

PLANNING COMMISSION MEETING

July 9, 2013

7:00 P.M.

I. CALL MEETING TO ORDER

The meeting was called to order at 7:00 p.m. by Chairman Don Darby.

II. ROLL CALL

Members Present: Carolyn Ghantous, David Okum, Richard Bauer, Tom Vanover, Robert Diehl, Marge Boice and Don Darby

Others Present: Greg Dale, City Planner; Don Shvegza, City Engineer; and William McErlane, Building Official

III. REPORT ON COUNCIL

(No report presented at this meeting.)

IV. MINUTES OF THE REGULAR MEETING OF JUNE 11, 2013

Chairman Darby: We will ask for a motion to accept the Minutes of the June 11, 2013 Planning Commission meeting.

(Mrs. Boice made a motion and Mr. Vanover seconded that the Minutes be approved as written; with a unanimous "aye" vote from the Planning Commission Members, the June 11, 2013 Planning Commission Minutes were approved.)

V. OLD BUSINESS

- A. Chairman Darby: We will now go into Old Business: Conditional Use Permit, Outdoor Seating at Mi Familia Restaurant, 318 Northland Boulevard. Since this is a Conditional Use Permit being requested, we have to convene the hearing. Anyone who will be speaking on this issue, please stand and be sworn in.

(At this time Mr. Okum did swear in Mr. Jose Galicia, business owner of the Mi Familia Restaurant.)

Mr. Jose Galicia: The last time I was here, they told me to bring examples of my rail for my patio and my plan for landscaping. I believe you have a copy of the plan. I have brought an example of the rail and the paver that we are going to be using on the patio.

(At this time Mr. McErlane read his Staff comments and Greg Dale read Anne McBride's Staff comments.)

Mr. Okum: Mr. Dale, if variances were requested on this site by the Board of Zoning Appeals, then if the motion came from this Commission to allow the Conditional Use with approval of the Zoning Board approving variances, those variances will hold to a patio area only and not a structure?

Mr. Greg Dale: I understand the question and I think that would be up to the Board of Zoning Appeals and presumably they could make it clear that in approving those variances they are limiting it to that.

Mr. Okum: To a patio only?

Mr. Greg Dale: Yes.

Mr. Okum: So, based upon Ms. McBride's understanding and study of our Code, the parking area that is there that is not in that parking area based upon the photos that we received, this is in a grassy knoll area that is currently there?

Mr. Greg Dale: Yes, sir. That is my understanding.

Mr. Okum: Is there a green space issue, based upon the site or does this stand alone, Mr. McErlane?

Mr. McErlane: I can only rough it out based on Cagis aerial photos and if we were close I think it would merit someone doing an actual study of it. Based on what I could pull off Cagis, it looked like the existing green space is almost 33% and this paver patio only reduces it by less than half of a percent. The only other thing I wanted to point out was, with regard to the setbacks needed, we would typically not require them for a pavement area however as Ms. McBride pointed out to me today that in our definition of structure it specifically says outdoor seating facilities is a structure. I think it is pretty clear that they need a variance.

Mrs. Boice: I just wanted total clarification; if we do not have to-scale plans we have no way of knowing whether these variances will be needed or not needed, is that correct?

Mr. McErlane: I think the only one in question is the side yard setback. The building itself is set at the required setback of 50', so anything that encroaches into that front yard will need a setback variance. We believe, based on what has been represented to us that we are looking at a 30' setback to the patio as opposed to the front yard setback of 50'. The one that is questionable is the side yard principally because the side property line is actually in the neighboring property's parking lot, it is not at the edge of their pavement. It is an old non-conforming situation there. So, it is questionable where that property line lies on the west side.

Mrs. Boice: So, without a to-scale plan I have a problem dealing with that.

Chairman Darby: There is no one in the audience requesting to speak, so we are going to close the public hearing at this time.

Mr. Bauer: On the entry or exit off of the patio near that parking space, where the van is on the picture that I am looking at with the patio, is that now on grade? Or is that going to be a step out or has that been determined?

Mr. Jose Galicia: To get out to the door?

Mr. Bauer: No. From the gate out to the front part, not the door from the restaurant.

Mr. Jose Galicia: It is going to be swing door.

Mr. Bauer: Is that level then; there is not going to be a step down?

Mr. Jose Galicia: No, it is just one little step about six inches. It is going to be level with the sidewalk, there is like a little sidewalk in there. There is not going to be steps, pretty much it is almost even.

Mr. Bauer: The question did come up the last time about eliminating, or a suggestion to eliminate parking, as demonstrated by the photo. Are you leaving those parking spaces there or are you eliminating them?

Mr. Jose Galicia: The reason we are not moving the patio to the other side is because there is a little sewer in there.

Mr. Bauer: If I look at the comments from Staff, there is a photo showing a van parked in the parking spaces there and there was some discussion about that last time about eliminating that parking in there; are you leaving that parking there?

Mr. Jose Galicia: We are leaving that. There are no cars parking in there. Those cars are from the restaurant and we have a big parking lot on the other side of the restaurant. There are plenty of parking spaces.

Mr. Bauer: But those parking spaces will stay there?

Mr. Jose Galicia: Well, yes.

Chairman Darby: There has been some issues raised, is there any additional information that you would like to give us concerning the submittal; lack of scale and also anticipating variances?

Mr. Jose Galicia: What do you mean?

Chairman Darby: Well, I think this Board is at a disadvantage without the exact dimensions.

Mr. Jose Galicia: When you see this part of the plan (demonstrating from submittal), we have 11' from here to here; and then 23' from here; and from here to here we have 20'.

Mr. Okum: I would like for you to explain that.

Mr. Jose Galicia: O.K. On this page we show 11' from this line to the patio.

Mr. Okum: Eleven foot from the property line to the west patio?

Mr. Jose Galicia: Yes. Using the plan from the front of the building; from my left side we have 11' to my patio, and from my exit door to the front of the sidewalk is 20'. If you stand in front of the patio, left to right is 25' long.

Mr. McErlane: Maybe I can help clarify a couple of things. If you look at the photograph with Anne McBride's report, you will notice at the window area in the middle it juts out 3' there. What he has indicated is at the corner it extends out 23' from the front of the building and 20' where that building juts out, and then it is 25' across. He has indicated that it is 11' from the property line and that is what he indicated on his site plan in May. From what we can tell off of aerial photo information, the building is at its required 50' setback, and that is to that area that juts out. So, if he is 20' from that, then we are looking at a 30' front-yard setback to the patio.

Mr. Vanover: Mr. Shvegza, the railing that we have here, are we going to have any life-safety code issues?

Mr. Shvegza: From the standpoint of any vehicles pending into the area? It is not curbed right now?

Mr. Jose Galicia: What do you mean?

Mr. Shvegza: Like a raised concrete divider?

Mr. Jose Galicia: No.

Mr. Shvegza: It is flush right now?

Mr. Jose Galicia: Yes.

Mr. Shveg zda: That is not the best situation for that location; although you indicated the vehicles that park in that parking spot, the critical area, are associated with the restaurant.

Mr. Vanover: That is still kind of a gray cloud that we have hanging over. I guess my other question is, in looking at a picture Mr. McErlane, is that support guide for that utility pole intruding into this area or is it clear of it?

Mr. McErlane: I think we looked at that previously, and I know on a previous drawing he had indicated where that guide wire was but we don't think it encroaches into it. And I think the applicant had indicated that he would check with OOPS for any underground electric that might be running through that area.

Mr. Okum: Prior to making a formal motion, if this Commission were to approve Conditional Use Variance on the site with a condition that the Board of Zoning Appeals granted the necessary variances for a patio area only and the applicant would go to the Board of Zoning Appeals at his liberty and change something from what we approve here, being something different than a patio only area; the Conditional Use Variance would go away because of the conditions set forth in our motion?

Mr. Greg Dale: Yes, sir. I believe that is the case.

Mr. Okum: So, based upon that, and I don't see any further comments coming from the Commission, are we ready for a motion?

Chairman Darby: We are ready.

Mr. Okum: Mr. Chairman, I would like to make a motion for Mi Familia Mexican Restaurant to have a Conditional Use Variance granted with the following conditions: It shall include Staff and City Engineer's, City Planner's recommendations and considerations. In regards to variances; the approval is conditional upon approval by the Springdale Board of Zoning Appeals of identified variances for a patio area only in this location. The landscaping conditions to include approval of a landscaping plan by Staff. In addition the site shall have a survey with means and bounds to be provided prior to the Board of Zoning Appeals hearing and consideration.

(Mrs. Ghantous seconded the motion. Mr. Okum, Mrs. Ghantous, Mr. Diehl and Mr. Darby voted "yes"; Mr. Bauer, Mr. Vanover and Mrs. Boice voted "no".)

Chairman Darby: The motion is defeated; four affirmative votes and three negative votes. In order for passage it would require five affirmative votes. Do you have questions about your options at this point?

Mr. Jose Galicia: I don't understand.

Chairman Darby: The plan that you submitted has been defeated.

Mr. Jose Galicia: It is no good?

Chairman Darby: No, I am not saying that it's not good, but as indicated in some of the discussions there are problems with the plan that was submitted. I would encourage you to work with Staff to present to this Board a cleaned-up version of your plan. You can incorporate the many considerations that have been given to us by Staff and also some of the comments that have been made by Commission Members. With that done you would be eligible to resubmit. Are there any comments from Staff while the applicant is still here?

Mr. McErlane: I think the major concerns are that you don't have a legitimate site plan that actually shows realistic setbacks and you are not certain where that property line is, so you need to have somebody come up with a site plan that shows accurately what the setback are to your patio from both the side lot line and the front lot line. I think those are the primary concerns by the Commission.

Mrs. Boice: I do like the pavers and I do like the fence but I do want to emphasize to you that you must have proper plans, to scale. It is obvious that you were leaning heavily on the City to be able to put this together for you and that is not basically the way it works. You need to come in with a to-scale plan; get somebody that can do that for you and we will be happy to look at this again.

## VI. NEW BUSINESS

- A. Chairman Darby: The item tonight for New Business is Conditional Use Permit for outdoor seating at D.J.'s Sports Bar, 380 Glensprings Drive. This also is a Conditional Use Permit hearing, so we will enter into a public hearing. Any person who will be commenting on this proposal that is before us will need to be sworn in at this time.

(Mr. Okum did swear in Mr. Dean Jiang, business owner; Mr. Chris Rosenberger, business manager; and Ms. Susanna McCullough, interpreter for owner.)

Ms. Susanna McCullough: First of all, he is glad to be here tonight and just to start his new business and hoping that he will be able to get the patio going for his new Sports Bar.

Mr. Chris Rosenberger: I am the new general manager. I believe we resubmitted some newer drawings after we read your Staff comments from the last meeting. I have also done some further work within the last couple of days, after I was informed of the parking lot and the parking space problem. Dean misunderstood that you wanted square footage for public use. I went and spent yesterday afternoon measuring places that are staff only, as opposed to public only; we are now at 49 / 78 in square footage, which takes us to 100 public parking spots plus the 10 that you require for the kitchen, plus the 13 you require for the extended patio, if you do give us the variance for the patio. That puts us at 123, and you say we require 124; so we are right in line if we get the variance. The new plans, I believe should show the exact markings where the lights should go on the outdoor patio and where the landscaping will go on the outside patio, as well.

(At this time Mr. McErlane, Greg Dale and Mr. Shveg zda read the Staff comments.)

Mr. Bauer: Mr. McErlane, can you explain the process that applicants typically go through when they apply? Is there a process where they come back and forth to you, asking questions and getting answers?

Mr. McErlane: The applications are submitted approximately one month before the meeting and the applicants are given comments usually within about a two week period of time after the application is submitted; they are given the comments and a week to make revisions and resubmit those.

Mr. Bauer: In that process are they allowed to speak to you on the phone and communicate with you?

Mr. McErlane: Yes.

Mr. Bauer: My second question Mr. McErlane, the applicant has indicated the space and the parking associated with the revised numbers, are you in agreement with those numbers that he is coming up with? And can you explain that to me because I am not understanding that?

Mr. McErlane: Well, we have a pretty heavy parking count based on public area at 1 per 50 square feet and that is typically those areas that are occupied by the public. I think the original number, as the applicant was indicating was 7,500 square feet included things like the toilet rooms, the serving areas and the bar area, the walk-in boxes and an area that leads back to some toilet rooms in the back of the restaurant. There is actually three toilet-room areas in the building so what they are expressing

is the net after they take those out is 5,000 square feet. I can't say that I can verify that because I haven't looked at that.

Mr. Okum: The angled parking on the side by the deck, I see five spots that will go away; is that correct Mr. Shvegza?

Mr. Shvegza: That appears to be correct; we would need to take a look at it to see how the circulation went around.

Mr. Okum: But you would need to approve that once the final plan would be submitted?

Mr. Shvegza: Correct.

Mr. Okum: In regards to lighting; I saw a cut sheet presented by the applicant regarding lights. I don't believe we have a set standard for outdoor seating lighting requirements, do we Mr. McErlane?

Mr. McErlane: No.

Mr. Okum: We probably do need it. We have outdoor dining in a number of restaurants. It is a safety issue but we don't have a set standard for that. After looking at this site from the last meeting that this was here, the one overhead pole light clearly belongs to what used to be Perkins, it is a pole mount and everything matches up to Perkins. When you are talking 123 parking spaces on a site, we have a very heavy requirement under our parking requirements for restaurants. Take a look at the restaurants in our community and except for Outback, which shares parking at their site, I think you see about 80% of the parking field mostly empty; this allows this Commission to give some flexibility to applicants. Given that, I am not saying to give away the store either; I just think there needs to be a reasonable approach to it.

Mr. Bauer: In regards to the guardrail, what are your plans for that?

Ms. Susanna McCullough: It is wood. He is planning to use wood.

Mr. Chris Rosenberger: And on every post up, a nine foot with a light over top of the patio.

Mr. Bauer: So, the outdoor seating lighting is off of the guardrail?

Mr. Chris Rosenberger: Yes, it will be overhead. The new plans show it every rail, I believe.

Mr. McErlane: I guess we need to clarify terminology. The building code refers to the rail around the deck as a guardrail. I think what Mr. Shvegza is talking about is a vehicular guardrail to keep somebody from backing into the deck from a parking space or running into it while driving.

Mr. Bauer: And that is what I was asking about.

Mr. McErlane: Relative to what the applicant is talking about with the light poles on it, that is the deck guardrail.

Mr. Chris Rosenberger: The deck guardrail, right.

Mr. Vanover: We are talking lighting and I want to make sure I understand what you are saying; the lighting fixtures are basically dual-head spotlight fixtures, correct?

Mr. Chris Rosenberger: Yes. They come off of each post, on the plan.

Mr. Vanover: We don't have any photo metrics on that; a lighting plan showing how much light is usable light hitting that surface because there is a life-safety issue that you, as well as we, are concerned with.

Mr. McErlane: My feeling is that two heads every 6' is overkill for that seating area. But, it would be worthwhile to get something that shows a reasonable lighting level on that deck.

Mr. Bauer: Going back to the vehicular guardrail; what are you anticipating that to be, what material?

Mr. Chris Rosenberger: For vehicular guardrail, that was not discussed in the comments but we can put one in if you desire, a vehicular guardrail in front of the regular deck guardrail to save it from getting hit.

Mr. Shvezda: The concern was that the deck was out into the pavement area and it needs to be separated and protected.

Mr. Chris Rosenberger: And that wasn't on the original plans?

Mr. Shvezda: It was on the original plans.

Mr. Okum: The understanding in building terms, a guardrail is the thing that goes around the deck, and in traffic engineering terms it is a vehicular guardrail.

Mr. Chris Rosenberger: So we will have both.

Mr. Okum: Correct. And there will be no outdoor entertainment?

Mr. Chris Rosenberger: No, none at all.

Mr. Okum: In Ms. McBride's comments, she stated under considerations, confirmation regarding outdoor entertainment on the deck. If I am making the motion, I am going to say "with the follow exception: no outdoor entertainment"; just so everybody on this Commission understands. I would also state that I would probably be making the motion for a reduction of parking spaces to 120, and leave it at that and make them prove out the 120; that is for Staff because that is their job and not ours.

Chairman Darby: Do you have plans for piped music?

Mr. Chris Rosenberger: We have piped music inside. We do have plans for a roll-out television to the patio but it will not be making sound. We are just going to have a quiet TV out there; I hope that is not considered outdoor entertainment.

Mr. Okum: Beef O'Brady's has a TV that faces outside to their deck.

Mr. Chris Rosenberger: If anything fell under the realm of entertainment, that would be it, a TV outside without sound. We will have our piped music inside.

Mr. Diehl: If I remember correctly from the last time, you have no food service going to the deck. In other words, you will have no waitresses or servers?

Mr. Chris Rosenberger: No waitresses or servers taking orders on the deck; if somebody wants to walk out with their cigarette and "what-have-you" then that is fine.

Mr. Diehl: O.K.

Chairman Darby: At this time we will close the public hearing.

Mr. Okum: Mr. Chairman I would like to make a motion to approve

D.J.'s Sports Bar, 380 Glensprings with the following conditions to include our Staff's, City Engineer's and City Planner's recommendations with the following exceptions: There will be no outdoor entertainment and there will be no outdoor audio. All lighting and re-lamping of existing fixtures shall conform with our existing zoning code. The lighting fixtures shall be of non-glare and shall not negatively impact the adjoining properties. Railings and fences shall meet the following conditions: The finish of the railings and guardrails on the deck system shall match the building finishes. The parking and drive site conditions shall include Staff approved vehicular guardrail and a reduction of the parking on the site shall be reduced to 120 spaces.

(Mr. Bauer seconded the motion and with six "yes" votes and one "no" vote from Mr. Vanover, the motion was passed with conditions.)

VII. DISCUSSION

Chairman Darby: Are there any items for discussion?

Mr. Okum: Tomorrow night at Washington Park from 5:00 p.m. until 7:00 p.m., there is a Strategic Regional Policy Plan; it is an open house and a little bit of an opportunity to find out what has evolved from the work, the surveys and input from the forms. It is free, except for parking; you will need to turn in a reservation. It is pretty important, it ties land use and our development infrastructure for roadways and systems and how it all ties together.

Mr. Vanover: Just a note, Thursday evening is the fortieth anniversary of Showcase Cinemas.

Chairman Darby: The next meeting is August 13th; is everyone anticipating being here?

Mr. Vanover: I will not be able to make that meeting.

VIII. ADJOURNMENT

Mr. Okum moved to adjourn; Mr. Vanover seconded the motion and the meeting adjourned at 8:04 p.m.

Respectfully submitted,

\_\_\_\_\_, 2013 \_\_\_\_\_  
Don Darby, Chairman

\_\_\_\_\_, 2013 \_\_\_\_\_  
Richard Bauer, Secretary