

**CITY OF RICHARDSON
CITY PLAN COMMISSION MINUTES – OCTOBER 1, 2013**

The Richardson City Plan Commission met on October 1, 2013, at 7:00 p.m. at City Hall in the Council Chambers, 411 W. Arapaho Road, Richardson, Texas.

MEMBERS PRESENT: Barry Hand, Chairman
Gerald Bright, Vice Chair
Janet DePuy, Commissioner
Marilyn Frederick, Commissioner
Thomas Maxwell, Commissioner
Eron Linn, Commissioner
Bill Ferrell, Alternate
Stephen Springs, Alternate

MEMBERS ABSENT: Randy Roland, Commissioner

CITY STAFF PRESENT: Sam Chavez, Assistant Director – Dev. Svcs – Planning
Israel Roberts, Development Review Manager
Chris Shacklett, Senior Planner
Kathy Welp, Executive Secretary

BRIEFING SESSION

Prior to the start of the regular business meeting, the City Plan Commission met with staff to receive a briefing on staff reports and agenda items. No action was taken.

MINUTES

1. Approval of the minutes of the regular business meeting of September 17, 2013.

Motion: Commissioner DePuy made a motion to approve the minutes as presented; second by Commissioner Frederick. Motion passed 7-0.

CONSENT AGENDA

All items listed under the Consent Agenda are considered to be routine by the City Plan Commission and will be enacted by one motion in the form listed below. There will be no separate discussion of these items unless desired, in which case any item(s) may be removed from the Consent Agenda for separate consideration.

2. First International Bible Church (companion to Item 3): A request for approval of a site and landscape plan for the development of a one-story, 11,503 square foot religious facility. The 1.74-acre site is located at 1233 E. Belt Line Road, on the north side of Belt Line Road, west of Plano Road.

Motion: Vice Chair Bright made a motion to approve the Consent Agenda as presented; second by Commissioner Maxwell. Motion approved 7-0.

PUBLIC HEARINGS

- 3. Belt Line/Glenville Addition, Lots 2, 3A and 6, Block 2 (companion to Item 2):** Consider and take necessary action on a request for approval of a replat of Block 2 of the McDonald Heights East Addition, and Lot 3 of the Belt Line/Glenville Addition into three lots. The 3.85-acre site is located at 1231 (Lot 3A), 1233 (Lot2), and 1234 (Lot 6) Belt Line Road; on the north side of Belt Line Road, west of Plano Road.

Mr. Roberts stated the requested replat would create three (3) legal lots of record for the proposed development of an 11,000 square foot church facility. In addition, the replat reflects the existing easements on proposed Lots 6 and 3A, and dedicates the necessary easements for the church facility on proposed Lot 2.

With no questions for staff, Chairman Hand opened the public hearing. No comments or questions, either in favor or opposed, were received and Chairman Hand closed the public hearing.

Motion: Commissioner DePuy made a motion to approve Item 3 as presented; second by Commissioner Linn. Motion approved 7-0.

- 4. Zoning File 13-05:** Consider and take the necessary action on a request by Travis Bousquet, representing The Bousquet Group, Inc., to rezone a 2.1-acre lot from LR-M(1) Local Retail with special conditions to LR-M(1) Local Retail with amended special conditions to accommodate redevelopment of an existing restaurant building and for approval of a Special Permit for a restaurant with drive-through service located at 350 S. Plano Road, on the west side of Plano Road, south of Belt Line Road.

Mr. Shacklett advised that the applicant was requesting to amend the special conditions and obtain a Special Permit for a 3,600 square foot drive-through restaurant located on the northern portion of 2.1-acre site located at 350 S. Plano Road.

Mr. Shacklett presented a brief history of the site development noting the previous zoning had conditions limiting the property to two buildings with concept plan and elevation approval, as well as screening and landscaping along the southern property line and providing access from Plano Road westward to Glenville. He added the proposed restaurant would have a drive-through wrapping around the north corner of the building and would require 36 parking spaces, all of which are available on site.

Mr. Shacklett noted that as part of the proposal, the existing Furr's building would be converted into a multi-tenant retail building with approximately one-third retail and two-thirds restaurant uses. In addition, the applicant would add a 10-foot landscape buffer along Plano Road to meet the City's landscaping policies, as well as leaving the conditions in place from the current zoning (i.e., screening wall, access, etc.). He added that the existing Burlington Coat Factory would not be part of the request.

Regarding the construction of the proposed restaurant, Mr. Shacklett said the stand alone restaurant building would be of 90 percent masonry material using brick, stone, and stucco, with accents of metal canopies and awnings. The remodel of the existing Furr's would also be in compliance with the City's masonry requirements.

Mr. Shacklett stated staff was recommending that the existing special conditions that apply only to the Burlington property be removed with the exception of the conditions related to the 8-foot masonry wall and the Live Oak trees along the southern property line as well as the restriction of no building being located closer than 55 feet to the south property line.

Commissioner Linn asked to clarify if the original zoning was for two buildings – the Burlington Coat Factory and the Furr's Cafeteria, and was the current request to change the zoning and allow a third building.

Mr. Shacklett replied that was correct.

Commissioner Maxwell asked if the applicant was only going to remodel the existing Furr's would they still have to come before the Commission for approval.

Mr. Shacklett replied that was correct, there are existing elevations are part of the zoning and approval from the Commission would be required.

With no further questions for staff, Chairman Hand opened the public hearing.

Mr. Travis Bousquet, The Bousquet Group, 501 S. Carol Boulevard, Denton, Texas, stated his group, Raising Cain's, and the developer, Street Level Investments, were all present and ready to answer any questions or concerns. He advised that the investors and developers had sent the proposed plan to the Homeowners Association (HOA) president of the adjoining neighborhood and the main concern had to do with maintaining the existing wall. Also, in addition to maintaining the wall and the Live Oaks along the wall, the development group was planning to construct a 10-foot landscape buffer along Plano Road.

Regarding a question raised in the briefing session about timing and proposed uses in the Furr's building, Mr. Bousquet stated the development group was in negotiations with national retailers and national sit-down restaurants for tenancy, and the redevelopment of the building would coincide with the development of the Raising Cain's to meet some of the requirements from the investors.

Another question from the briefing session dealt with line-of-sight and Mr. Bouquet felt the 3,500 square foot Raising Crain's would have a minimal impact on the 70,000 square foot building located behind the proposed restaurant.

Commissioner DePuy asked if the HOA had any concerns other than the screening wall and trees, such as traffic impact in the area.

Mr. Bousquet replied the only questions from HOA were in regard to the wall and the trees.

Commissioner Linn stated he was concerned about the line-of-sight issue and asked if the applicant had had any conversations with representatives from the Burlington Coat Factory. He also wanted to know if the redevelopment of the Furr's building was optional.

Mr. Bousquet stated a Burlington representative had called asking questions regarding the proposal and an email was sent with a copy of the site plan, but no direct response was made by Burlington after the email.

Regarding redeveloping the Furr's building, Mr. Bousquet deferred to one of his associates.

Mr. Brian Sullivan, 3405 Howell, Unit 18, Dallas, Texas, replied the investors had looked at re-tenanting the Furr's building, but there was very little interest for a 10,000 square foot building, which is why they came up with the idea of changing it to a combination of retail and restaurant uses.

Commissioner Linn asked if it was possible to take half of the Furr's building and use it for the Raising Caine's restaurant.

Mr. Bousquet replied that under the City's parking code, retail use was parked at a lesser rate than restaurant, which would lead to a very large parking lot and that would not make the numbers work for Street Level Investments.

Vice Chair Bright asked if delaying a decision on the proposed request would cause any problems for the applicant.

Mr. Bousquet said they would prefer to move forward, but if a decision was made to postpone, he would like the Commission to specify their concerns so they could be addressed at the next meeting.

Chairman Hand called for any other comments in favor or opposed.

Mr. Dick Ferrell, 5948 Meletio Lane, Dallas, Texas, stated he owned the shopping center to the north of the Furr's building and was in favor of the proposal and felt the new development and investment in the area would be desirable.

Mr. Boyd Mouse, 1601 Elm Street, Thanksgiving Tower, 37th Floor, Dallas, Texas, stated he was legal counsel for the owner of the site where the Burlington Coat Factory is located. The owners, MDS Texas Realty One LP, are opposed to the proposal based on a Reciprocal Easement Agreement (REA) from the early 1980's.

Mr. Mouse explained the REA granted a non-exclusive perpetual easement over the Furr's parking areas and driveways for the benefit of the Burlington parcel, and the Burlington parcel did the same. He read an excerpt from the REA stating "*It is further agreed that Furr's shall not construct any barriers or obstructions on the Furr's parcel except as shown on the site plan.*" Therefore, he felt there was a contractually restricted agreement, of public record, that prevents what the applicant was proposing.

Mr. Mouse concluded his statement pointing out that the agreement was in place to protect the site lines and additional development would exacerbate the site line issues. In addition, he felt the proposed use would have an adverse effect on the parking and both of these issues could cause a problem for Burlington and could possibly result in an empty store on the site.

Commissioner Linn concurred with Mr. Mouse and said he understood why there was a REA in place and felt this was the core of the issue.

No other comments were received in opposition.

In rebuttal, Mr. Bousquet replied that as far as the site line issue, they had not completed detailed studies, but it would be something they will discuss along with any impact to the adjacent businesses.

Regarding access across the property and parking, Mr. Bousquet felt the proposed site plan maintained all the existing access easements and added additional easements. In addition, the existing parking would accommodate the proposed uses for the Furr's building as well as the proposed Raising Caine's restaurant.

Mr. Dan Watson, Street Level Investments, 5950 Berkshire Lane, Suite 200, Dallas, Texas, said the investors were aware of the REA and, because they took the agreement very seriously, sought legal advice from two different counsels to determine their rights and obligations under the agreement. As a result of the consultations, the legal counsel advised that the agreement states that whatever site plan configuration, now or in the future, allows access and parking protections for adjacent property owners and does not put restrictions upon building area.

Mr. Watson felt the amount of traffic and revenue Raising Cain's and the other retailers would bring to the area outweighed any line of site issues. He added that an example of similar businesses bringing additional traffic to the area could be seen across the street at the former Richardson Square Mall.

In concluding his comments, Mr. Watson stated that an earlier suggestion of only redeveloping Furr's building would not be a viable option because of the price the owner is asking for the property, the only way a private investor could achieve that price would be to upgrade the development and include the out-parcel opportunity that Raising Cain's provides.

Chairman Hand noted that correspondence had been received from the adjoining neighborhood association asking to continue the case for two weeks due to the inability of residents to attend the meeting because of National Night Block Parties being held on same night as the Commission's meeting.

Commissioner Linn asked a procedural question if the public hearing could be closed at the current meeting and then re-opened at a later date.

Chairman Hand replied that some action needed to be taken at the current meeting, whether that was to keep the public hearing open, or close it and make a deciding motion.

Commissioner Maxwell asked staff if the REA presented by Mr. Mouse was something that should be considered as part of the zoning request.

Mr. Chavez replied the REA was a private agreement between two property owners and not part of the zoning request. He also pointed out that if the Commission decided to close the public hearing and continue the item to another date, the item would have to be re-notified and suggested the Commission leave the public hearing open if the matter was going to be continued.

Vice Chair Bright asked in light of the REA presented by Mr. Mouse, would the City's attorney need to be consulted.

Mr. Chavez replied that would not be necessary.

Commissioner Springs asked if the email received from the neighborhood association gave any indication if they were in favor or opposed to the zoning request.

Chairman Hand read the email into the record:

“Thank you for the information. It is ashamed that the meeting is scheduled for tomorrow night when all the HOAs in the Neighborhood and City are involved with NNO. I know you have a 2nd meeting (Final) at the end of the month but by that time you may have only heard one side of the discussion which may not be fair to the citizens that live in the neighborhood. By changing to next Tuesday the three-four HOAs can participate in NNO and still have the opportunity to speak at the initial meeting on the rezoning. I am sure the Mayor and City Councilmen would agree. Thank you for your consideration of the change in the date for the rezoning hope to hear from you soon. Thank you, again. Take care. Francisco “Paco” Otal, GPHA President [sic].

Chairman Hand also noted that correspondence between Mr. Otal and Mr. Bousquet was available for the Commission to review.

Commission Linn asked if a motion was required to delay or continue the item for two weeks and, if so he was ready to make a motion to continue the public hearing.

Chairman Hand suggested a motion to delay should be made prior to any further deliberation, but offered the applicant an opportunity to comment on a delay.

Mr. Watson stated they would like to move forward, but if not, could all questions and concerns from the Commission be verbalized so they could make any changes or be better prepared for the next meeting.

Commissioner DePuy asked if the REA had previously been discussed with the applicant. She also wanted to know if the terminology in the REA referencing another retailer that is no longer in business and not Burlington Coat Factory should be considered.

Mr. Shacklett replied that the REA had been discussed with the applicant as it related to the fact that there was access between the two properties.

Regarding the terminology in the REA, Mr. Shacklett said he had not seen the copy presented by Mr. Mouse and could not comment on it.

Commissioner Frederick asked if the Burlington store had the same amount of building entrances as the former retailer, who had three entrances, because that might be of concern for line of site issue, however, if Burlington had only one major entrance she was not as concerned there would be a problem.

Commissioner Linn said the original retailer did have three building entrances and the Burlington store only has one, the main entrance on Plano Road.

Commissioner DePuy stated that the additional traffic that would be generated by Raising Cain's would be beneficial to Burlington, similar to what has been developed at the retail center across the street. In addition, she noted that information from the applicant mentioned the adjoining neighborhood association had expressed concern only with the screening wall and trees and not with the traffic, plus that item would go before the City Council and anyone could voice their opinion at that time.

Chairman Hand noted that there were three distinct issues involved in the zoning request: 1) the REA presented by Mr. Mouse; 2) the issue line of site and parking; and, 3) continuing the item to the next meeting.

Regarding the REA, Mr. Hand said the Commission was not a court and the burden was not on the Commission to make a judgment between private parties.

The second issue regarding the use of land and line of site was a concern based on prior experience where a restaurant was built in front of a grocery store and that action caused the store to go out of business and made the property less attractive to other tenants. He added that he concurred with Mr. Linn's concerns about the impact on line of site a restaurant would bring to the existing business, but was not particularly concerned that there would be parking issues.

Regarding the third issue, continuing the public hearing, Chairman Hand said he felt it would be undue burden on the applicant to have them come back because of scheduling problems. He added that he was not in favor of a continuation because anyone who would like to speak on the item could be heard at the City Council meeting.

Commissioner Linn was concerned that if the Commission and City Council approved the item and the Raising Cain's was not built because of possible legal concerns regarding the REA and questioned if the Commission should proceed with the item at the current meeting.

Commissioner DePuy said she did not think that the concerns raised by Mr. Linn were within the purview of the Commission.

Chairman Hand asked to clarify his position and said he would continue the item only because of the number of issues he enumerated earlier and not because the neighborhood has requested a delay.

Commissioner Springs agreed with Mr. Hand, but said the Commission should be equally fair to the applicant as they would be to someone who would like to appear and comment on an issue.

Chairman Hand replied that in the past when an application was delayed the end product would be better. He added that he felt the biggest problem was the line of site and the impact it would have the Burlington store.

Commissioner DePuy said she felt the current location of the Burlington building already put it at a disadvantage because it is so far back on the site and still thought that traffic generated by Raising Cain's would be beneficial to all.

Commissioner Ferrell concurred with Ms. DePuy and did not feel the REA was an issue because the intent was to have access to the site and the access was not being obstructed.

Vice Chair Bright stated he supported the request as presented and, although he was sympathetic to the neighborhood association, he did not feel the association had given enough information to justify a delay.

Commissioners Frederick and Maxwell concurred with Mr. Bright's statement and said that if the neighborhood association had other concerns outside the issue of the screening wall or the trees, they would have made a representative available for the public hearing. Ms. Frederick suggested the applicant reach out to the neighborhood association with a promise to maintain the wall and the trees.

Commissioner Linn said he was opposed to the item and closing the public hearing because he felt the Commission's charge was to decide what was best in terms of land use, and the fact that the adjoining property owner, Burlington, was opposed to the request.

Motion: Commissioner Linn made a motion to continue the Public Hearing for two weeks to the October 15, 2013 meeting. The motion failed for lack of a second.

Motion: Commissioner DePuy made a motion to close the Public Hearing and recommend approval of Zoning File 13-05 as presented; second by Commissioner Frederick. Motion approved 5-2 with Chairman Hand and Commissioner Linn opposed.

- 5. Zoning File 13-16:** Consider and take the necessary action on a request by Robert Sommerfelt, representing Gym Ratz Basketball Skills Club, LLC, for approval of a Special Permit for a basketball skills gym with modified development standards to be located at 750 N. Dorothy Drive, on the east side of Dorothy Drive, south of Arapaho Road. The property is currently zoned I-M(1) and I-FP(2) Industrial.

Mr. Shacklett stated the applicant was requesting approval of a Special Permit for a basketball skills gym and to modify development standards for 8,036 square foot lease space in a multi-tenant building at 850 Dorothy Drive. He added that the request would provide a basketball skills and trailing facility, but prohibit leagues and tournaments.

As part of the requested, Mr. Shacklett said a parking ratio of 1:500 was proposed for the use and with this ratio the property would provide 293 parking spaces, which is the required parking for the site, however, the applicant provided several parking counts at varied times during the weeks and there were never more than 82 of the 293 spaces being used.

Mr. Shacklett concluded his presentation by noting no correspondence had been received and highlighted the staff recommendations for special conditions.

Vice Chair Bright asked if the padded post posed a safety issue.

Mr. Shacklett replied that based on the description from the applicant there would be no full-court games, but half-court games and the padding was there as a precaution.

With no other questions for staff, Chairman Hand opened the public hearing.

Mr. Rob Summerfelt, 7615 Carter Valley Drive, Dallas, Texas said his vision was to open a basketball skills gym in the vacant warehouse to satisfy the need for more basketball space as well as provide an opportunity for basketball players to improve their skills.

Mr. Summerfelt said the location was chosen because it was in the middle of the four high schools in the Richardson Independent School District (RISD). He added that the facility would help basketball players work on their shooting skills using technology evaluating the players on their shooting arc, dribbling skills and ball handling.

Mr. Summerfelt said the workout sessions will be 30 minutes long and the facility would track the player's progress or areas to work on. In addition, there will be coaches on hand to do personal instruction to individuals or groups of up to 10 players.

Commissioner DePuy asked if the applicant had started a business like this before and how many players did they anticipate would be using the facility.

Mr. Summerfelt said this was his first business, and had coached and played basketball almost his whole life and his partner was currently a basketball coach in the area. He added that the only similar business was located in Portland, Oregon and when he visited that facility on a Sunday afternoon there were 30 to 40 players present.

Vice Chair Bright asked if there would be trainers present and did the applicant know of any other facility that used the same technology.

Mr. Summerfelt replied that looking on the internet for basketball skills facilities, there are a few that have some of the technology, but nothing similar to what their facility would offer.

Regarding the trainers, Mr. Summerfelt said they currently have one trainer to start with, but he did envision letting outside trainers bring in their clients to use their facilities.

Chairman Hand asked if the facility would be used for private parties, such as birthday parties.

Mr. Summerfelt replied that it would be possible if the person wanted to rent the space, but the size of the facility would limit the number of people who could attend.

No further comments or questions were made either in favor or opposed and Chairman Hand closed the public hearing.

Commissioner Linn complimented the applicant on his creative idea and said there was a need for additional space and instruction.

Commissioner DePuy stated she would hope the facility would also be helpful for female basketball players.

Motion: Vice Chair Bright made a motion to recommend approval of Zoning File 13-16 as presented; second by Commissioner Linn. Motion approved 7-0.

ADJOURN

With no further business before the Commission, Chairman Hand adjourned the regular business meeting at 8:34 p.m.

Gerald Bright, Vice Chair
City Plan Commission