewalks and landscaping as per City Codes. The applicant, the daycare owner's son-in-law, wishes to install a portable building within the parking area of the daycare. The building will be meeting the 40' front setback along Griffin Parkway. Access to the site is provided through an existing 22' concrete driveway off of Griffin Parkway.

Based on the square footage of the existing daycare center and the proposed portable building, a total of 21 parking spaces are required. The site currently has 20 parking spaces available. If the portable building is installed within 2 spaces, the applicant would need to add 3 additional spaces. If the portable building is installed off of the parking area, only 1 additional space will be required.

The portable building will be equipped with restroom facilities, however in the absence of this, the restroom facilities may be provided by the daycare.

- Days/Hours of operation: Everyday from 12 p.m. to 9 p.m.
- Staff: 2 employee (Applicant and wife)
- A business license is required prior to occupancy
- Must meet the City's Sign Ordinance
- Requires the approval of the Health Department

Letters were sent to property owners within 200' of the subject tract. Staff has not received any comments for or against this request. Staff recommended approval subject to: 1) 1 year re-evaluation to assess this new operation, 2) provide additional parking space(s) based on the requirements above, 3) approval by the Health Department, and 4) acquisition of a business license.

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

There was no response.

Chairman Sheats asked if the applicant or representative were present.

The applicant, Mr. Orlando Margo was present to address any questions that the Board might have.

Mrs. Marin asked at what stage the parking would be done.

Mr. Salinas stated that the parking would be done prior to the business license issuance.

Mr. Garza asked if the applicant agreed with staff's recommendations.

Mr. Salinas stated that he had talked with the applicant and he agreed with staff's recommendations

There being no further discussion, Chairman Sheats entertained a motion. Mr. Garza moved to approve the item as recommended by staff. Mr. Vela seconded the motion. Upon a vote the motion passed unanimously.

Started: 5:14 p.m.

Ended: 5:16 p.m.

Item #1.5

**Conditional Use Permit: The Complimentary offering of Alcoholic Beverages for On-site Consumption for a Social and/or Cultural Event
202 W. Tom Landry
Lots 7-10, Block 175, M.O.T. Subdivision
C-3
The Greater Mission Chamber of Commerce**

Mr. Salinas briefed over the write-up stating that the site is located on the NW corner of Tom Landry and Dunlap Avenue. He stated that Ordinance #3436 permits civic organizations to request such CUP's from city-owned buildings where complimentary alcoholic drinks will be offered (not sold) during a social/cultural event. The Greater Mission Chamber of Commerce is requesting that the City consider issuing a conditional use permit for their proposed Sister City Dinner on January 29th from 6:30 p.m. until 11:30 p.m. During the event, complimentary alcoholic beverages will be served (not sold). The Greater Mission Chamber of Commerce firmly attests that they will be watchful of how much the patrons are responsibly served. Staff recommended approval.

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

There was no response.

Chairman Sheats asked if the applicant or representative were present.

There was no response.

Mr. Mario Garza asked Mr. Salinas if this was a one-time event.

Mr. Salinas replied, "Yes".

There being no further discussion, Chairman Sheats entertained a motion. Mrs. Caudle moved to approve the item as recommended by staff. Mr. Garza seconded the motion. Upon a vote the motion passed unanimously.

Started: 5:19 p.m.

Ended: 5:23 p.m.

Item #1.6

**Conditional Use Permit Renewal: Restaurant in Property Zoned
Neighborhood Commercial
104 Mayberry, Suite "A"
Lot 52, Mayberry Plaza #2 Subd.
C-2
Life of Use
Luis Barbosa**

Mr. Zavala briefed over the write-up stating that the property is at the NE corner of Mayberry and 1st Street. Currently on Lot 52 there is an existing building with 3 suites thereon. The applicant has been operating a BBQ Restaurant from this Neighborhood Commercial (C-2) zoned property for one year and needs renewal consideration at this time. The days and hours of operation are Monday through Saturday from 11:00 a.m. to 8:00 p.m. Mr. Barbosa and 3 full-time employees run this establishment. No alcoholic beverages are sold.

In reviewing the floor plan, the existing 500 sq. ft. suite has a total of 6 tables that can seat a total of 20 people and there are an additional 3 seating spaces at the counter area for a grand total of 23 seating spaces in the dining area. One parking space for every three seats or one space for every 75 sq. ft. of floor area, whichever is greater, is required by code – or 8 based on the higher of the two (total seating spaces). A field visit revealed that there are 17 parking spaces held in common for this development, meeting code.

All building, fire, health, landscaping, and sign codes are in compliance. A total of 22 notices were mailed to property owners within a 200' radius of the site and as of this write-up (1-15-10), no comments in favor or against this request have been forwarded to the Planning Department. Staff recommended approval subject to a three-year re-evaluation to continue monitoring this CUP operation.

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

There was no response.

Chairman Sheats asked if the applicant or representative were present.

The applicant, Mr. Luis Barbosa was present to address any questions that the Board might have.

Mr. Arturo Rodriguez the owner of the Flower Shop adjacent to the BBQ restaurant stated that he was not in opposition of this request; the only concern he had was that the smoke from the BBQ business was going into his flower shop. He added that he just needed help from staff in finding a solution to his concern.

Mrs. Beatriz B. Rodriguez stated that she was the owner of the property and if any of her tenants had any type of concern she would work it out with them.

There being no further discussion, Chairman Sheats entertained a motion. Mr. Vela moved to approve the item as recommended by staff. Mrs. Marin seconded the motion. Upon a vote the motion passed unanimously.

Started: 5:19 p.m.

Ended: 5:20 p.m.

Item #1.7

**Conditional Use Permit Renewal: Home Occupation – Notary Service
& Preparation of Income Tax Forms
2606 N. Shary Road
Being a 4.11 acre tract of land out of
Lot 265, John H. Shary Subdivision
AO-I
Life of Use
Lupita Ramon**

Mr. Zavala briefed over the write-up stating that this conditional use permit was awarded to Mrs. Ramon on February 8, 2006 and again on August 8, 2007 with these conditions: 1) compliance with section 1.56-1 of the Zoning Ordinance, 2) acquisition of a business license, and 3) a 2 year re-evaluation. Since this conditional use permit was awarded staff has not received any complaints or concerns from this location.

The subject site is located ¼ mile North of Griffin Parkway (FM 495) along the east side of Shary Road. Mrs. Ramon has a CUP permitting a home occupation for a notary service and income tax preparation service at the above address and is requesting renewal at this time. Mrs. Ramon has a large estate size lot fronting

190' along Shary Road, with a depth of 1,110' (210,000 sq. ft. or 5 acres) and has her residence thereon. Mrs. Ramon has a 1,200' sq. ft. personal office that is being used for this home occupation (formerly a 3 car garage). The office operates Monday through Saturday from 6:00 p.m. to 9:00 p.m. Mrs. Ramon is the only employee running this home occupation. There is an existing paved parking area, which accommodates up to 8 cars for customer parking. Mrs. Ramon has alerted staff that traffic is minimal, and strictly by appointment only. Mrs. Ramon has alerted staff that the income tax preparation is only done during January through April and the notary services are year round. Staff recommended approval; re-evaluate in 3-year intervals.

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

There was no response.

Chairman Sheats asked if the applicant or representative were present.

The applicant, Mrs. Lupita Ramon was present to address any questions that the Board might have.

There being no discussion, Chairman Sheats entertained a motion. Mr. Vela moved to approve the item as recommended by staff. Mrs. Marin seconded the motion. Upon a vote the motion passed unanimously.

Started: 5:23 p.m.

Ended: 5:35 p.m.

Item #2.0

VARIANCE REQUEST BY EDWIN CRUZ TO ALLOW A RESIDENTIAL DRIVEWAY OFF OF LOT 26, LA TIERRA DE LOS ENCINOS DIRECTLY ONTO MAYBERRY RD. (ARTERIAL STREET)

Mr. Salinas briefed over the write-up stating that the double-frontage Lot is 1800' north of Griffin Parkway along the west side of Mayberry Rd. (within La Tierra De Los Encinos Subdivision). The Lot is irregularly-shaped as seen in the copy of the subdivision. The property's primary frontage is along Keralum Ave. The following discloses the recent dialogue between Mr. Cruz & Staff:

- The applicant built a 2-car garage, an above ground pool, and a second story deck to the home's rear that leads to the pool area; these improvements were done without required permits.
- Mr. Cruz inquired of possible access off of Mayberry Rd. Staff mentioned that plat note 10 of La Tierra De Los Encinos states: **'No entry / exit to any lots from Mayberry Rd'**; and Sec. 98-134 Streets (o) Marginal Access

Streets reads as follows: ***Where a subdivision has frontage on or borders an arterial street, the planning and zoning commission may require marginal access...on the subdivision side of the arterial street***". The marginal access street is Keralum.

- Mr. Cruz proceeded to inform us that he is a retired veteran, who is 100% permanently disabled and unemployable. He mentioned that his (VA Physician) recommended swimming exercises in order to avoid the risk of total paralysis thus the need for the swimming pool.

Mr. Salinas also stated that the applicant should have obtained a building permit prior to constructing the two-car garage, deck, and pool. Regardless of what transpires with this request, the required permits will be imposed to verify safety (electrical) and structural integrity of the improvements.

Since the applicant is a retired & (totally) disabled veteran with very unique health conditions, staff is inclined to approve the request for Mr. Cruz but subject to:

- ❖ a legal agreement, to be recorded with the County Clerk's Office, stating the City's indemnification; that the driveway was granted due to the owner's health conditions;
- ❖ said approval will not be transferable to future owner(s) others; and,
- ❖ when the need is no longer required due to the unique health issue, that the subsequent owner shall re-seal the driveway and fully buffer Mayberry Road.
- ❖ and having this applicant escrow the sidewalk re-construction costs (\$130 total).

Chairman Sheats asked if there was any input from the Board Members in regards to this request.

Mrs. Marin asked Mr. Zavala if by allowing a sidewalk or entry through Mayberry wouldn't they have a problem with cars exiting the driveway.

Mr. Zavala stated that he understands that this might create a problem and that's why staff would not like to multiply it. He also stated that the reason the codes were in place was because it would cause additional traffic. He mentioned that if a property owner owns a double frontage lot, the primary access for this lot would be from the minor street that is the way it has been since the home was constructed. He added that based on his unique health conditions (which he could be permanently paralyzed), staff has recommend approval with certain encumbrances. Mr. Zavala stated that he would be subject to inspections so that staff could make sure the applicant is still living in the property now. If he moves on and/or sells the property, then the title work will produce a recorded document that will show that the access is valid only for this particular property owner.

Mrs. Marin asked if there were any other easements.

Mr. Zavala stated that there was a utility easement, but driveways go over right-of-ways and utility easements all the time.

Mrs. Marin asked if the applicant needed to do anything to the subdivision like re-plat.

Mr. Zavala replied, "No".

Mrs. Marin asked if the city attorney was okay with the variance as long as they record a document holding the city harmless in the event of any accident.

Mr. Zavala replied, "Yes". He added that this request would go forward depending on whether or not there is a favorable ruling. He added that if there was a favorable ruling then it would need to go to the City Council were legal would look at the draft at that point and adjust if necessary.

Chairman Sheats stated that he has a consensus that it is not what P&Z would like to do but specifically and strictly due to the medical condition of the applicant he was recommending in favor.

Mr. Flores asked if the city would be in charge of doing the repairs or re-sealing the driveway.

Chairman Sheats stated that the applicant would be responsible and would escrow the costs to re-seal the driveway.

The applicant, Mr. Edwin Cruz was present to address any questions that the Board might have.

There being no further discussion, Chairman Sheats entertained a motion. Mrs. Marin moved to approve the item as recommended by staff. Mr. Vela seconded the motion. Upon a vote the motion passed unanimously.

Started: 5:35 p.m.

Ended: 5:39 p.m.

Item #2.1

Discussion and Action on Park Dedication Proposals by Hunt Valley Industrial I, L.P., as they Relate to Compliance to Amended Park Dedication Ordinance #1846, to Dedicate El Sendero Park and Los Nogales Park as 'City Parks'

Mr. Zavala briefed over the write-up stating that in 1986, the City of Mission was the first city in the Valley to adopt a Park Dedication Ordinance that links residential development to a pro rata share of property to be dedicated to the City or money dedicated by said developer(s) for the use of City-owned neighborhood parks. (NOTE: original Ord. #1340 was amended by Ord. 1846).

Last year, the Planning Department became aware that Hunt Valley Development had unilaterally recorded a 'Dedication Deed' (Doc. #1275229) conveying 2 parks to the City of Mission. In consulting with City Attorney David Guerra, the City of Mission has to '*accept*' the parks and proper deeds recorded to be accepted as a '*city park*'.

(NOTE: The 6+acre Madero Park was presented this way and accepted by the City several years ago....thus, the same process must be processed.)

Our Ordinance & policy states that if a developer desires to dedicate property to comply with park dedication (platting) requirements, it must first get the advisory recommendations from the Planning & Zoning Commission and the Parks Board prior to final action by the City Council. The 2 parks are as follows:

Los Nogales Park is 2.1 acres, located near the intersection of Santa Fe and San Roman; accessibility is extremely good via public streets; there are 2 perimeter gathering areas with perimeter landscaping and a mid-soccer field (running) area; the entire perimeter of the park has concrete sidewalk, too.

El Sendero Park is 1.7 acres, located near the intersection of Santa Fe and Santa Rocio; accessibility is extremely good via public streets; there are 3 primary gathering areas with playground equipment all linked to each other via waving concrete sidewalks - - no perimeter sidewalks adjacent to the street are evident but this is probably because people would use the ones within the interior of the park thus having a nicer walking experience; landscaping is throughout the subject site and there are some open areas that function well for running children.

In review of the Park Dedication Ordinance, these 2 recreational areas meet the intent of the city's ordinance since they are nestled in the midst of residential neighborhoods, have good location, are easily accessible, and have viable amenities for recreational purposes.

Staff recommended to the P&Z that the 2 parks be recommended to the City Council to be accepted as 'City Parks' in Hunt's efforts to comply with our Park Dedication Ordinance.

Chairman Sheats asked if there was any input from the Board Members in regards to this request.

There was no response.

Mrs. Marin asked how the Madero Park was dedicated.

Mr. Zavala stated that the Madero Park was presented to and accepted by the City year's back. He added that the City had a deed for Madero Park.

There being no further discussion, Chairman Sheats entertained a motion. Mrs. Marin moved to approve the item as recommended by staff. Mr. Lopez seconded the motion. Upon a vote the motion passed unanimously.

Started: 5:39 p.m.

Ended: 5:40 p.m.

Item #3.0

Public Hearing to Consider on Whether to Revoke or Not the Conditional Use Permit Issued to Ruben De Leon to Retain a Recreational Vehicle on Property Zoned Single-Family Residential at 126 S. Canal aka Lot 16, BK 13, Southwest #1 Subdivision

Chairman Sheats entertained a motion to remove the item from the 'Table'. Mr. Garza moved to remove the item from the 'Table'. Mr. Vela seconded the motion. Upon a vote the motion passed unanimously.

Mr. Zavala stated that the last time staff opened this item both testimonies were heard and the minutes for that meeting were attached in the P&Z packet as to what was disclosed and discussed. He added that he believed all the members of the P&Z Board were present and the message he got from the Zoning Commission was that they wanted to hear the comments from the owner/applicant himself (Mr. De Leon), but unfortunately he was not present, in that regard he didn't know if P&Z wanted to open up the public hearing or re-sustain P&Z's action which is due for re-evaluation in April 2011.

Chairman Sheats stated that at this point in time since this item was taken off the 'Table' it doesn't seem like the Board is gaining at all on getting the best information, which would be from the person who applied for the conditional use permit and the owner of the property himself.

There being no further discussion, Chairman Sheats entertained a motion to "*just continue*" the cup as is. Mr. Flores so moved. Mr. Garza seconded the motion. Upon a vote the motion passed unanimously. Mr. Sheats stated that the CUP stays as it is.

4.0 OTHER BUSINESS

Mr. Zavala stated that Mr. Jaime Acevedo had left the City and was now working for the McAllen School District.

Mr. Zavala stated that as far as the next meeting, Hunt Valley Development would be proposing the acceptance of linear parks to be dedicated to the city.

Chairman Sheats asked if the city's acceptance of parks from Hunt Valley is in lieu of park fees.

Mr. Zavala replied, "Yes".

Chairman Sheats asked if the park fees obtained from all over the city were dumped into one fund.

Mr. Zavala replied, "No".

Mr. Zavala stated that he would explain to the P&Z in regards to the Park Board, the park zones and the park dedication process.

5.0 ADJOURNMENT

There being no further items for discussion, Chairman Sheats entertained a motion to adjourn. Mr. Garza moved to adjourn. Mr. Vela seconded the motion. Upon a unanimous vote, the meeting adjourned at 5:44 p.m.

Ned Sheats, Chairman
Planning and Zoning Commission