



**PLANNING AND ZONING COMMISSION MEETING
CITY COUNCIL CHAMBERS
757 North Galloway Avenue
Mesquite, Texas
May 26, 2020 - 7:00 P.M.
MEETING PARTICIPATION INSTRUCTIONS**

In accordance with the Governor's suspension of various provisions of the Texas Open Meetings Act issued pursuant to his state disaster authority, and guidance issued on the suspension by the Attorney General's Office:

1. A quorum of the Planning and Zoning Commission will participate in the meeting by telephone or by being physically present at the meeting location.
2. Applicants having matters on the agenda and interested parties may participate by telephone or by appearing at the meeting location.
3. All persons present at the meeting location must wear some form of covering over their noses and mouths and shall observe social distancing by remaining a minimum of six (6) feet from other meeting participants.
4. Members of the public may participate by telephone.
5. Applicants and/or member of the public desiring to participate in the meeting by telephone conference may do so by dialing the following local number on Monday, May 26, 2020, before, at or after 7:00 p.m. central time.

Telephone Conference Number: 214-396-6338
Participation Code (Meeting Id): 177-6111

Persons may INCREASE their listening volume by pressing *88.
Persons may DECREASE their listening volume by pressing *89.

Repeat as necessary to incrementally increase or decrease the listening volume.

Persons may press *5 to be recognized to speak during the public comment or public hearing portion of the meeting.

6. The meeting will be audible to all in-person and telephone participants and will allow for their two-way communication.
7. Comments may be made during the meeting upon recognition by the Chairperson or may be made in writing before 3:00 p.m. on May 26, 2020, to the following email address: glangford@cityofmesquite.com.
8. An electronic copy of the agenda packet will be posted online at the City of Mesquite's website (www.cityofmesquite.com).

The meeting will be recorded and made available to the public.

AGENDA

Pursuant to Section 551.071 of the *Texas Government Code*, the Planning and Zoning Commission may meet in a closed executive session to consult with the City Attorney regarding matters authorized by Section 551.071, including matters posted on this agenda.

COMMISSION BUSINESS

1. ROLL CALL.

2. INSTRUCTIONS.

City staff shall give verbal instructions for participation in the meeting.

PUBLIC COMMENTS

3. Any individual desiring to address the Planning and Zoning Commission regarding an item on the CONSENT AGENDA shall do so on a first-come, first-served basis. Comments are limited to three (3) minutes, except for a speaker addressing the Planning and Zoning Commission through a translator will be allowed six (6) minutes.

CONSENT AGENDA

All items on the Consent Agenda are routine items and may be approved with one motion; however, should any member of the Planning and Zoning Commission or any individual wish to discuss any item, said item may be removed from the Consent Agenda by a motion of the Planning and Zoning Commission.

4. MINUTES.

Discuss and consider approval of the minutes for May 11, 2020, Planning and Zoning Commission.

PUBLIC HEARINGS

The City Council may approve a different zoning district than the one requested, except that the different district will not: (1) have a maximum structure height or density that is higher than the one requested; or (2) change the uses to solely nonresidential uses when the request is for solely residential uses or vice versa.

5. ZONING APPLICATION No. Z0420-0134.

Conduct a public hearing and consider Zoning Application No. Z0420-0134 submitted by BGE, Inc. on behalf of Wynn/Jackson, Inc. for a Zoning Change from AG, Agriculture to Planned Development – Industrial to allow an industrial business park on an approximately 284-acre property generally located at the southwestern corner of FM 2932 and Interstate Highway 20 frontage road.

6. ZONING APPLICATION No. Z0420-0137.

Conduct a public hearing and consider Zoning Application No. Z0420-0137 submitted by JM Civil Engineering on behalf of Taun Dai for a Zoning Change from C, Commercial to Planned Development – General Retail to allow a convenience store and fueling station, located 2110 N. Town East Blvd.

7. ZONING APPLICATION No. Z0420-0138.

Conduct a public hearing and consider Zoning Application No. Z0420-0138 submitted by Marvin Cooksy to amend Conditional Use Permit, Ordinance No. 4714, regarding a screening wall for a primary outdoor storage yard, located 2533 Westwood Drive.

8. ZONING TEXT AMENDMENT No. 2020-01.

Conduct a public hearing and consider zoning text amendments to Mesquite Zoning Ordinance, Section 1-600, Temporary Uses and Structures; Section 6-102, Permitted temporary uses and structures; Subsection (C) currently titled “Temporary Batch Plant” to be retitled “Temporary Batch Plants and Temporary Material Stockpile Sites” all pertaining to new and revised regulations for temporary batch plants and temporary material stockpile sites.

9. ZONING TEXT AMENDMENT No. 2020-03.

Conduct a public hearing and consider zoning text amendments to Mesquite Zoning Ordinance, Section 5-200, currently titled “Appeal, Variance, and Special Exception Procedures” to be retitled “Special Exceptions, Variances, and Appeals of Administrative Decisions”; all pertaining to new and revised regulations and procedures for special exceptions, variances, and appeals of administrative decisions.

DIRECTOR’S REPORT

10. DIRECTOR’S REPORT.

Director’s Report on recent City Council action taken on zoning items at their meeting on May 20, 2020.

[NOTE: Commission action, *if any*, shall not be taken regarding the Director’s Report until Public Comments have been received.]

PUBLIC COMMENTS

11. Any individual desiring to address the Planning and Zoning Commission regarding the DIRECTOR’S REPORT or ANY OTHER MATTER not listed on the Agenda shall be allowed to speak for a length of time not to exceed three (3) minutes on a first-come, first-served basis. Citizens addressing the Planning and Zoning Commission through a translator will be allowed six (6) minutes.

At the conclusion of business, the Chair shall adjourn the meeting.

Pursuant to Section 30.06, Penal Code (trespass by license holder with a concealed handgun), a person licensed under Subchapter H, Chapter 411, Government Code (handgun licensing law), may not enter this property with a concealed handgun.

Conforme a la Sección 30.06 del Código Penal (entrada ilegal de persona titular de licencia con arma de fuego oculta), personas con licencia segun el Sub- capitulo H, Capitulo 411, Código de Gobierno (ley de permiso para portar arma de fuego), no deben entrar a esta propiedad portando un arma de fuego oculta.

Pursuant to Section 30.07, Penal Code (trespass by license holder with an openly carried handgun), a person licensed under Subchapter H, Chapter 411, Government Code (handgun licensing law), may not enter this property with a handgun that is carried openly.

Conforme a la Sección 30.07 del Código Penal (entrada ilegal de persona titular de licencia con arma de fuego a la vista), personas con licencia segun el Sub- capitulo H, Capitulo 411, Código de Gobierno (ley de permiso para portar arma de fuego), no deben entrar a esta propiedad portando una arma de fuego a la vista.

Pursuant to Section 551.007 (c) of the Texas Government Code any member of the public wishing to address the Planning and Zoning Commission through the use of a translator is granted at least twice the amount of time as a member of the public who does not require the assistance of a translator.

Conforme a la Sección 551.007 (c) del Código de Gobierno de Texas, cualquier miembro del público que desea dirigirse a la Comisión través del uso de un traductor se le otorga al menos el doble de tiempo como miembro del público que no requiere la asistencia de un traductor.

CERTIFICATE

I, Garrett Langford, Manager of Planning and Zoning for the City of Mesquite, Texas, hereby certify that the attached agenda for the Planning and Zoning Commission meeting to be held May 26, 2020, was posted on the bulletin boards at the Municipal Center and City Hall by May 22, 2020, before 6:00 p.m. and remained so posted until after the meeting. This notice was likewise posted on the City's website at www.cityofmesquite.com for a minimum of 72 hours prior to the meeting.



Garrett Langford, AICP
Manager of Planning and Zoning
City of Mesquite, Texas

**MINUTES OF THE PLANNING AND ZONING COMMISSION MEETING,
HELD AT 7:00 P.M., MAY 11, 2020, 757 NORTH GALLOWAY AVENUE,
MESQUITE, TEXAS**

Present: Chairwoman Yolanda Shepard, Vice-Chair David Gustof, Ronald Abraham, Sherry Williams, Debbie Anderson, Sheila Lynn, Claude McBride, Alternate Mildred Arnold

Absent:

Staff: Director of Planning & Development Services Jeff Armstrong, Manager of Planning & Zoning Garrett Langford, Planner John Chapman, Senior Assistant City Attorney Karen Strand, Senior Administrator Devanee Winn

In accordance with the Governor's suspension of various provisions of the Texas Open Meetings Act issued pursuant to his State Disaster Authority, and guidance issued on the suspension by the Attorney General's Office, this meeting was held by telephone conferencing to support social distancing. Commissioners and City staff attended the meeting via telephone conference with the exception of Mr. Armstrong and Mr. Langford, who were present in the City Council Chamber and practiced social distancing.

COMMISSION BUSINESS

1. ROLL CALL

Manager of Planning & Zoning Garrett Langford called on each Commissioner for the record. Each Commissioner answered yes if they were present by conference call. Chairwoman Shepard called the meeting to order and declared a quorum present.

2. INSTRUCTIONS

Mr. Langford gave verbal instructions for participation in the meeting.

CONSENT AGENDA

3. PUBLIC COMMENTS.

4. MINUTES.

Discuss and consider approval of the minutes for March 23, 2020, Planning and Zoning Commission.

5. PLAT APPLICATION No. PL0419-0108.

Consider Application No. PL0419-0108 submitted by Claymoore Engineering on behalf of Stallion Town East, LLC., to subdivide the property into five lots, located at 1900 block of N. Town East Blvd.

6. PLAT APPLICATION No. PL0519-0114.

Consider Application No. PL0519-0114 submitted by Peloton Land Solutions, Inc. on behalf of Heartland Retail, LLC., to subdivide the property into 12 lots, located at the southeast corner of FM 741 and IH – 20.

7. PLAT APPLICATION No. PL0420-0028.

Consider Application No. PL0420-0028 submitted by Westwood Professional Services, Inc., on behalf of MM TR South II, LLC., for Travis Ranch South, a 220-lot single-family subdivision in the Mesquite Extra-Territorial Jurisdiction, generally located at the northwest corner of FM 460 and US HWY 80.

There were no comments on the consent agenda from the Commission or the public via conference call. A motion was made by Ms. Debbie Anderson to approve the consent agenda as presented. Mr. David Gustof seconded. The motion passed unanimously.

PUBLIC HEARINGS

8. ZONING APPLICATION No. Z0420-0135.

Conduct a public hearing and consider Zoning Application No. Z0420-0135 submitted by Vilbig Associates on behalf of QuikTrip Corporation for a Zoning Change from LC, Light – Commercial to Planned Development – General Retail to allow a convenience store and fueling station, generally located at the southwestern corner of Lawson Road and Interstate Highway 20 frontage road.

Planner John Chapman briefed the Commission. Ms. Williams asked where the fence is located. Mr. Chapman referred to the fence exhibit slide and explained the fence would be located where the red dashed line is shown in the upper right-hand corner of the property. The fence will act as screening to prevent trash and debris from entering an adjacent property and is proposed to be removed after adjacent properties are developed. Mr. Gustof asked what the height of the sign is on Military Parkway and IH-635 QuikTrip property. Mr. Langford answered that it is 35 feet. The Applicant John Pimentel, 1120 Urban Industrial Blvd, Euless, TX, gave a presentation regarding the store security features. Chairwoman Shepard asked if there would be security cameras outside and around the fuel pumps. Mr. Pimentel answered, yes; there will be security cameras for the entire property, including the fuel pumps, to provide surveillance. Tommy Vilbig gave a presentation regarding the height of the pole sign and proposed change to the westbound Lawson Road IH-20 exit ramp. Mr. Vilbig explained that the reason for the additional sign height is that the Texas Department of Transportation (TxDOT) will be putting in an exit ramp in a location where commuters would not be able to see a 35-foot sign. Mr. Chapman continued Staff's presentation and stated concerns over the visibility of the 50-foot pole sign given changes in elevation and the approximate 1.6-mile distance from the pole sign and proposed Lawson Road exit. Jake Petras also with QuikTrip, recognized the staff presentation regarding the lack of visibility due to the elevation, but stated that the 50-foot pole sign would provide value and provide better exposure to commuters. He further added that he would like the Commission to approve the request with the 50-foot pole sign; however, they would accept a 35-foot pole sign to keep the entitlement process moving forward. QuikTrip will re-evaluate the situation if only a 35-foot pole sign is approved. Ms. Williams asked if QuikTrip could utilize one of the logo and directional signs from TxDOT. Director of Planning & Development Jeff Armstrong explained that TxDOT controls the logo signs. Staff would not know for sure if a logo sign would be available to QuikTrip near the proposed location. Chairwoman Shepard opened the public hearing. No one had any comments. The public hearing was closed. A motion was made by Mr. Abraham to approve with the proposed 50-foot pole sign. Ms. Lynn seconded. The motion passed unanimously.

DIRECTOR'S REPORT

9. PUBLIC COMMENTS.

At this time, any individual wishing to discuss the Director's Report shall be allowed to speak for a length of time not to exceed three (3) minutes on a first-come, first-served basis. Citizens addressing the Planning and Zoning Commission through a translator will be allowed six (6) minutes.

There were no public comments regarding the Director's Report.

10. DIRECTOR'S REPORT.

Director's Report on recent City Council action taken on zoning items at their meetings on April 20, 2020, and May 4, 2020.

Director of Planning and Development Services Jeff Armstrong briefed the Commission.

The City Council zoning actions taken on April 20, 2020, are as follows;

Application No. Z0220-0130, for a change of zoning by amending Planned Development - General Retail Ordinance No. 4270 on property located at 1711 West Scyene Road to allow additional uses permitted in the Planned Development - General Retail Ordinance No. 4270 and adding conditional use permits to allow the sale of used cell phones at Suite B and a carwash. **Approved by Ordinance No. 4774.**

City Council took no zoning actions on May 4, 2020.

Chairwoman Shepard called the meeting adjourned at 7:45 P.M.

Chairwoman Yolanda Shepard



PLANNING AND ZONING DIVISION

FILE NUMBER: Z0420-0134
REQUEST FOR: Planned Development
CASE MANAGER: Garrett Langford, Manager of Planning and Zoning

PUBLIC HEARINGS

Planning and Zoning Commission: Tuesday, May 26, 2020
 City Council: Monday, June 15, 2020

GENERAL INFORMATION

Applicant: BGE, Inc. on behalf of Wynn/Jackson, Inc.
Requested Action: Zoning change from Agricultural to Planned Development – Industrial to allow an industrial business park.
Location: 12955 FM 2932; generally located at the southwestern corner of FM 2932 and Interstate Highway 20.

SITE BACKGROUND

Platting: Not platted
Size: 284 +/- acres
Zoning: AG, Agricultural
Future Land Use: Trinity Pointe Special Planning Area
Zoning History: 2010 – Annexed and zoned AG – Agricultural

Surrounding Zoning and Land Uses (see attachment 3):

| | <u>ZONING</u> | <u>EXISTING LAND USE</u> |
|-------------------|----------------------------|--|
| NORTHWEST: | PD – Residential and AG | Subdivision under construction |
| NORTHEAST: | Outside of the City Limits | Small commercial developments |
| SOUTHWEST: | Outside of the City Limits | Future Phase for Heartland Residential Development |
| SOUTHEAST: | Outside of the City Limits | Undeveloped/Vacant |

CASE SUMMARY

The applicant, BGE, Inc. on behalf of Wynn/Jackson, Inc., is requesting a zoning change from Agricultural (AG) to Planned Development – Industrial (PD – I) to develop a 284-acre industrial business park. The proposed PD would establish a multi-lot, multi-building development primarily for warehouse distribution and light industrial uses. If the City approves the rezoning request, then the developer, Wynn/Jackson, will pursue potential tenants prior to the development of the site. The developer anticipates pursuing a development agreement with the City for possible financial incentives once a tenant is secured. The proposed PD – I includes restrictions on the intended uses and establishes standards regarding landscaping, screening, parking, and signage.

Development of the subject property will require negotiation and interlocal agreements with a couple of districts, water is served by Talty Special Utility District (SUD) and an interlocal agreement (ILA) with the Talty SUD will need to be negotiated and executed to determine how the water meter readings taken by Talty will be transmitted to the City of Mesquite so that sanitary sewer can be billed (along with solid waste and Drainage Utility District fees). Sanitary sewer can be provided through the Heartland Kaufman Municipal Utility District (KMUD), which will require interlocal agreements with Heartland KMUD and North Texas Municipal Water District. The developer will pursue these agreements after the rezoning, if approved.

MESQUITE COMPREHENSIVE PLAN

The *Mesquite Comprehensive Plan* designates the subject property as part of the Trinity Pointe Special Planning Area, which “is envisioned as a thriving business corridor with a variety of residential opportunities and outdoor spaces that interconnect. It is envisioned to be a premier community with a distinct character, while setting itself apart as a destination for family-friendly entertainment, high-quality retail, and innovative business services.” It further states, “industrial uses should be avoided along the highway frontage and focused on defined industrial business parks.”

STAFF COMMENTS:

The *Mesquite Comprehensive Plan* recommends that industrial uses along the interstate should be avoided and that they should be contained within an industrial business park. The proposed PD does establish an industrial business park with no frontage on IH-20. However, it was the intent of the *Mesquite Comprehensive Plan* for the City to perform additional land-use planning and establish additional zoning requirements for the desired land uses within the Trinity Pointe area. The additional land-use planning, which has not been done, would determine where certain uses, such as industrial, should be located in the Trinity Pointe area.

MESQUITE ZONING ORDINANCE

SECTION 4-201(A) PROPOSED USES

“An application for a PD district shall specify and the PD ordinance shall incorporate the category or type of use or the combination of uses, which are to be permitted in the PD district. Uses may be specified by reference to a specific zoning district, in which case all uses permitted

in the referenced district, including those permitted through the cumulative provision of the zoning ordinance, shall be permitted in the PD district. Uses requiring a Conditional Use Permit under the referenced district shall require a Conditional Use Permit under the PD district unless such use is specifically set out as permitted in the PD ordinance.”

STAFF COMMENTS:

The proposed PD will incorporate the Industrial zoning district as its base zone with all applicable regulations and uses, as amended, from the Mesquite Zoning Ordinance. However, the proposed PD will restrict certain retail uses and require manufacturing uses to obtain a Conditional Use Permit. The PD would allow warehouse distribution and light assembly uses as defined in the PD by right.

SEC. 4-201(B) DEVELOPMENT REQUIREMENTS

“An application for a PD district shall specify and the PD ordinance shall incorporate the development requirements and standards which are to be required in the PD district. Development requirements and standards may include, but are not limited to, density, lot size, unit size, setbacks, building heights, lot coverage, parking ratios, screening and other requirements or standards as the Council may deem appropriate. Development requirements and standards may be specified by reference to a specific zoning district, in which case all requirements and standards in the referenced district shall be applicable. The applicant or the City may propose varied or different standards that improve development design or enable a unique development type not otherwise accommodated in the Zoning Ordinance.”

STAFF COMMENTS:

Provided as Exhibit B (attachment 7), the proposed PD will include several changes to the development standards for the proposed industrial park. The PD standards include establishing additional landscaping and screening requirements along the perimeter of the property. It is Staff’s opinion that the changes meet and/or exceed the spirit and intent of the Mesquite Zoning Ordinance and *Mesquite Comprehensive Plan*.

SEC. 4-201(C) CONCEPT PLAN

“An application for a PD District shall include a concept plan showing a preliminary layout of proposed uses, access, buildings, parking, open space and the relationship to existing natural features and to adjacent properties and uses. The concept plan shall be construed as an illustration of the development concepts and not as an exact representation of all specific details.”

STAFF COMMENTS:

Exhibit C (attachment 8) includes the concept plan. The proposed PD allows the building sizes and the number of lots to change provided that all development requirements in the PD and City ordinances are met.

SEC. 3-301 LOT, SETBACK, AND HEIGHT REGULATIONS

The table below identifies the existing I zoning district regulations and the proposed regulations of this PD.

STAFF COMMENTS:

| | REQUIRED | PROPOSED |
|---|-----------------|-----------------|
| MAXIMUM LOT COVERAGE (%) | 75% | 75% |
| MINIMUM FRONT AND EXTERIOR SIDE YARDS (FEET) | 25 feet | 25 feet |
| MINIMUM INTERIOR SIDE AND REAR YARDS (FEET) | 0 feet | 0 feet |
| MAXIMUM STRUCTURE HEIGHT (FEET) | 75 feet | 75 feet |

The proposed development is not making any changes to the existing lot, setback, and height regulations of the I zoning district.

SEC. 1A-202(A) GENERAL SITE REQUIREMENTS - LANDSCAPING

All nonresidential districts shall have a minimum landscaped area of 10% of the site area.

STAFF COMMENTS:

| | REQUIRED | PROPOSED |
|---------------------------------------|-----------------|------------------|
| MAXIMUM LANDSCAPE AREA (%) | 10% | 10% |
| REQUIRED TREE RATIO | 1:500 s.f. | 1:500 s.f. |
| MINIMUM TREE SIZE INSTALLATION | 3" caliper inch | 3" caliper inch* |

The applicant proposes to meet the general landscaping requirements in the Mesquite Zoning Ordinance with one caveat. The PD would allow the developer to plant fewer but larger trees if its total caliper inches provided match what would be required if all trees were planted at 3 caliper inches. For example, Tract A on the concept plan is approximately 65.6 acres, which would require 6.56 acres of landscaping and 571 shade trees totaling in 1,713 caliper inches. Under the proposed PD, the developer could instead plant 343 trees at 5 caliper inches, which would result in 1,713 caliper inches. While this provision would reduce the number of trees, it would not decrease the aesthetic quality of the development as it would encourage larger trees at planting. This provision would not be allowed to reduce the number of trees required in the landscaped buffer and screening areas.

SEC. 1A-303 (A) DISTRICT SCREENING REQUIREMENTS

“An eight (8) foot high long-span precast concrete decorative screening wall and a buffer tree line shall be established and maintained along the property line abutting the residential district.”

STAFF COMMENTS:

District screening is required for the subject property where it bounds residential and agricultural zoning to the northwest. Instead of using an 8-ft concrete wall, the PD proposes an 80-ft buffer that would include a living screen consisting of evergreen trees or hedgerow 8 feet in height, a 6-ft tall wrought iron fence, and additional trees. The PD allows the existing tree canopy to be used as screening if it is preserved within the 80-foot buffers. A landscape and

screening buffer will be established along the property line adjacent to the Heartland Development southwest of the subject property even though it is outside of the city limits.

SEC. 1A-303 (D) NONRESIDENTIAL SERVICE AREAS ABUTTING A STREET

“When the service area of a nonresidential use is located so as to be visible from a street, a 10-foot wide landscape strip shall be created along the street right-of-way line, in which a solid screen, eight (8) feet in height, shall be established through the use of either (i) a solid landscape hedge planted in the center of the landscape strips, or (ii) a long-span precast concrete decorative screening wall located along the inside line of the landscape strip with shrubs and trees planted in front of the wall on the street side.”

STAFF COMMENTS:

The PD stipulates a higher standard for a living screen by requiring a 25-ft landscaped buffer, evergreen trees or hedgerow 8 feet in height, a wrought-iron fence, and additional trees.

CONCLUSIONS

ANALYSIS

While the Trinity Pointe Special Planning Area does allow for an industrial business park, the location and the standards for such a development has not been created. It is possible that the subject property could be developed for another use that is more complementary with the adjacent residential uses located within and outside of the City limits. The proposed PD attempts to address this issue by establishing large buffers with a substantial number of trees and vegetation to soften the edges of the industrial park. The proposed industrial park could provide a significant tax and employment base along the IH-20 corridor within Mesquite’s city limits. It is staff’s opinion that the proposed PD with its stipulations complies with the *Mesquite Comprehensive Plan*.

RECOMMENDATIONS

Staff recommends the approval of the zoning change to PD – Industrial with Exhibits A through C.

PUBLIC NOTICE

Staff mailed notices to all property owners within 200 feet of the subject property. As of the date of this writing, Staff has received one returned notice in favor of the request.

CODE CHECK

As of the date of this writing, the site does not have any open code cases.

ATTACHMENTS

1. Aerial Map
2. Public Notification Map
3. Zoning Map

File No.: Z0420-0134
Zoning Change

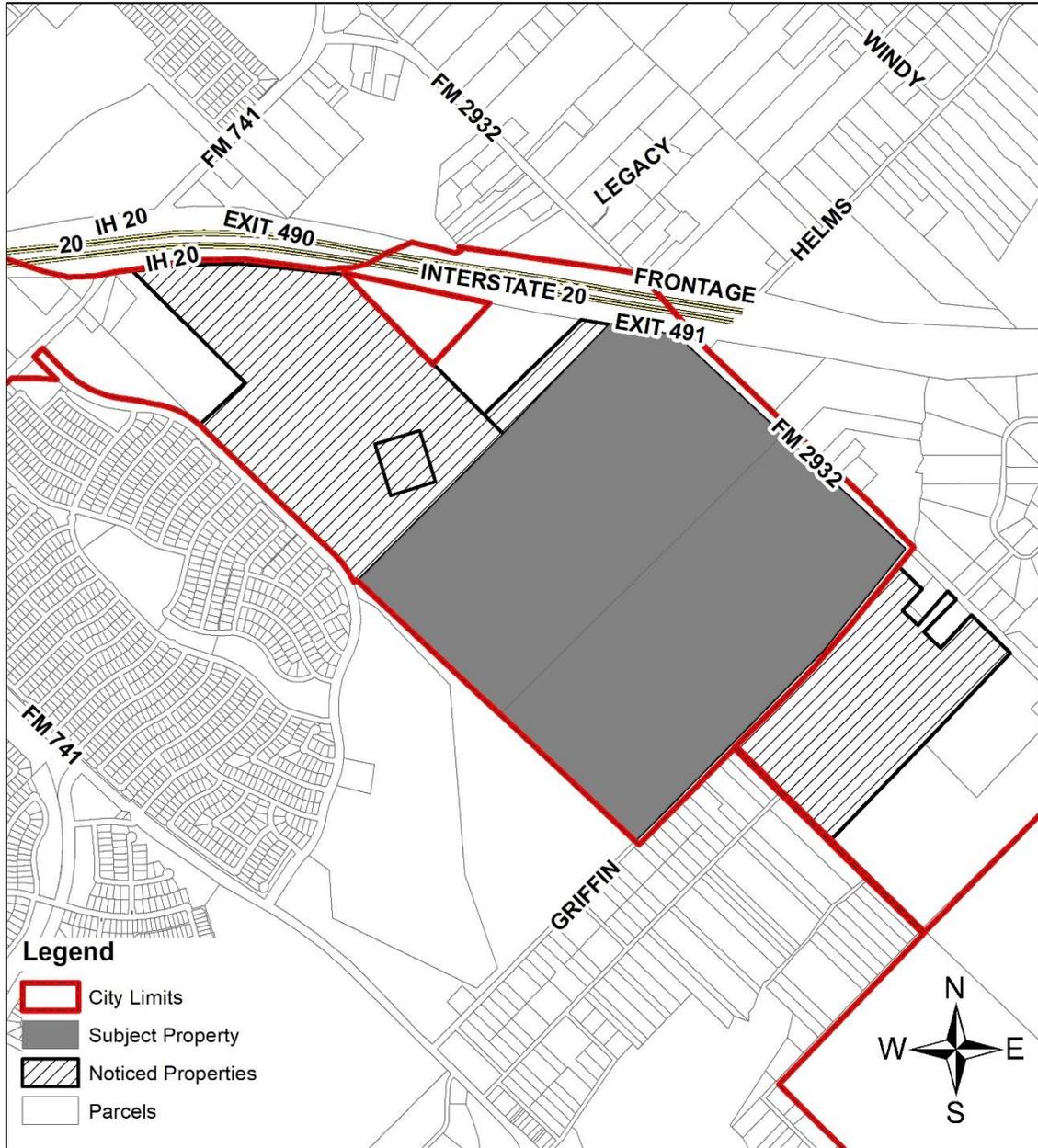
4. Future Land Use Map
5. Site Pictures
6. Exhibit A – Legal Description
7. Exhibit B – Planned Development Standards
8. Exhibit C – Concept Plan
9. 3-D Illustrations

Aerial Map

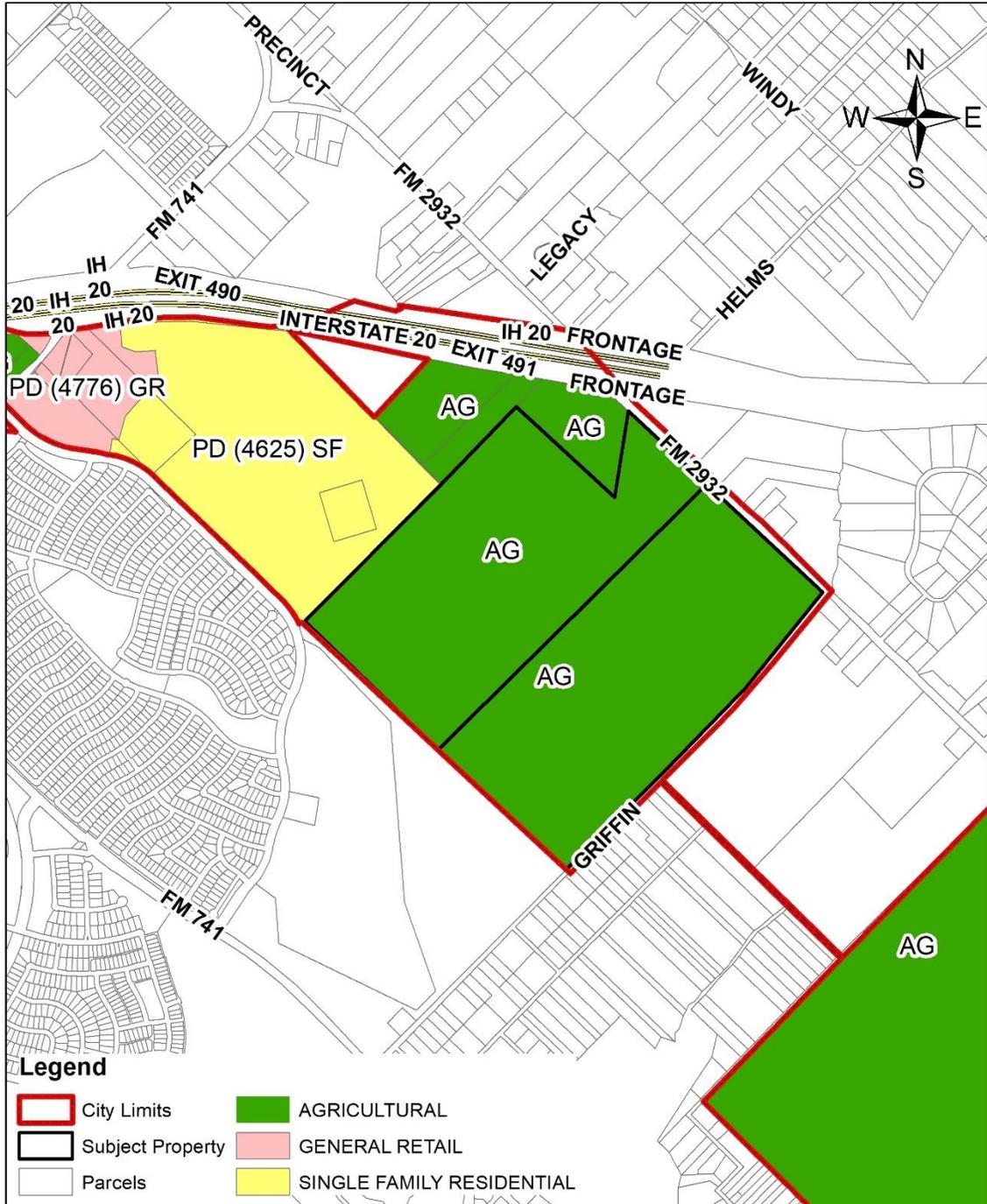


ATTACHMENT 2 – PUBLIC NOTIFICATION MAP

Notification Map: Zoning Case Z0420-0134

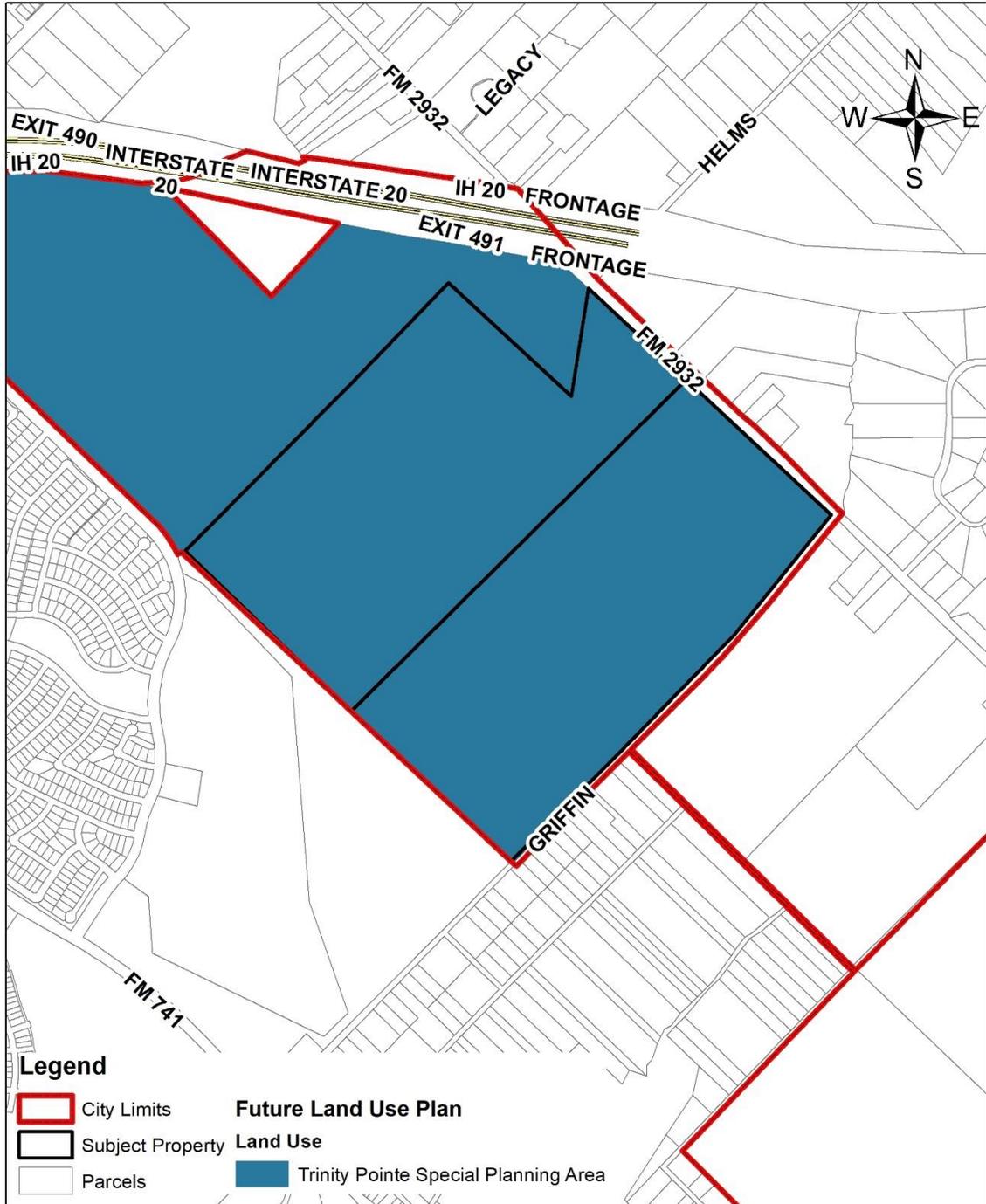


Zoning Map



ATTACHMENT 4 – FUTURE LAND USE MAP

Future Land Use Map



ATTACHMENT 5 – SITE PICTURES



View of the property Griffin Ln and FM 2932



View of the property from FM 2932 and IH 20 frontage road



View of the property from Griffin Lane



View from Heartland Amenity Center. The subject property is behind the tree line in the background.

ATTACHMENT 6 – EXHIBIT A – LEGAL DESCRIPTION

EXHIBIT "A"

LEGAL DESCRIPTION

BEING, all of that 283.517 acre (12,350,020 square foot) tract of land situated in the John Moore Survey, Abstract Number 309, in the City of Mesquite, Kaufman County, Texas; being parts of those tracts of land described as Exhibit A, Tract 2 and Exhibit B, Tract 2 In Partnership Distribution and Partition Deed to Carolyn Crockett West, et al as recorded in Volume 1636, Page 43 of the Official Public Records of Kaufman County, Texas; said 283.517 acre tract of land being more particularly described by metes and bounds as follows:

BEGINNING, at a 1/2-inch iron rod with "DAA" cap found at the most northerly northwest corner of that tract of land described as Tract 4 in Special Warranty Deed to HW Heartland, L.P. as recorded in Volume 3119, Page 158 of the Official Public Records of Kaufman County, Texas; said point being an angle point in the southeast line of that called 41.500 acre tract of land described in Special Warranty Deed to D.R. Horton - Texas, Ltd. as recorded in Volume 5763, Page 43 of the Official Public Records of Kaufman County, Texas; said point being the west corner of said Exhibit A, Tract 2;

THENCE, North 44° 45' 38" East, at a distance of 668.48 feet passing a 5/8-Inch Iron rod with "PETITT RPLS 4087" cap found at the east corner of said 41.500 acre tract; said point being the south corner of that called 10.312 acre tract of land described in Special Warranty Deed to D.R. Horton - Texas, Ltd. as recorded in Volume 5853, Page 97 of the Official Public Records of Kaufman County, Texas; at distance of 1,898.52 feet passing a 3/4-inch iron pipe found at the east corner of said 10.312 acre tract; said point being an ell corner in the northwest line of said Exhibit A, Tract 2; continuing in all a total distance of 3,003.41 feet to a 5/8-Inch Iron rod with "BGE" cap set for corner;

THENCE, South 45° 14' 22" East, a distance of 1,234.92 feet to a 5/8-Inch Iron rod with "BGE" cap set for corner;

THENCE, North 08° 54' 23" East, a distance of 861.67 feet to a 5/8-inch iron rod with "BGE" cap set for corner in the southwest line of Farm-to-Market Highway No. 2932 (a 100-foot wide right-of-way);

THENCE, South 46° 07' 04" East, with the southwest line of said Farm-to-Market Highway No. 2932, a distance of 2,777.43 feet to a 5/8-Inch Iron rod with "BGE" cap set for corner;

THENCE, South 43° 52' 56" West, departing the southwest line of said Farm-to-Market Highway No. 2932, and partially along Griffin Lane (a generally recognized public road, no record of dedication found), a distance of 3,680.96 feet to a point for corner;

THENCE, North 46° 15' 57" West, at a distance of 44.21 feet passing a 1/2-inch iron rod with "DAA" cap found at the east corner of said Tract 4; said point being in the southwest line of said Exhibit B, Tract 2; continuing with the northeast line of said Tract 4 and the southwest lines of said Exhibit B, Tract 2 and said Exhibit A, Tract 2 in all a total distance of 3,564.33 feet to the POINT OF BEGINNING and containing an area of 283.517 acres or 12,350,020 square feet of land, more or less.



René Silvas
Registered Professional
Land Surveyor No. 5921



NOTES

Bearings are based on the Texas State Plane Coordinate System, Texas North Central Zone 4202, North American Datum of 1983, adjustment realization 2011.



BGE, Inc.

777 Main Street, Suite 1900, Fort Worth, TX 76102
Tel: 817-887-6130 • www.bgeinc.com
TBPELS Registration No. 10194416

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ATTACHMENT 7 – EXHIBIT B – PLANNED DEVELOPMENT STANDARDS

1. Except as provided herein, the site plan for the Property shall conform substantially to the Concept Plan, attached hereto as Exhibit “C”. The number of lots and the Permissible Building Area (“PBA”) sizes shown on Exhibit “C” may be modified provided that parking and other development standards are met. The orientation and location of structures, driveways and parking areas shown on Exhibit “C” may be modified to avoid conflict with utilities, floodplain and/or wetlands provided that parking and other development standards are met. However, in no case, shall screening and buffering requirements be modified. In the event of a conflict between the provisions of this ordinance and Exhibit “C”, the provisions of this ordinance control.
2. All uses permitted in the Industrial District are allowed on the Property except as modified in Subsections “a”, “b” and “c” of this paragraph. The uses permitted in the PD-I are subject to the same requirements applicable to the uses in the Industrial District, as set out in the Mesquite Zoning Ordinance. For example, a use permitted in the Industrial District only by conditional use permit (“CUP”) is permitted in this District only by CUP.
 - a. The following uses are prohibited on the Property:

| | |
|-----------------|--|
| SIC Code 32a: | Concrete Batch Plants |
| SIC Code 40: | Railroad Passenger Terminal |
| SIC Code 61: | Alternative Financial Institutions |
| SIC Code 593: | Used Merchandise |
| SIC Code 593a: | Pawnshops |
| SIC Code 5993: | Tobacco Stores |
| SIC Code 7299a: | Massage Parlors, Turkish and Steam Baths |
 - b. The following uses are allowed within the District:

| | |
|------------------|--|
| SIC Code xx-xxx: | Warehouse Distribution (as defined in Section 3) |
|------------------|--|
 - c. The following uses are allowed only by CUP in this District:

| | |
|------------------|-----------------------------|
| SIC Code 20-399: | Manufacturing Uses, general |
|------------------|-----------------------------|
3. Warehouse Distribution Definition: Warehouse Distribution is defined as a building or facility used for the storage and distribution of items/products, which may include (a) receiving, storing, shipping, distributing, preparing, and selling items/products and serving as a pick-up/drop-off location for items/products; (b) the parking, storage, incidental maintenance, fueling and use (including driving into and through the building for loading and unloading and parking inside the building) of automobiles, trucks, machinery and trailers, including outdoor loading and unloading; (c) printing; (d) limited assembly as defined below; (e) warehouse and office use; (f) using, handling or storing materials in the ordinary course of business, including any packaged merchandise to be sold, handled, and/or held for shipment to customers, maintenance of trucks and machinery, and fuel (including liquefied hydrogen or other alternative fuels) or batteries for any trucks, generators or other machinery or the equipment described in this definition; (g) installing and operating rooftop equipment such as satellite dishes, cellular antenna, and renewable energy systems, including solar energy systems and hydrogen fuel cell tanks and related

equipment; (h) installing and operating battery storage systems, electrical generators, and fuel tanks; and (i) ancillary and related uses for any of the foregoing, all on a twenty-four-hour, seven-days-per-week, fifty-two-weeks-per-year basis.

Definition:

Limited Assembly - The assembly of finished products or parts, predominantly from previously prepared materials, but excluding basic industrial processing. Such operations shall be determined by Health, Fire, and Building officials not to be a hazard or nuisance to adjacent property or the community at large, due to the possible emission of excessive smoke, noise, gas, fumes, dust, odor, or vibration, or the danger of fire, explosion, or radiation.

4. Parking: Warehouse Distribution/Manufacturing Uses:
 - a. Shall be the lesser of the following:
 - i. one (1) space for each three hundred (300) square feet of office/display area plus one (1) space for each one thousand (1,000) square feet of storage/plant area
 - ii. one (1) space for each one (1) employee on duty at peak shifts.
5. The overnight parking of heavy load vehicles and/or unmounted trailers is permitted as defined in Section 3-600 of the Mesquite Zoning Ordinance in areas designated on the Concept Plan, if it is associated with tenant(s) or owners(s) of the Property.
6. The truck court (including heavy load vehicle parking, overhead doors or loading docks) shall not face the proposed 60-ft public right-of-way shown on Exhibit C without screening. Where not screened by a building, the truck court shall be screened pursuant to Section 1A-303.D and further defined below in 6(a). Wood or chain link screening is prohibited. Said screening shall be provided prior to the issuance of a Certificate of Occupancy.
 - a. Solid Landscape Hedge under Section 1A-303.D.1. shall consist of the following:
 - i. Evergreen Screen "Hedge", shall be installed to create a continuous evergreen screen a minimum of eight feet in height at time of planting. The evergreens can be either evergreen trees that are full to the ground or large evergreen shrubs. Evergreen trees shall be planted a maximum of eighteen feet (18') on center. Large evergreen shrubs shall be planted a maximum of eight feet (8') on center.
7. The screening and buffer zones for the Property identified on Exhibit C shall include the following:
 - a. Zone A: An 80-ft landscaped buffer shall be established as shown on Exhibit C that will include the following:
 - i. A six-foot-high wrought iron fence;
 - ii. Evergreen trees selected from Section 1A-500 (excluding pine trees) shall be installed to create an Evergreen Visual Screen and further defined below.
 1. Evergreen Visual Screen shall be installed to create a continuous evergreen screen a minimum of eight feet in height at time of planting. The evergreens can be either evergreen trees that are full to the ground or large evergreen shrubs. Evergreen trees shall be planted a

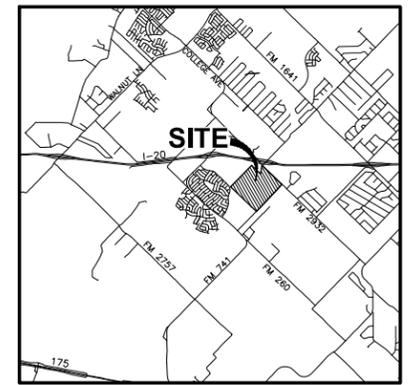
- maximum of eighteen feet (18') on center. Large evergreen shrubs shall be planted a maximum of eight feet (8') on center.
- iii. Trees shall be planted within the Buffer Zone at the following rate: 1-Shade Tree, 1-Evergreen Tree, or 3-Ornamental trees selected from Section 1A-500 shall be installed per 500 square feet of Buffer Zone where parking areas or buildings are between 80-ft and 100-ft from the property line. Where parking areas or buildings are constructed more than one hundred fifty feet (150') off of the property line, trees shall be planted within the Buffer Zone at the following rate: 1-Shade Tree, 1-Evergreen Tree, or 3-Ornamental trees selected from Section 1A-500 shall be installed per 1,200 square feet of Buffer Zone.
- b. Zone B: An 80-ft landscaped buffer shall be established as shown on Exhibit C that will include the following:
- i. A six-foot-high wrought iron fence;
 - ii. Evergreen trees selected from Section 1A-500 (excluding pine trees) shall be installed to create an Evergreen Visual Screen and further defined below.
 1. Evergreen Visual Screen shall be installed to create a continuous evergreen screen a minimum of eight feet in height at time of planting. The evergreens can be either evergreen trees that are full to the ground or large evergreen shrubs. Evergreen trees shall be planted a maximum of eighteen feet (18') on center. Large evergreen shrubs shall be planted a maximum of eight feet (8') on center.
 - iii. Trees shall be planted within the Buffer Zone at the following rate: 1-Shade Tree, 1-Evergreen Tree, or 3-Ornamental trees selected from Section 1A-500 shall be installed per 500 square feet of Buffer Zone where parking areas or buildings are between 80-ft and 100-ft from the property line. Where parking areas or buildings are constructed more than one hundred feet (100') off of the property line, trees shall be planted within the Buffer Zone at the following rate: 1-Shade Tree, 1-Evergreen Tree, or 3-Ornamental trees selected from Section 1A-500 shall be installed per 1,200 square feet of Buffer Zone.
 - iv. Preserving the existing tree canopy within Zone B as shown on Exhibit C will exempt the above requirements i-iii.
- c. Zone C: An 80-ft landscape buffer shall be established as shown on Exhibit C that will include the following:
- i. A six-foot-high wrought iron fence
 - ii. Evergreen trees selected from Section 1A-500 (excluding pine trees) shall be installed to create an Evergreen Visual Screen and further defined below.
 1. Evergreen Visual Screen shall be installed to create a continuous evergreen screen a minimum of eight feet in height at time of planting. The evergreens can be either evergreen trees that are full to the ground or large evergreen shrubs. Evergreen trees shall be planted a maximum of eighteen feet (18') on center. Large evergreen shrubs shall be planted a maximum of eight feet (8') on center.
 - iii. Trees shall be planted within the Buffer Zone at the following rate: 1-Shade Tree, 1-Evergreen Tree, or 3-Ornamental trees selected from Section 1A-500 shall be installed per 500 square feet of Buffer Zone where parking

- areas or buildings are between 80-ft and 100-ft from the property line. Where parking areas or buildings are constructed more than one hundred feet (100') off of the property line, trees shall be planted within the Buffer Zone at the following rate: 1-Shade Tree, 1-Evergreen Tree, or 3-Ornamental trees selected from Section 1A-500 shall be installed per 1,200 square feet of Buffer Zone.
- iv. Preserving the existing tree canopy within Zone C will exempt the above requirements ii.-iii.
- d. Zone D: A 25-ft landscape buffer shall be established as shown on Exhibit C that will include the following:
- i. A six-foot-high wrought iron fence.
 - ii. Evergreen trees selected from Section 1A-500 (excluding pine trees) shall be installed to create an Evergreen Visual Screen and further defined below.
 - 1. Evergreen Visual Screen shall be installed to create a continuous evergreen screen a minimum of eight feet in height at time of planting. The evergreens can be either evergreen trees that are full to the ground or large evergreen shrubs. Evergreen trees shall be planted a maximum of eighteen feet (18') on center. Large evergreen shrubs shall be planted a maximum of eight feet (8') on center.
 - iii. Trees shall be planted within the Buffer Zone at the following rate: One (1)-Shade Tree, 1-Evergreen Tree or 3-Ornamental trees (selected from Section 1A-500) shall be installed per 500 sf of Buffer Zone where parking areas or buildings are constructed within 80-ft and 100-ft of the property line. Where parking areas or buildings are constructed more than one hundred feet (100') off of the property line, trees shall be planted within the Buffer Zone at the following rate: One (1) -Shade Tree, one (1) Evergreen Tree or 3-Ornamental trees (selected from Section 1A-500) shall be installed for each 1,200-square feet of Buffer Zone.
 - iv. If the adjacent property is zoned agricultural or non-residential at the time the Property is developed, then the above requirement ii. will be exempt.
- e. Zone E: A 25-ft landscape buffer shall be established as shown on Exhibit C that will include the following:
- i. A six-foot-high wrought iron fence.
 - ii. Evergreen trees selected from Section 1A-500 (excluding pine trees) shall be installed to create an Evergreen Visual Screen where truck courts are visible from the public right-of-way and further defined below.
 - 1. Evergreen Visual Screen shall be installed to create a continuous evergreen screen a minimum of eight feet in height at time of planting. The evergreens can be either evergreen trees that are full to the ground or large evergreen shrubs. Evergreen trees shall be planted a maximum of eighteen feet (18') on center. Large evergreen shrubs shall be planted a maximum of eight feet (8') on center.
 - iii. 1-Shade Tree, 1-Evergreen Tree, or 3-Ornamental trees selected from Section 1A-500 shall be installed per 1,200 square feet of Buffer Zone.
 - iv. If a 14-ft tall wing wall is installed to cover the loading docks, then the planting of the evergreen trees in ii. will be exempt.

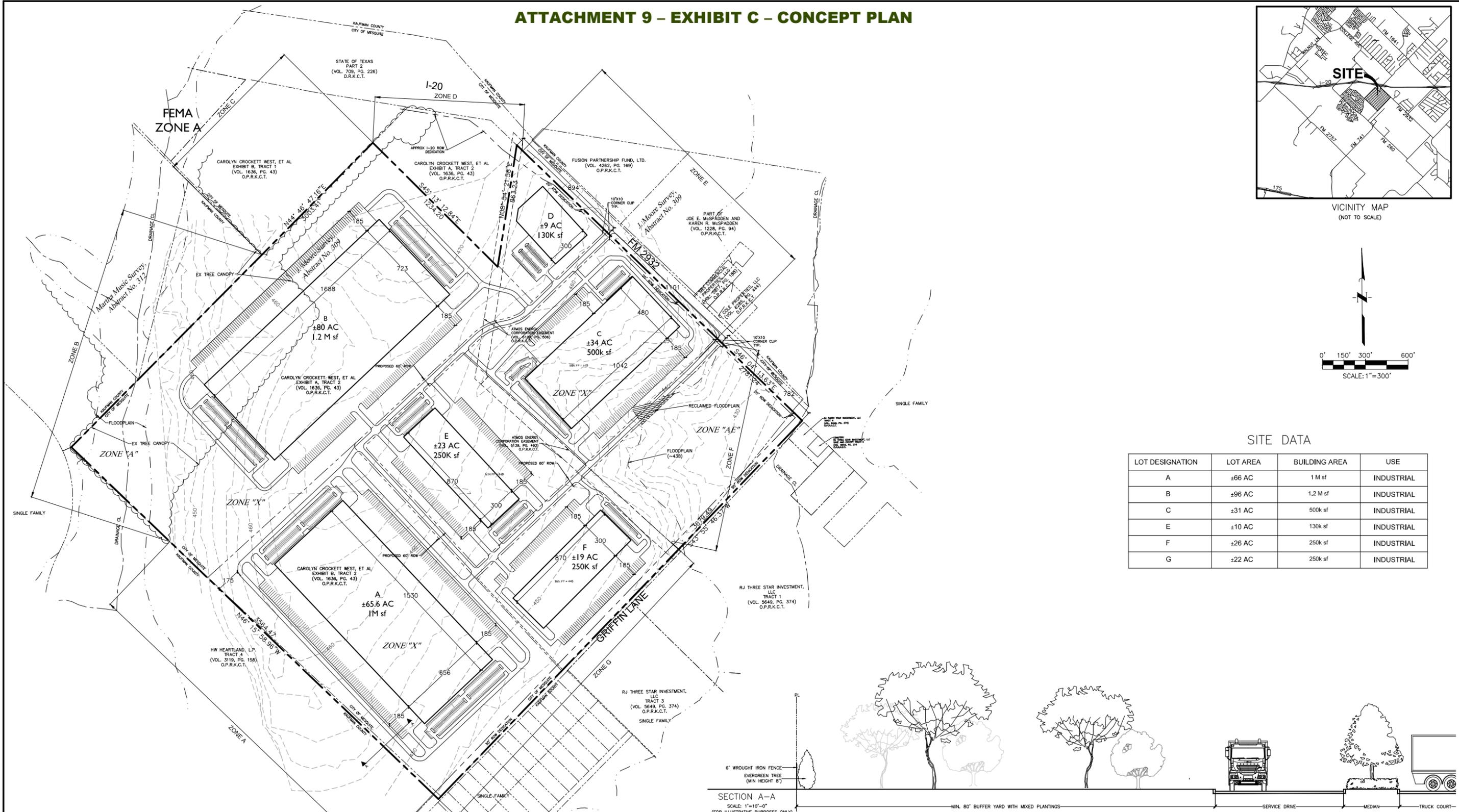
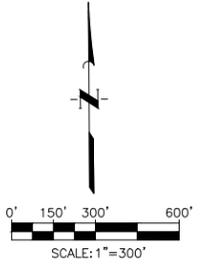
- f. Zone F: A 25-ft landscape buffer shall be established as shown on Exhibit C that will include the following:
 - i. Evergreen trees selected from Section 1A-500 (excluding pine trees) shall be installed to create an Evergreen Visual Screen where truck courts are visible from the public right-of-way and further defined below.
 - 1. Evergreen Visual Screen shall be installed to create a continuous evergreen screen a minimum of eight feet in height at time of planting. The evergreens can be either evergreen trees that are full to the ground or large evergreen shrubs. Evergreen trees shall be planted a maximum of eighteen feet (18') on center. Large evergreen shrubs shall be planted a maximum of eight feet (8') on center.
 - ii. 1-Shade Tree, 1-Evergreen Tree, or 3-Ornamental trees selected from Section 1A-500 shall be installed per 1,200 square feet of Buffer Zone.
 - g. Zone G: A 25-ft landscape buffer shall be established as shown on Exhibit C that will include the following:
 - i. A six-foot-high wrought iron fence
 - ii. Evergreen trees selected from Section 1A-500 (excluding pine trees) shall be installed to create an Evergreen Visual Screen where truck courts are visible from the public right-of-way.
 - 1. Evergreen Visual Screen shall be installed to create a continuous evergreen screen a minimum of eight feet in height at time of planting. The evergreens can be either evergreen trees that are full to the ground or large evergreen shrubs. Evergreen trees shall be planted a maximum of eighteen feet (18') on center. Large evergreen shrubs shall be planted a maximum of eight feet (8') on center.
 - iii. Trees shall be planted within the Buffer Zone at the following rate: 1-Shade Tree, 1-Evergreen Tree, or 3-Ornamental trees selected from Section 1A-500 shall be installed per 500 sf of Buffer Zone where parking areas or buildings are between 25-ft and 100-ft from the property line. Where parking areas or buildings are constructed more than one hundred feet (100') off the property line, 1-Shade Tree, 1-Evergreen Tree, or 3-Ornamental trees selected from Section 1A-500 shall be installed per 1,200 square feet of Buffer Zone.
 - h. Trees and landscaping installed in the buffers may be used to fulfill the tree requirement in Section 1A-202.A.2.
 - i. Trees in the buffer areas shall be planted in staggered rows over the entire length of the buffer.
 - j. The quantities of trees required to meet the Landscape Ordinance are based on each tree having a minimum caliper-inch of 3-inches. As an option, the Property may reduce the total number of trees planted by increasing the tree caliper-inch, only if the total caliper-inches required are matched. For example, if 100 trees are required per ordinance (100 trees x 3-inches = 300 caliper-inches), the Property may elect to plant 75 trees if each tree is 4 caliper-inch (75 trees x 4 inches = 300 caliper-inches).
8. The minimum building size for a warehouse, distribution or manufacturing use shall be 75,000 square feet.

9. A Property Owner's Association (POA) shall be established to maintain commonly owned facilities, landscape, screening buffers and open space throughout the Property.

ATTACHMENT 9 - EXHIBIT C - CONCEPT PLAN

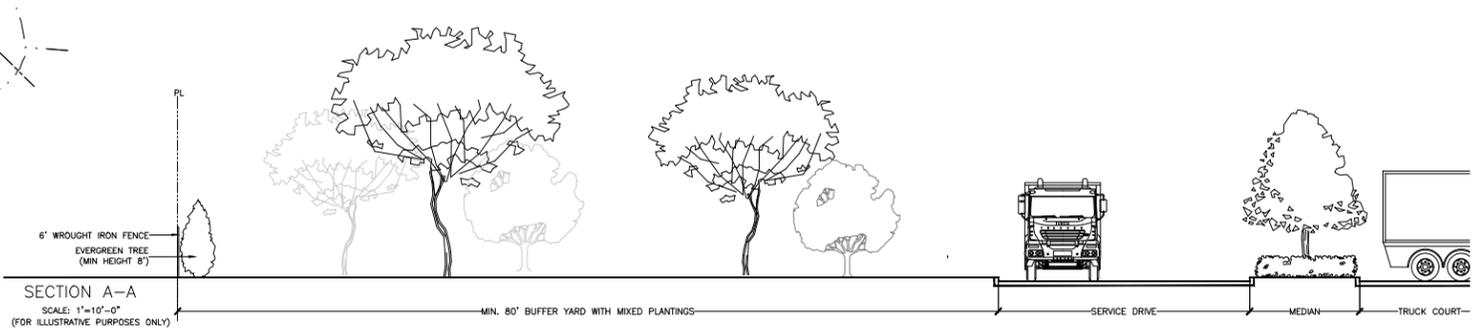


VICINITY MAP
(NOT TO SCALE)



SITE DATA

| LOT DESIGNATION | LOT AREA | BUILDING AREA | USE |
|-----------------|----------|---------------|------------|
| A | ±66 AC | 1 M sf | INDUSTRIAL |
| B | ±96 AC | 1.2 M sf | INDUSTRIAL |
| C | ±31 AC | 500k sf | INDUSTRIAL |
| E | ±10 AC | 130k sf | INDUSTRIAL |
| F | ±26 AC | 250k sf | INDUSTRIAL |
| G | ±22 AC | 250k sf | INDUSTRIAL |



- NOTES:
1. DEVIATIONS FROM CURRENT DEVELOPMENT STANDARDS/ REGULATIONS NOT SPECIFICALLY ADDRESSED/ LISTED FOR APPROVAL AS PART OF PLANNED DEVELOPMENT REGULATIONS MAY REQUIRE A HEARING/ APPROVAL BY THE BOARD OF ADJUSTMENT (BOA).
 2. ALL CURRENT DEVELOPMENT REQUIREMENTS OF THE CITY AS AMENDED SHALL BE MET UNLESS APPROVED OTHERWISE WITHIN THESE PLANNED DEVELOPMENT ZONING DISTRICT DEVELOPMENT REGULATIONS
 3. THIS ZONING CONCEPT PLAN IS FOR ILLUSTRATIVE PURPOSES ONLY AND SUBJECT TO CHANGE. THIS ZONING CONCEPT PLAN, ALONG WITH DEVELOPMENT REGULATIONS, IS INTENDED TO DESCRIBE THE INTENT OF THE PLANNED DEVELOPMENT.

BGE, Inc. G:\TX\Projects\Wynne_Jackson\7650-00-Mesquite_276_Area_Industrial_Tract\010_CADD\06_Enhanced\Zoning Exhibit\Exhibit C.dwg May 21, 2020-11:38am GScoggins

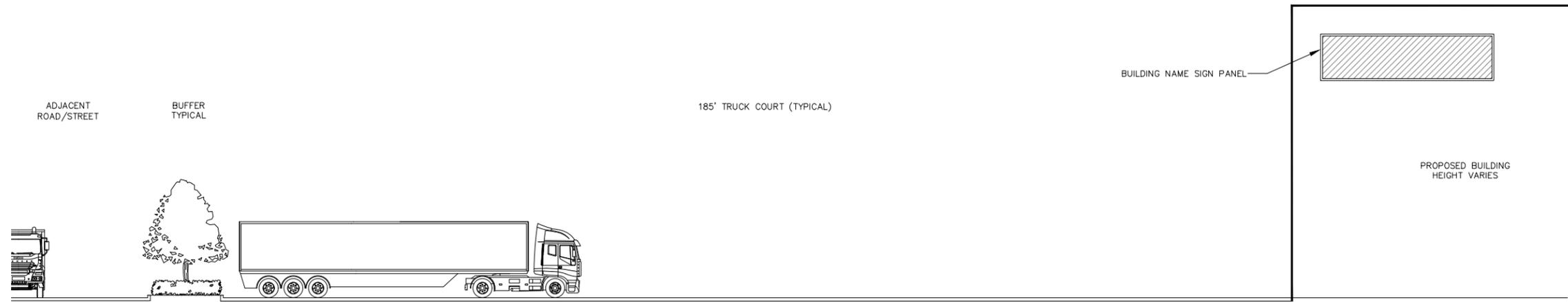
OWNER
CROCKETT WEST, LLC./ ESTATE OF GORDON WEST
2607 WOLFEN AVE. PMB 168
AMARILLO, TEXAS 79109
TEL: 806-673-6629
CONTACT: GORDON WEST
WPI@WESTPROPERTIESAMA.COM

DEVELOPER
WYNNE/JACKSON, INC.
600 NORTH PEARL ST, SUITE 650, L.B. 149
DALLAS, TEXAS 75201
TEL: 214-880-8620
CONTACT: MICHAEL JACKSON
MJACKSON@WYNNEJACKSON.COM

BGE, Inc.
2595 Dallas Parkway, Suite 101
Frisco, TX 75034
Tel: 972-464-4800 • www.bgeinc.com
TBPE Registration No. F-1046
Contact: GARRETT SCOGGINS
Tel: 972-464-4858

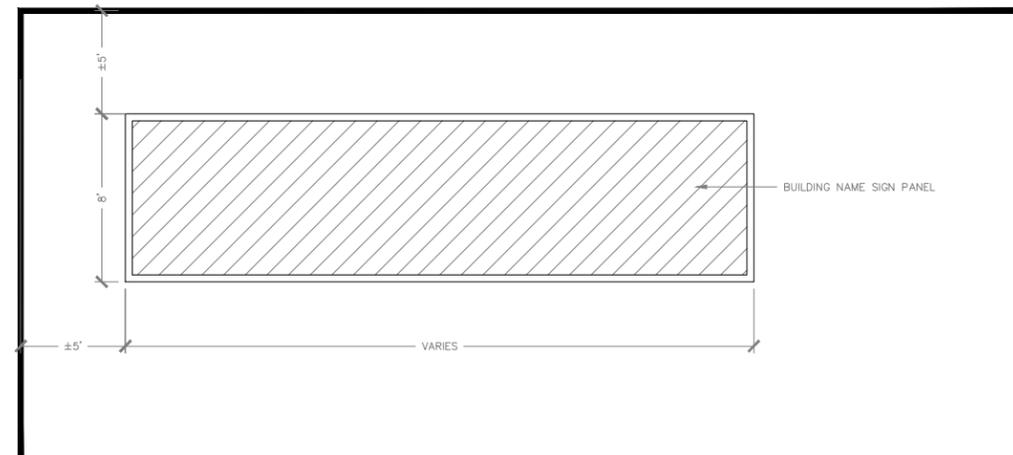
EXHIBIT C - ZONING CONCEPT PLAN
WYNNE JACKSON 2932 INDUSTRIAL PARK
BEING 283.598 ACRES
JOHN MOORE SURVEY, ABSTRACT NUMBER 309
CITY OF MESQUITE, KAUFMAN COUNTY, TEXAS
MAY 2020

ATTACHMENT 9 – EXHIBIT C – CONCEPT PLAN



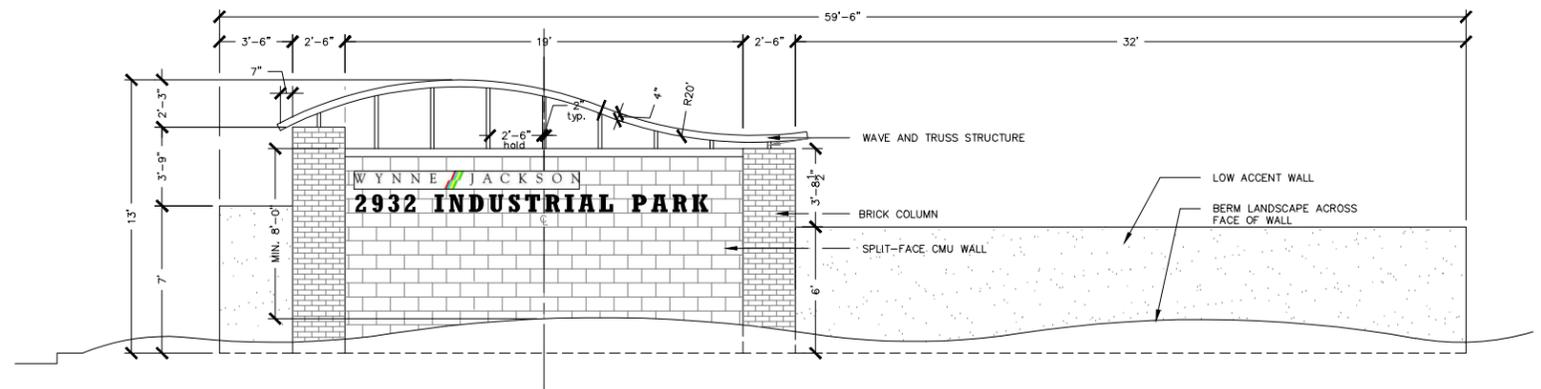
A BUILDING MONUMENT SIGN PANEL
ELEVATION

SCALE: 1"=10'-0"



B BUILDING MONUMENT SIGN PANEL - ENLARGEMENT
ELEVATION

SCALE: 1/4"=1'-0"



C MONUMENT SIGN - TYPICAL 2932 ENTRANCE
ELEVATION

SCALE: 1/4"=1'-0"

- NOTES:
1. DEVIATIONS FROM CURRENT DEVELOPMENT STANDARDS/ REGULATIONS NOT SPECIFICALLY ADDRESSED/ LISTED FOR APPROVAL AS PART OF PLANNED DEVELOPMENT REGULATIONS MAY REQUIRE A HEARING/ APPROVAL BY THE BOARD OF ADJUSTMENT (BOA).
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DALLAS, TEXAS 75201
TEL: 214-880-8620
CONTACT: MICHAEL JACKSON
MJACKSON@WYNNEJACKSON.COM

BGE, Inc.
2595 Dallas Parkway, Suite 101
Frisco, TX 75034
Tel: 972-464-4800 • www.bgeinc.com
TBPE Registration No. F-1046
Contact: GARRETT SCOGGINS
Tel: 972-464-4858
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EXHIBIT C - MONUMENT SIGN
WYNNE JACKSON 2932 INDUSTRIAL PARK
BEING 283.598 ACRES
JOHN MOORE SURVEY, ABSTRACT NUMBER 309
CITY OF MESQUITE, KAUFMAN COUNTY, TEXAS
MAY 2020



for:
WYNNE JACKSON
600 North Pearl, Ste 650
Dallas, Texas 75201

BGE
BGE, Inc.
2595 Dallas Parkway, Suite 101
Frisco, TX 75034
Tel: 972-464-480 www.bgeinc.com

Mesquite Development Site

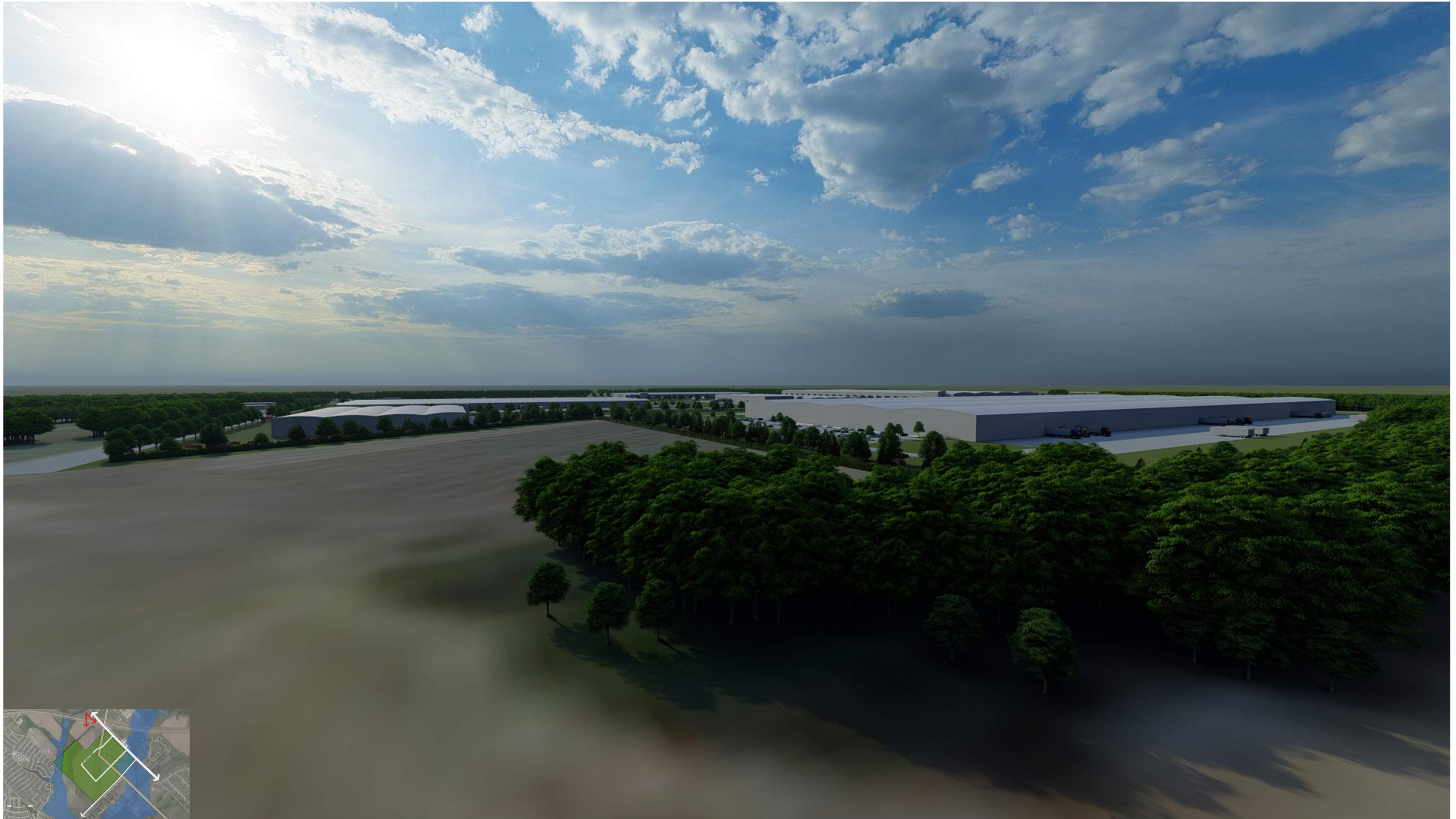
Griffin Lane & FM 2932

Mesquite, Texas

5/19/2020

VIEW OF ENTRY MONUMENT SIGN

By: B.MANN
This concept plan is intended for conceptual developmental use and shall not be interpreted as an official or submitted document. All aerial and map images were attained from best available information. This plan is subject to change.



for:
WYNNE JACKSON
600 North Pearl, Ste 650
Dallas, Texas 75201



BGE, Inc.
2595 Dallas Parkway, Suite 101
Frisco, TX 75034
Tel: 972-464-480 www.bgeinc.com

Mesquite Development Site

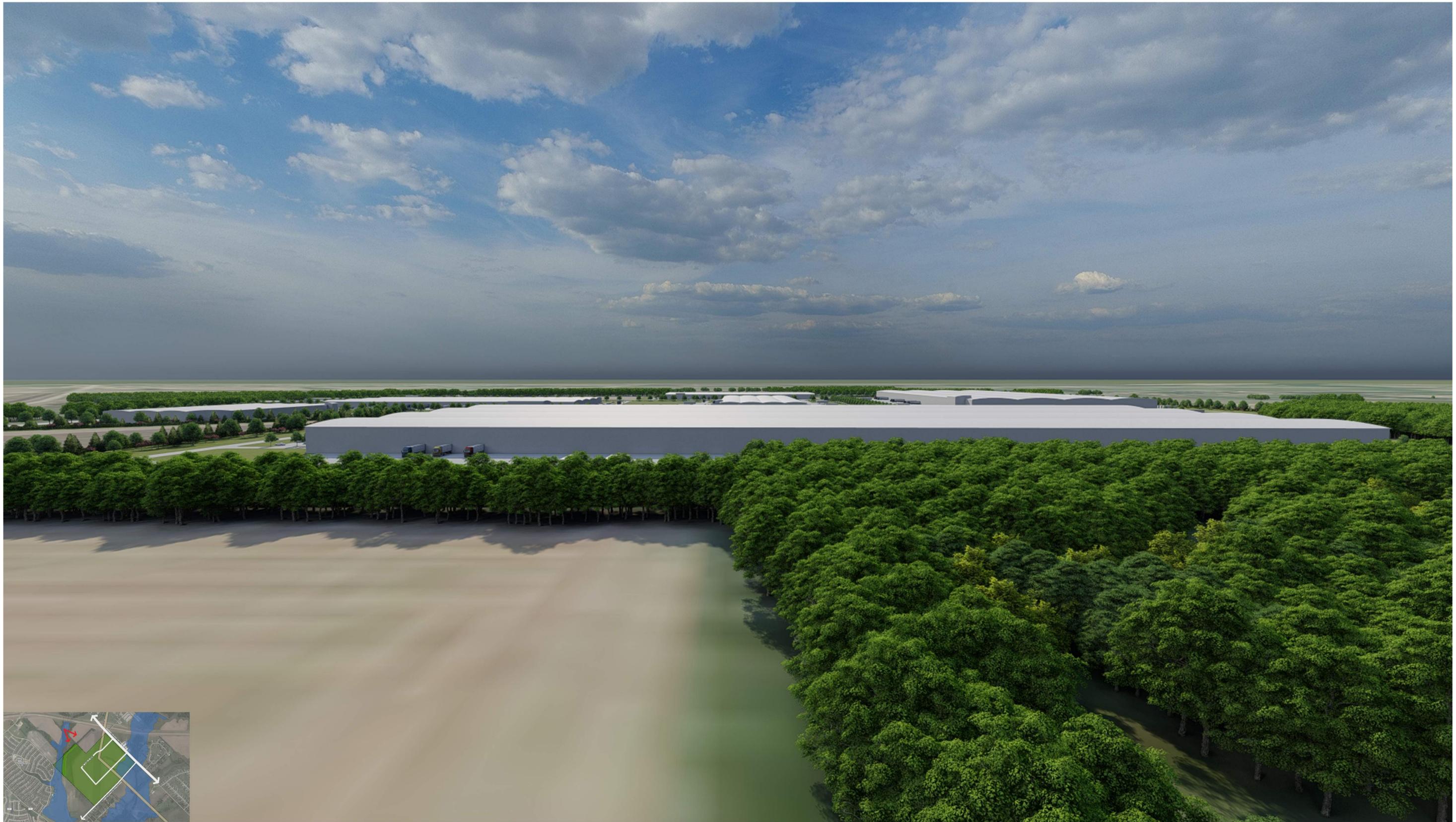
Griffin Lane & FM 2932

Mesquite, Texas

5/19/2020

VIEW FROM I-20

By: B.MANN
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for:
WYNNE JACKSON
600 North Pearl, Ste 650
Dallas, Texas 75201

BGE, Inc.
2595 Dallas Parkway, Suite 101
Frisco, TX 75034
Tel: 972-464-480 www.bgeinc.com

Mesquite Development Site

Griffin Lane & FM 2932

Mesquite, Texas

5/19/2020

VIEW FROM FUTURE RESIDENTIAL

By: B.MANN
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for:
WYNNE JACKSON
600 North Pearl, Ste 650
Dallas, Texas 75201



BGE, Inc.
2595 Dallas Parkway, Suite 101
Frisco, TX 75034
Tel: 972-464-480 www.bgeinc.com

Mesquite Development Site

Griffin Lane & FM 2932

Mesquite, Texas

5/19/2020

VIEW FROM FM2932

By: B.MANN
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for:
W Y N N E JACKSON
 600 North Pearl, Ste 650
 Dallas, Texas 75201

BGE **BGE, Inc.**
 2595 Dallas Parkway, Suite 101
 Frisco, TX 75034
 Tel: 972-464-480 www.bgeinc.com

Mesquite Development Site
 Griffin Lane & FM 2932
 Mesquite, Texas
 5/19/2020

VIEW FROM HEARTLAND

By: B.MANN
 This concept plan is intended for conceptual developmental use and shall not be interpreted as an official or submitted document. All aerial and map images were attained from best available information. This plan is subject to change.



for:
WYNNE JACKSON
600 North Pearl, Ste 650
Dallas, Texas 75201

BGE, Inc.
2595 Dallas Parkway, Suite 101
Frisco, TX 75034
Tel: 972-464-480 www.bgeinc.com

Mesquite Development Site

Griffin Lane & FM 2932

Mesquite, Texas

5/19/2020

VIEW FROM NORTH

By: B.MANN
This concept plan is intended for conceptual developmental use and shall not be interpreted as an official or submitted document. All aerial and map images were attained from best available information. This plan is subject to change.



for:
WYNNE JACKSON
600 North Pearl, Ste 650
Dallas, Texas 75201



BGE, Inc.
2595 Dallas Parkway, Suite 101
Frisco, TX 75034
Tel: 972-464-480 www.bgeinc.com

Mesquite Development Site

Griffin Lane & FM 2932

Mesquite, Texas

5/19/2020

VIEW FROM SOUTH

By: B.MANN
This concept plan is intended for conceptual developmental use and shall not be interpreted as an official or submitted document. All aerial and map images were attained from best available information. This plan is subject to change.



PLANNING AND ZONING DIVISION

File Number: Z0420-0137
REQUEST FOR: Planned Development
CASE MANAGER: John Chapman, Planner

PUBLIC HEARINGS

Planning and Zoning Commission: Tuesday, May 26, 2020
 City Council: Monday, June 15, 2020

GENERAL INFORMATION

Applicant: JM Civil Engineering
 Requested Action: Zoning Change from C, Commercial to Planned Development – General Retail to allow a convenience store and fueling station.
 Location: 2110 N. Town East Blvd.

SITE BACKGROUND

Platting: Schulz Rep, Block A, Lot 1 Less ROW
 Size: 0.98 acres
 Zoning: C – Commercial
 Future Land Use: Neighborhood Retail
 Zoning History: 1954 – Annexed and zoned Residential (Ord. No. 112)
 1959 – Residential to C, Commercial (Ord. No. 250)

Surrounding Zoning and Land Uses (see attachment 3):

| | <u>ZONING</u> | <u>EXISTING LAND USE</u> |
|---------------|---------------------|--|
| NORTH: | GR - General Retail | Safelite AutoGlass and PLS Check Cashing Store |
| SOUTH: | C - Commercial | City Hospital Emergency Case Center |
| EAST: | C - Commercial | Ollie’s Bargain Outlet |
| WEST: | GR - General Retail | Take 5 Oil Change |

CASE SUMMARY

The applicant, JM Civil Engineering, is requesting a zoning change from Commercial (C) to Planned Development – General Retail (PD-GR) to develop a convenience store and fueling station (12 fueling positions) under the ownership of Murphy’s Express.

Early this year, City Council passed ordinances No. 4771 and No. 4767 amending the Mesquite Zoning Ordinance and Chapter 8 of the City Code, respectively. The purpose of these amendments was to enhance public safety pertaining to convenience stores within the City and provide an increased residential proximity buffer between residential districts and fuel pumps. Staff has shared the new requirements with the applicant.

The applicant is proposing a Planned Development rather than a straight zoning change to General Retail to request different development standards regarding a modification to the 500-foot separation requirement between fuel pumps and residential districts, as well as permitted uses and other development standards.

MESQUITE COMPREHENSIVE PLAN

The *Mesquite Comprehensive Plan* designates the future land use of the subject property as Neighborhood Retail. The Neighborhood Retail land use designation represents a variety of retail and personal service businesses that meet the daily needs of the residents. This development type generally includes small or medium scale development ranging from 1,500 square feet to 45,000 square feet and one to two stories in height. Neighborhood Retail uses are typically retail, restaurants, and personal services. It is recommended that uses within the Neighborhood Retail:

- Serve as a buffer from roadways for residential areas;
- Provide a combination of screening, increased rear setbacks, and enhanced landscaping; and
- Provide a transitional land use between residential uses and higher intensity commercial land uses.

STAFF COMMENTS:

The existing Commercial zoning does not align with the Neighborhood Retail designation because it allows more intensive land uses by right such as construction and manufacturing. The proposal to include GR with a more restrictive set of allowable land uses as the base zone for the proposed PD supports the intent of the *Mesquite Comprehensive Plan*.

MESQUITE ZONING ORDINANCE

SECTION 4-201(A) PROPOSED USES

“An application for a PD district shall specify and the PD ordinance shall incorporate the category or type of use or the combination of uses, which are to be permitted in the PD district. Uses may be specified by reference to a specific zoning district, in which case all uses permitted in the referenced district, including those permitted through the cumulative provision of the zoning ordinance, shall be permitted in the PD district. Uses requiring a Conditional Use Permit

under the referenced district shall require a Conditional Use Permit under the PD district unless such use is specifically set out as permitted in the PD ordinance.”

STAFF COMMENTS:

The proposed PD will incorporate the GR, General Retail zoning district as its base zone with all applicable regulations and uses, as amended, from the Mesquite Zoning Ordinance. In GR zoning, Convenience Stores require a CUP, and refueling stations (more than eight fueling positions) are not permitted. The proposed PD will allow SIC 549(a) Convenience Stores, and SIC 554 Refueling Stations by right.

SEC. 4-201(B) DEVELOPMENT REQUIREMENTS

“An application for a PD district shall specify and the PD ordinance shall incorporate the development requirements and standards which are to be required in the PD district. Development requirements and standards may include, but are not limited to, density, lot size, unit size, setbacks, building heights, lot coverage, parking ratios, screening and other requirements or standards as the Council may deem appropriate. Development requirements and standards may be specified by reference to a specific zoning district, in which case all requirements and standards in the referenced district shall be applicable. The applicant or the City may propose varied or different standards that improve development design or enable a unique development type not otherwise accommodated in the Zoning Ordinance.”

STAFF COMMENTS:

Provided as Exhibit B, the proposed PD will include several amendments to GR development standards:

1. The proposed PD will allow a convenience store and fuel sales by right. Recently, City Council passed an ordinance amending the Mesquite Zoning Ordinance to require a Conditional Use Permit for Convenience Stores in GR districts and requiring all fuel pumps be located 500 feet from any residential district. The proposed fuel pumps will be located approximately 310 feet from the Casa Ridge Heights No. 3 subdivision.
2. The proposed PD is proposed to have a minimum of 25% open space requirement. This requirement is 15% above the required 10% and meets the intent of the *Mesquite Comprehensive Plan*.

All other required GR development standards and special conditions for fueling stations will be enforced as written.

SEC. 4-201(C) CONCEPT PLAN

“An application for a PD District shall include a concept plan showing a preliminary layout of proposed uses, access, buildings, parking, open space and the relationship to existing natural features and to adjacent properties and uses. The concept plan shall be construed as an illustration of the development concepts and not as an exact representation of all specific details.”

STAFF COMMENTS:

Exhibit C (attachment 9) includes the concept plan, landscape plan, and façade plan. Staff has reviewed these plans based on the proposed development standards and GR zoning district regulations and finds that all requirements are being met.

SEC. 3-504(A)(3) REFUELING STATION PUMP ISLANDS

Pump islands shall be set back a minimum of 25 feet from any street right-of-way line.

STAFF COMMENTS:

The pump islands are set back beyond 25 feet from any street right-of-way line.

SEC. 3-301 LOT, SETBACK, AND HEIGHT REGULATIONS

The table below identifies the existing GR zoning district regulations and the proposed regulations of this PD.

STAFF COMMENTS:

| | REQUIRED | PROPOSED |
|---|----------|----------|
| MAXIMUM LOT COVERAGE (%) | 30% | 30% |
| MINIMUM FRONT AND EXTERIOR SIDE YARDS (FEET) | 25 feet | 25 feet |
| MINIMUM INTERIOR SIDE AND REAR YARDS (FEET) | 0 feet | 0 feet |
| MAXIMUM STRUCTURE HEIGHT (FEET) | 35 feet | 35 feet |

The proposed development is not making any changes to the existing lot, setback, and height regulations of the GR zoning district.

SEC. 1A-202(A) GENERAL SITE REQUIREMENTS - LANDSCAPING

All non-residential districts shall have a minimum landscaped area of 10% of the site area and be irrigated.

STAFF COMMENTS:

| | REQUIRED | PROPOSED |
|--|------------|------------|
| MAXIMUM LANDSCAPE AREA (%) | 10% | 25% |
| REQUIRED TREE RATIO | 1:500 s.f. | 1:800 s.f. |
| REQUIRED TREES (BASED ON RATIO SITE SIZE) | 8 trees | 13 |

This development is proposing to have a minimum of 25% of the lot landscaped as part of the Planned Development standards. Though there is a proposed increase in the required tree ratio, the proposed standards will account for five additional trees to the site than what would traditionally be required. This increase in landscaping adheres to the intent of the *Mesquite Comprehensive Plan* for the Neighborhood Retail future land designation.

SEC. 3-504(A)(4) REFUELING STATION RESIDENTIAL SEPARATION

Pump islands shall be located a minimum of 500 feet from any residential district.

STAFF COMMENTS:

As shown in Attachment 6, the location of the fueling pumps are within the 500-foot residential buffer. The fuel pumps are approximately 300 feet from a residential district located to the northwest of the Gus Thomasson and N. Town East Blvd intersection.

COMMUNITY APPEARANCE MANUAL PRINCIPLE 6 - TRANSPARENCY

6.1 Facades of new development, reconstruction and major rehabilitation shall incorporate transparency features (windows and doors) over a minimum percentage of the surface area of street fronting facades. Minimum percentages for different levels shall be outlined as follows:

- Ground level of retail uses: 50% of surface area minimum;
- Secondary facades: 10% of surface area minimum

6.2 Transparency on the ground level shall be calculated within the first 15 feet of the building wall, measured vertically at street level.

6.3 In cases where a building has more than two facades fronting a street or primary travelway, the transparency requirement shall only be required on two facades based on pedestrian traffic and vehicle visibility.

STAFF COMMENTS:

If the Community Appearance Manual was enforced, two facades would require transparency. The PD is proposing to incorporate transparency requirements on the façade fronting N. Town East Blvd. The availability for additional transparency is limited on the façade fronting Gus Thomasson Road due to the refuse container and interior layout. There is potential for transparency to be incorporated on the east side of the building.

CONCLUSIONS

ANALYSIS

The proposed development would provide for the redevelopment of a vacant restaurant, which would improve the appearance of a highly visible property at a major street intersection. While the proposed rezoning will bring the property further in compliance with the Mesquite Comprehensive Plan's Neighborhood Retail designation, it does not meet the recently enacted 500-ft separation from residential.

Staff is supportive of this redevelopment opportunity; however, at this time, we are unable to recommend full approval of this case because it does not meet the recently enacted 500-ft separation requirement from residential. The amendment requires all fuel pumps to be located a minimum of 500 feet away from any residential district and as of today there is no precedent or criteria by which Staff may base a professional opinion on.

File No.: Z0420-0137
Zoning Change

The proposed development standards are acceptable for any traditional store-front retail.

The proposed plan does show a new access drive through 3400 Gus Thomasson Blvd. This access will require either an amending plat to provide for an access easement or for an access easement to be recorded by separate instrument. If the access drive is developed, a new site plan and landscape plan will be required of 3400 Gus Thomasson Rd. The applicant has provided sufficient information to Staff to ensure this access drive will not create an illegal premise at 3400 Gus Thomasson Rd with regards to the required open space, which is 10%.

RECOMMENDATIONS

Staff recommends consideration of the zoning change request from Commercial to Planned Development – General Retail with exhibits A through C as prepared. If the recommendation from the Planning and Zoning Commission is to approve the request, Staff recommends the following stipulations:

1. A minimum of 10% transparency be required on the eastern façade.

PUBLIC NOTICE

Staff mailed notices to all property owners within 200 feet of the subject property. As of the date of this writing, Staff has received no returned notices.

CODE CHECK

As of the date of this writing, the site does not have any open code cases.

ATTACHMENTS

1. Aerial Map
2. Public Notification Map
3. Zoning Map
4. Future Land Use Map
5. Site Pictures
6. Residential Proximity Map
7. Exhibit A – Legal Description
8. Exhibit B – Planned Development Standards
9. Exhibit C – Concept Plan
10. TIA – Executive Summary

Aerial Map



Legend

-  Subject Property
-  Mesquite City Limits
-  Parcels

ATTACHMENT 2 – PUBLIC NOTIFICATION MAP

Notification Map

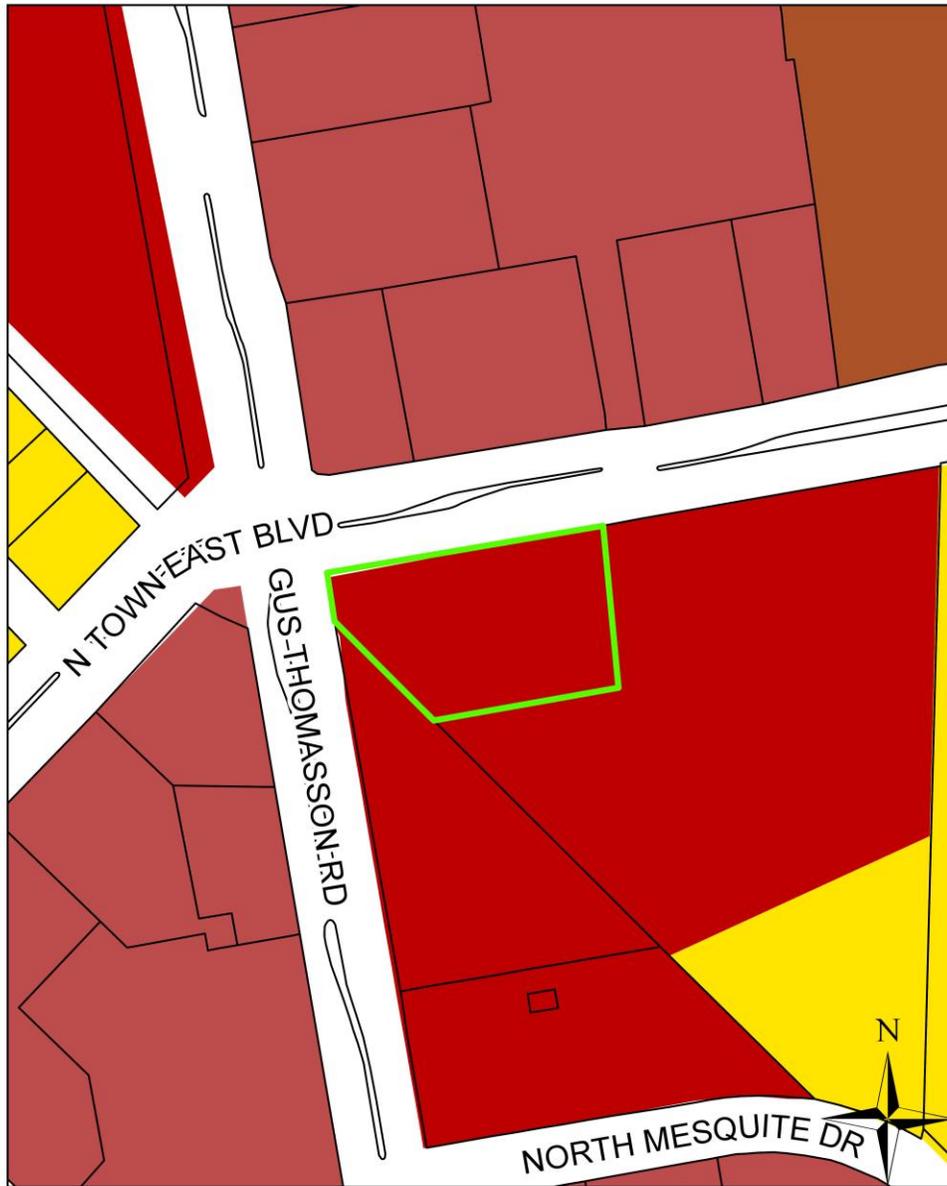


Request: Zoning Change from Commercial to
Planned Development General Retail
Applicant: JM Civil Engineering
Location: 2110 N Town East Blvd

Legend

-  Subject Property
-  Noticed Properties

Zoning Map

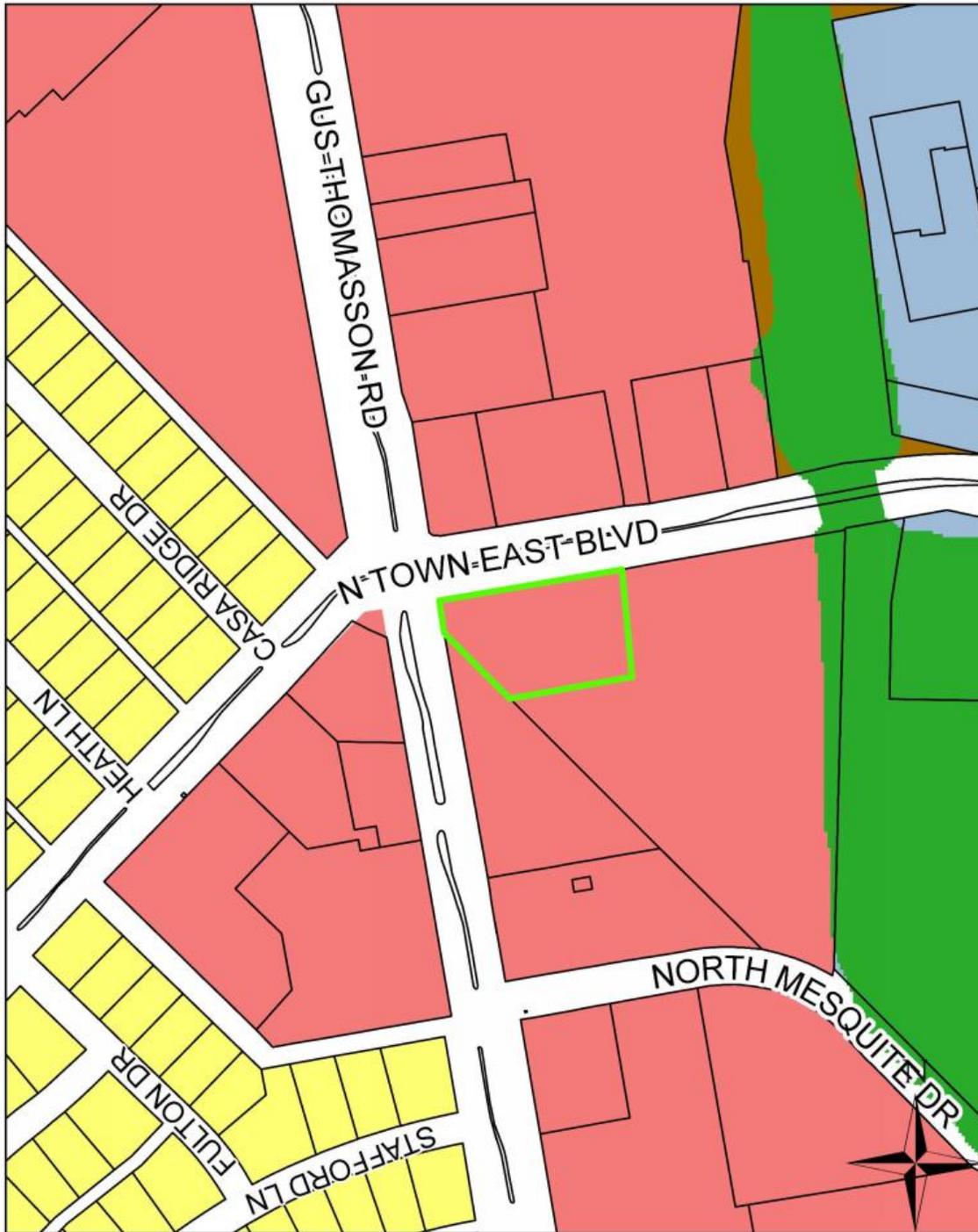


Legend

- | | |
|---|---|
| ■ COMMERCIAL | ■ MULTIFAMILY RESIDENTIAL |
| ■ GENERAL RETAIL | ■ SINGLE FAMILY RESIDENTIAL |

ATTACHMENT 4 – FUTURE LAND USE MAP

Future Land Use Map



-  Mesquite City Limits
-  Parcels
-  Subject Property
-  Town East Special Planning Area
-  Low Density Residential
-  High Density Residential
-  Neighborhood Retail
-  Parks, Open Space, Drainage

ATTACHMENT 5 – SITE PICTURES



View of property fronting Gus Thomasson Blvd



View of property along N Town East Blvd



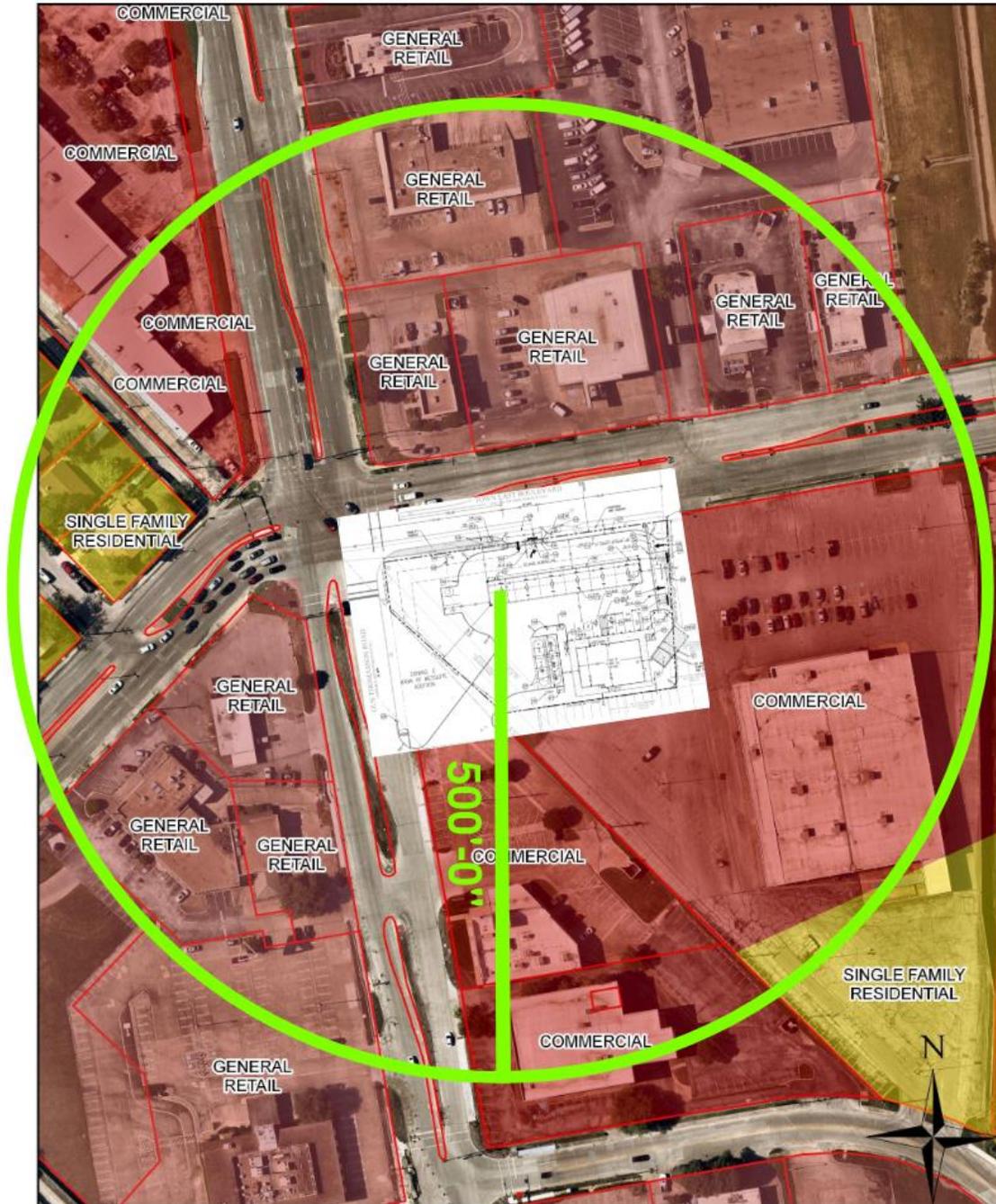
Front of Structure



Rear of structure

ATTACHMENT 6 – RESIDENTIAL PROXIMITY MAP

Residential Proximity Map



Legend

- | | |
|---------------------------|----------------------|
| COMMERCIAL | Subject Property |
| GENERAL RETAIL | Parcels |
| MULTIFAMILY RESIDENTIAL | Mesquite City Limits |
| SINGLE FAMILY RESIDENTIAL | |

ATTACHMENT 7 – EXHIBIT A – LEGAL DESCRIPTION

EXHIBIT "A" MURPHY MESQUITE - GUS THOMASSON RD & TOWN EAST BOULEVARD REZONING DESCRIPTION

BEING a 0.9745 acre tract of land located in the Daniel Tanner Survey, Abstract No. 1462 and the Isham Thomas Survey, Abstract No. 1501, City of Mesquite, Dallas County, Texas, said 0.9745 acre tract of land being all of **LOT 1, BLOCK A, SCHULTZ ADDITION**, being an Addition to the said City and State, according to the plat thereof filed for record in Volume 78051, Page 1501, Deed Records, Dallas County, Texas (D.R.D.C.T.), said 0.9745 acre tract of land also being all of that certain tract of land conveyed to **TENNESSEE PROPERTY, LP**, by deed thereof filed for record in Volume 2005131, Page 7188, D.R.D.C.T., said 0.9745 acre tract of land being more particularly described by metes and bounds as follows:

BEGINNING at a 1/2 inch iron rod found (Controlling Monument) at the southeast lot corner of said Lot 1, same being a northwest property corner of Lot 2, of said Block A, Schultz Addition;

THENCE South 79°54'48" West, along the south lot line of said Lot 1, same being a north lot line of said Lot 2, a distance of 178.00 feet to a 5/8 inch iron rod found at the southwest lot corner of said Lot 1, same being an interior ell corner in said Lot 2;

THENCE North 49°47'47" West, along a southwest lot line of said Lot 1, same being a northeast lot line of said Lot 2, a distance of 154.49 feet to a 5/8 inch iron rod with a cap stamped "SPOONER 5922" set (hereinafter referred to as an iron rod set) at a west lot corner of said Lot 1, same being a north lot corner of said Lot 2, and being on the east right-of-way line of Gus Thomasson Road (being a variable width public right-of-way);

THENCE North 09°47'12" West, along the most westerly lot line of said Lot 1 and along the said east right-of-way line, a distance of 51.15 feet to an iron rod set at the northwest lot corner of said Lot 1, same being at the intersection of the said east right-of-way line with the south right-of-way line of Town East Boulevard (being a called 100 feet wide public right-of-way);

THENCE North 79°54'48" East, along the north lot line of said Lot 1 and along the said south right-of-way line, a distance of 291.51 feet to an iron rod set at the northeast lot corner of said Lot 1, same being a northwest lot corner of the aforesaid Lot 2;

THENCE South 05°01'12" East, along the east lot line of said Lot 1, same being a northwest lot line of said Lot 2, a distance of 170.67 feet to the **POINT OF BEGINNING**.

The hereinabove described tract of land contains a computed area of **0.9745 acres (42,449 square feet)** of land, more or less.

The bearings shown hereon are referenced to the Texas Coordinate System of 1983, Texas North Central Zone 4202, and are based on the North American Datum of 1983, 2011 Adjustment. All areas shown hereon are calculated based on surface measurements.

I do hereby certify that the above legal description was prepared from public records and from an actual and accurate survey upon the ground and that same is true and correct.



1-20-20

Eric Spooner
Registered Professional Land Surveyor, Texas No. 5922
Spooners and Associates, Inc. Firm No. 10054900
Surveyed on the ground the October 8th, 2019, November 6th, 2019 and January 6th, 2020.



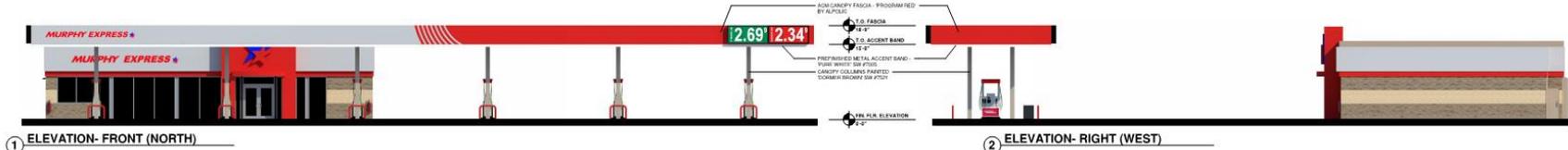
ATTACHMENT 8 – EXHIBIT B – PLANNED DEVELOPMENT STANDARDS

EXHIBIT B - PLANNED DEVELOPMENT STANDARDS

Z0420-0137 Page 1 of 1

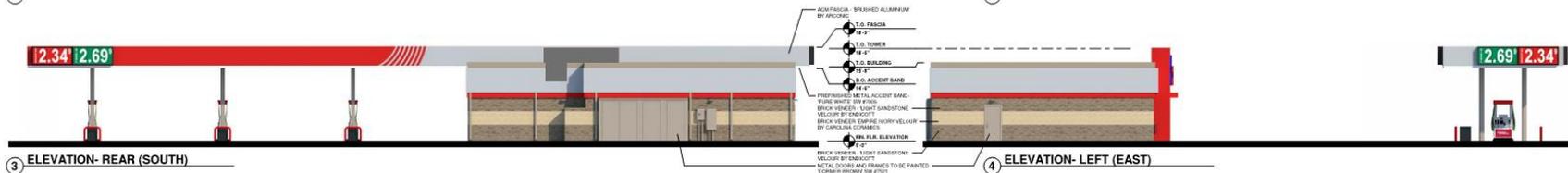
This Planned Development General Retail (PD-GR) must adhere to all conditions of the Mesquite Code of Ordinances, as amended, and adopt base district standards corresponding with the Concept Plan attached hereto and incorporated herein as Exhibit C and as identified below. The following regulations must be specific to the PD-GR District. Where these regulations conflict with or overlap another ordinance, easement, covenant or deed restrictions, the more stringent restriction will prevail.

- A. **Permitted Land Uses.** Uses in the PD-GR are limited to those permitted in the GR – General Retail zoning district, as amended, and subject to the following.
1. Any land use requiring a Conditional Use Permit (CUP) in the GR zoning district, as amended, is only allowed if a CUP is issued for the use.
 2. Any land use prohibited in the GR zoning district, as amended, is also prohibited.
 3. The following uses are permitted by right:
 - i. SIC 549.a – Convenience Store
 - ii. SIC 554 – Fuel Sales (maximum 12 fueling positions)
- B. **Development Standards.** In addition to the requirements of the GR base zoning district, the Planned Development is subject to the following.
1. Open space, as defined by the Zoning Ordinance, must be a minimum 25% of the lot.
 2. One shade tree, or one evergreen tree, or three ornamental trees shall be provided for each 800 square feet of required open space area.
 3. All pole signage must have an irrigated landscaped area consisting primarily of bushes, shrubs, and ornamental grasses that is equal to or greater in size than the total surface area of the largest pole sign face and shall be installed around the base of the sign.
 4. Pump islands shall be located a minimum of 310 feet from any residentially zoned property.
 5. Transparency requirements shall only be required for the façade fronting N. Town East Blvd.



1 ELEVATION- FRONT (NORTH)

2 ELEVATION- RIGHT (WEST)



3 ELEVATION- REAR (SOUTH)

4 ELEVATION- LEFT (EAST)



5 ELEVATION- FRONT BUILDING ONLY (NORTH)



6 TRASH ENCLOSURE



7 MONUMENT SIGN



| SIGN | QTY | HEIGHT | WIDTH | AREA S.F. | TOTAL S.F. |
|---|-----|--------|--------------|-----------|------------|
| MURPHY EXPRESS BLDG LOGO | 1 | | GRAPHIC AREA | 27.71 | 27.71 |
| MURPHY BLDG. STAR LOGO | 1 | | GRAPHIC AREA | 34.98 | 34.98 |
| MURPHY EXPRESS CANOPY LOGO SIGN | 1 | | GRAPHIC AREA | 28.00 | 28.00 |
| MEDIUM COMBINED CANOPY PRICE SIGN | 3 | 58.12" | 117.10" | 38.98 | 116.94 |
| TOTAL: | | | | 199.67 | 199.67 |
| MONUMENT SIGN: | | | | | |
| LOGO - 10" x 10" - ETHANOL - FREE AVAILABLE | 1 | 80.00" | 100.00" | 80.00 | 80.00 |
| TOTAL: | | | | 80.00 | 80.00 |



MESQUITE, TX (GUS THOMASSON & TOWN) (R01)
DECEMBER 02, 2019

ATTACHMENT 10 – TIA EXECUTIVE SUMMARY

DRAFT Traffic Study

EXECUTIVE SUMMARY

Peters & Associates Engineers, Inc., has conducted a traffic engineering study relating to development of a Murphy Express site proposed to be constructed on the southeast corner of Gus Thomasson Road and N. Town East Boulevard in Mesquite, Texas. Access to the site will be via a right-in/right-out access drive (West Drive) along Gus Thomasson Road, a right-in/right-out access drive (Drive A) and a fully-directional access drive (East Drive) along N. Town East Boulevard. The primary focus of this report is to assess traffic operational characteristics of the nearby intersections of N. Town East Boulevard and Gus Thomasson Road, Gus Thomasson Road and N. Mesquite Drive and the access drive intersections proposed to serve the site so they provide acceptable operation. Additionally, a 5-year year back-ground growth of existing traffic volumes has been included for analysis of future traffic conditions.

The site is proposed to consist of a Murphy Express to include 12 fueling positions as indicated on the project site plan and if approved, is expected to be completed within one year.

Findings of this study are summarized as follows:

- Approximately 2,426 vehicle trips (combined in and out) per average weekday are projected to be generated by the proposed Murphy Express development on this site. Of this total, approximately 150 vehicle trips are estimated during the traffic conditions of the adjacent street AM peak hour and approximately 168 vehicle trips are estimated during the traffic conditions of the adjacent street PM peak hour.
- Capacity and level of service analysis was performed for existing traffic volumes, lane geometry and traffic control for the AM and PM peak hours for the study intersections. The traffic signal controlled intersections of Gus Thomasson Road and N. Town East Boulevard and Gus Thomasson Road and N. Mesquite Drive currently operate at what calculates as an acceptable LOS "C" or better during the existing conditions of the AM and PM peak hours. Additionally, all vehicle movements at these traffic signal controlled intersections as well as at the "Stop" sign controlled access drives study intersections currently operate at what calculates as an acceptable LOS "D" or better for existing traffic conditions for the AM and PM peak hours except for the following:
 - o The northbound left-turn and thru right-turn vehicle movements on East Drive at N. Town East Boulevard during the PM peak hour (LOS "F").
 - o The southbound left-turn vehicle movement on East Drive at N. Town East Boulevard during the PM peak hour (LOS "F").

DRAFT Traffic Study

- Capacity and LOS analysis was performed for projected traffic conditions at initial completion of the proposed Murphy Express development for the AM and PM peak hours for the study intersections. The traffic signal controlled intersections of Gus Thomasson Road and N. Town East Boulevard and Gus Thomasson Road and N. Mesquite Drive overall intersection LOS are expected to continue to operate at what calculates as an acceptable LOS "C" or better during these projected conditions at initial completion of the Murphy Express for the AM and PM peak hours. All vehicle movements at these traffic signal controlled intersections as well as the "Stop" sign controlled access drive intersections are expected to operate at what calculates as an acceptable LOS "D" or better for these initial completion traffic conditions for the AM and PM peak hours except for the following:
 - o The northbound left-turn vehicle movement on East Drive at N. Town East Boulevard during the AM (LOS "E") and PM (LOS "F") peak hours. This condition already exists during the PM peak hour. The 95th percentile queue length for this approach is only 1 vehicle during the AM peak hour and only 2.5 vehicles during the PM peak hour.
 - o The northbound thru / right-turn vehicle movements on East Drive at N. Town East Boulevard during the PM peak hour (LOS "F"). This condition already exists during the PM peak hour. The 95th percentile queue length for this approach is only 1 vehicle during the PM peak hour.
 - o The southbound left-turn vehicle movement on East Drive at N. Town East Boulevard during the PM peak hour (LOS "F"). This condition already exists. The 95th percentile queue length for this approach is 8 vehicles during the PM peak hour (only one more vehicle than existing conditions).
- Projected average control delay (seconds per vehicle) and intersection capacity utilization are found to continue to be acceptable for each of the study intersections at initial completion of the Murphy Express development.
- The westbound left-turn lane on N. Town East Boulevard at East Drive can accommodate the projected traffic volumes during the AM and PM peak hours within the existing approximate 75-foot storage lane with a calculated 95th percentile queue length for this approach of no more than two vehicle during the AM and PM peak hours at initial completion of the Murphy Express development.

DRAFT Traffic Study

- Capacity and LOS analysis was performed for projected 5-year traffic conditions for the AM and PM peak hours for the study intersections. For projected 5-year traffic conditions, the capacity and LOS results are similar to the initial completion conditions results with all vehicle movements at the study intersection expected to operate at what calculates as an acceptable LOS "D" or better except the northbound and southbound approaches on East Drive at N. Town East Boulevard. Also, projected average control delay (seconds per vehicle) and intersection capacity utilization are found to continue to be acceptable for each of the study intersections for projected 5-year traffic conditions.
- The westbound left-turn lane on N. Town East Boulevard at East Drive can be accommodate the projected traffic volumes during the AM and PM peak hours within the existing approximate 75-foot storage lane with a calculated 95th percentile queue length for this approach of no more than two vehicle during the AM and PM peak hours for projected 5-year traffic conditions.
- None of the projected AM or PM peak hours traffic volumes at initial completion of the Murphy Express or for future 5-year projected conditions meet the threshold values for the need for a right-turn acceleration lane on N. Town East Boulevard from the Drive A or from the East Drive or on Gus Thomasson Road from the West Drive. Additionally, in consideration of an additional right-turn acceleration lane provided in "Table 2-3: Auxiliary Lane Thresholds" of the "TXDOT Access Management Manual," an auxiliary acceleration lane is not considered to be desirable on the West Drive because of the proximity to the signalized intersection at N. Town East Boulevard and Gus Thomasson Road.
- A right-turn deceleration lane should not be considered at N. Town East Boulevard at Drive A or at East Drive or on Gus Thomasson Road at West Drive per the "TXDOT Access Management Manual Section 7: Auxiliary Lanes" threshold values for both projected traffic conditions.

DRAFT Traffic Study

Recommendations of this study are summarized as follows:

- It is recommended to continue to operate the West Drive (existing) as a right-in right-out access drive to intersect Gus Thomasson Road as shown on the site plan.
- It is recommended to relocate Drive A approximately 137 feet east of Gus Thomasson Road and approximately 130 feet west of East Drive (as shown on the current site plan) and to operate as a right-in right-out access drive at N. Town East Boulevard. A variance request is recommended to be applied for from the Planning and Zoning Commission for the re-location of this driveway.

The conclusion of traffic operational findings associated with this study is that additional traffic expected to be generated by the proposed Murphy Express and future 5-year background growth can be accommodated by the existing adjacent roadways lane geometry and access drive intersections constructed as proposed, without discernable impact on traffic flow in the vicinity along Gus Thomasson Road, N. Town East Boulevard and N. Mesquite Drive.



PLANNING AND ZONING DIVISION

FILE NUMBER: Z0420-0137
REQUEST FOR: Amend Conditional Use Permit (Ord. No. 4714)
CASE MANAGER: John Chapman, Planner

PUBLIC HEARINGS

Planning and Zoning Commission: Tuesday, May 26, 2020
 City Council: Monday, June 15, 2020

GENERAL INFORMATION

Applicant: Marvin Browny Cooksey
Requested Action: Amend Conditional Use Permit, Ordinance No. 4714, regarding a screening wall for a primary outdoor storage yard.
Location: 2533 Westwood Avenue

SITE BACKGROUND

Platting: Hilhome Garden Addition, Block 5, Lots 12 & 15
Size: 0.93 acres
Zoning: C – Commercial with CUP for Primary Outdoor Storage
Land Use: Primary Outdoor Storage Yard
Zoning History: 1951: Annexed into City of Mesquite – Zoned Residential
 1955: Zoning Ordinance Established
 1972: Rezoned Duplex to Commercial (Ord. No. 1047)
 1980: Conditional Use Permit for Metal Buildings with Masonry Fronts (Ord. No. 1618)
 2019: Conditional Use Permit for Primary Outdoor Storage Yard with stipulations (Ord. No. 4714)

Surrounding Zoning and Land Uses (see attachment 3):

| | <u>ZONING</u> | <u>EXISTING LAND USE</u> |
|---------------|----------------|---|
| NORTH: | C - Commercial | <ul style="list-style-type: none"> • Storage with no outdoor storage • Roof Contractor with Warehousing and Storage |
| SOUTH: | C - Commercial | <ul style="list-style-type: none"> • Office and Storage with no outdoor storage or work |
| EAST: | C - Commercial | <ul style="list-style-type: none"> • Vacant |
| WEST: | C - Commercial | <ul style="list-style-type: none"> • Automotive Part Sales/Vacant |

CASE SUMMARY

The applicant is requesting a modification to a City Council adopted condition of approval for the Conditional Use Permit (CUP) to allow a primary outdoor storage yard at 2533 Westwood Ave. The stipulation placed on the CUP requires that all outdoor storage be screened by a permanently maintained solid masonry wall at least six feet in height along the front property line. Construction of this wall was deferred for nine months until June 16, 2020.

The minutes from the September 2019 City Council meeting when the CUP was approved indicated that their decision to require a masonry screening wall for the subject property was due to the following:

- A similar requirement was placed on an apartment complex within the City who applied for a screening variance.
- Concerns about wood fencing deteriorating over time and becoming an enforcement issue.

The applicant is requesting a modification to the masonry wall requirement due to its high cost and that a recently approved primary outdoor storage yard located nearby at 2511 Edinburgh St did not include the masonry screening requirement.

The applicant applied for the original CUP after he submitted a certificate of occupancy (CO) on June 4, 2019, to use the subject property for outdoor parking and storage as the primary use. The applicant wishes to park vehicles and non-combustible items on the premises, including cars, trucks, recreational vehicles, equipment, and materials. The applicant is not proposing to make any other amendments to the approved CUP except for requesting a wooden fence rather than the stipulated masonry wall. The concept plan from the initial CUP includes paving a portion of the properties, totaling approximately 19,500 square feet, with a 2-foot buffer between the edge of the pavement and perimeter fencing. The existing R-panel fence spanning the front property line along Westwood Ave is proposed to be board-on-board cedar and landscaping within the front yard setback to include two approved trees from Section 1A-500 of the Mesquite Zoning Ordinance and irrigation as required by the Mesquite Zoning Ordinance. Primary Outdoor Storage Yards have required a CUP in the C – Commercial zoning district since December of 1989 (Ordinance 2650).

MESQUITE COMPREHENSIVE PLAN

The *Mesquite Comprehensive Plan* designates the subject properties as part of the US 80 Special Planning Area. The character and land use north of US 80 should, “continue to be a commercial and small office district. Land uses should include small office warehouses and some personal services. Outdoor storage should be screened from view and limited to ensure an aesthetically pleasing appearance and consistent design. New commercial development should be of similar size to the existing development. New professional offices of 2-3 stories should be promoted in the remaining vacant areas. Improved streetscapes should be developed to create an inviting environment and create a distinct feel.”

“The vision for the US 80 Special Planning Area is to create an office and commercial district with revitalized existing development and new office space along the highway. North of US 80 is revitalized commercial development and new office space to create a business district supporting small office and commercial development.”

STAFF COMMENTS:

Based on the *Mesquite Comprehensive Plan*, outdoor storage should be a limited use within this area. If approved, Staff recommends ensuring the property be aesthetically pleasing with landscaping and premium fencing material.

MESQUITE ZONING ORDINANCE

SEC. 3-603.A: PERMITTED OUTDOOR STORAGE

1. Primary outdoor storage yards shall be permitted in the I district and may be approved as a Conditional Use permit in the C district. A primary outdoor storage yard shall mean such storage which constitutes a principal use on the premises or is conducted without a permanent building on the premises, which utilizes more than 50% of the premises, or which otherwise exceeds the limitation of an accessory storage area. Modification of the conditions set out below may be specified as part of the approval of a Conditional Use permit, if noted on the application and required notification, when it is determined that the storage can be accommodated in a modified manner without adverse impacts on adjacent properties and that such storage will still meet the general intent of the limitations.

STAFF COMMENTS:

A CUP exists on this property to allow the use of a primary outdoor storage yard. This request is to seek a modification to the masonry wall requirement along Westwood Avenue, as stipulated by City Council.

SEC. 3-603.B: REQUIRED CONDITIONS

1. Type Materials: Storage shall be limited to goods and materials customarily stored outside and resistant to damage and deterioration from exposure to the elements.

STAFF COMMENTS:

The applicant is aware and understands the type of materials allowed to be stored outside.

2. Location: Outdoor storage shall not be located in any required front or exterior side yard; shall not obstruct or eliminate any required parking or loading space, access drive, or fire lane; or occupy any street right-of-way.

STAFF COMMENTS:

All location requirements will be met.

3. Height: Storage of stacked materials shall not exceed the height of the screening fence or 8 feet, whichever is less. Individual items of greater height may be stored, but may not exceed one-half the height of the principal building.

STAFF COMMENTS:

The applicant is aware and understands the height restriction for the storage of stacked materials. There is no principal building on the property.

4. Screening: All outdoor storage shall be screened by a permanently maintained solid wood fence or solid masonry wall at least six (6) feet in height along any side facing a front or exterior side property line, any side facing a rear or interior side property line which is adjacent to a district which does not allow outdoor storage as a permitted use, or any other side generally open to public view.

STAFF COMMENTS:

The applicant understands the screening requirements and is proposing to remove the existing r-panel fence along the front property line adjacent to Westwood Avenue and construct a board-on-board cedar fence. A manual wrought-iron gate is being proposed with a mesh privacy screen. No other property line faces a front or exterior side. The interior side property lines are adjacent to like-zoning properties (C – Commercial) and therefore do not require a masonry or solid wood fence. All other property lines other than the front are currently screened by an existing chain link fence, masonry wall, or adjacent building.

5. Surfacing: The storage of vehicles, trailers, and equipment which is normally intended to be mobile, whether self-propelled or towed, shall be conducted only on an approved asphalt or concrete surface which is provided in accordance with the requirements for parking areas.

STAFF COMMENTS:

The applicant is not seeking any changes to the previously approved surface material requirements.

SEC. 5-303: REVIEW CRITERIA FOR CONDITIONAL USE PERMITS

1. Existing Uses: The Conditional Use will not be injurious to the use and enjoyment of other property in the immediate area for purposes already permitted, nor substantially diminish and impair property values within the immediate vicinity.

2. Vacant Properties: The Conditional Use will not impede the normal and orderly development and improvement of surrounding vacant property for uses predominant in the area.

3. Services: Adequate utilities, access roads, drainage, and other necessary facilities have been or are being provided.

4. Parking: Adequate measures have been or will be taken to provide sufficient off-street parking and loading spaces to serve the proposed uses.

5. Performance Standards: Adequate measures have been or will be taken to prevent or control offensive odor, fumes, dust, noise, and vibration, so that none of these will constitute a nuisance and to control lighted signs and other lights in such a manner that no disturbance to neighboring properties will result.

STAFF COMMENTS:

The request is to seek a modification to the masonry wall stipulation and not a reconsideration of an approved land use. As a result, Staff is not providing comments regarding the review criteria for a CUP.

CONCLUSIONS

RECOMMENDATIONS

Staff recommends consideration of the screening modification. Should the Commission recommend approval of the applicant's request, then Staff suggests the following changes to Stipulation #4 as shown in the strikethrough and underlined, and adding a fifth stipulation:

1. Install T-post and wire fencing spanning the southwestern edge of pavement.
2. Two approved trees from Section 1A-500 shall be planted within the front setback along Westwood Avenue.
3. A wrought-iron gate with mesh privacy screening at a height no shorter than 6 feet and no greater than 8 feet shall be installed at the point of access on Westwood Avenue.
4. ~~All outdoor storage shall be screened by a permanently maintained solid masonry wall at least six feet in height along the front property line, the construction of which is deferred for a period of nine months from the date of this ordinance.~~ A six-foot, board-on-board, stained cedar privacy fence with a top rail which shall be constructed along the front building line.
5. All fencing shall be maintained in a like-new manner meaning, any portion of fencing showing signs of deterioration, broken or missing panels, or creates a safety hazard, shall be replaced.

PUBLIC NOTICE

Staff mailed notices to all property owners within 200 feet of the subject property. As of the date of this writing, Staff has received one returned public notice in favor of the request.

ATTACHMENTS

1. Aerial Map
2. Public Notification Map
3. Zoning Map
4. Future Land Use Map
5. Site Pictures
6. Concept Plan
7. Ord. No. 4714
8. Owner Authorization
9. Applicant Letter of Intent
10. Returned Notice

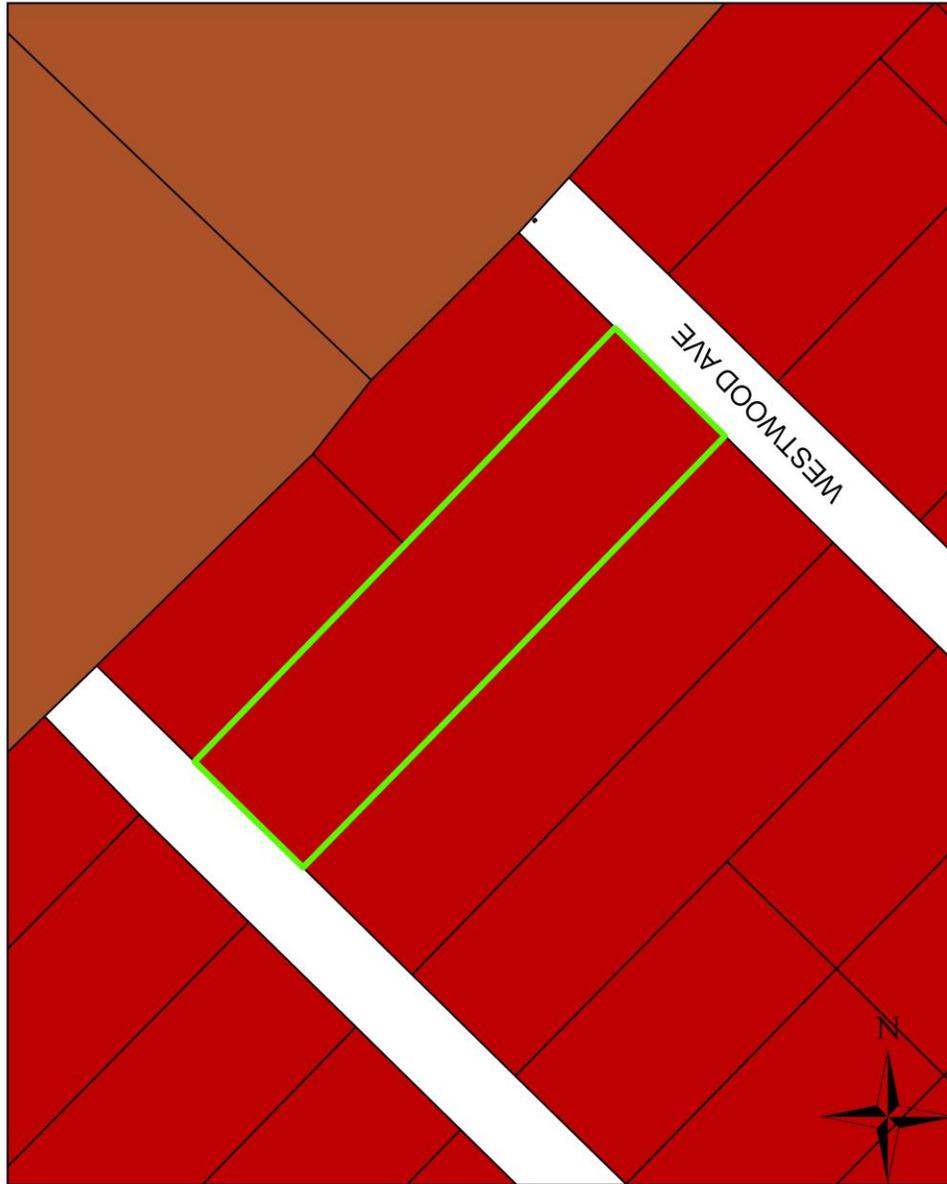
Aerial Map



Legend

-  Subject Property
-  Mesquite City Limits
-  Parcels

Zoning Map

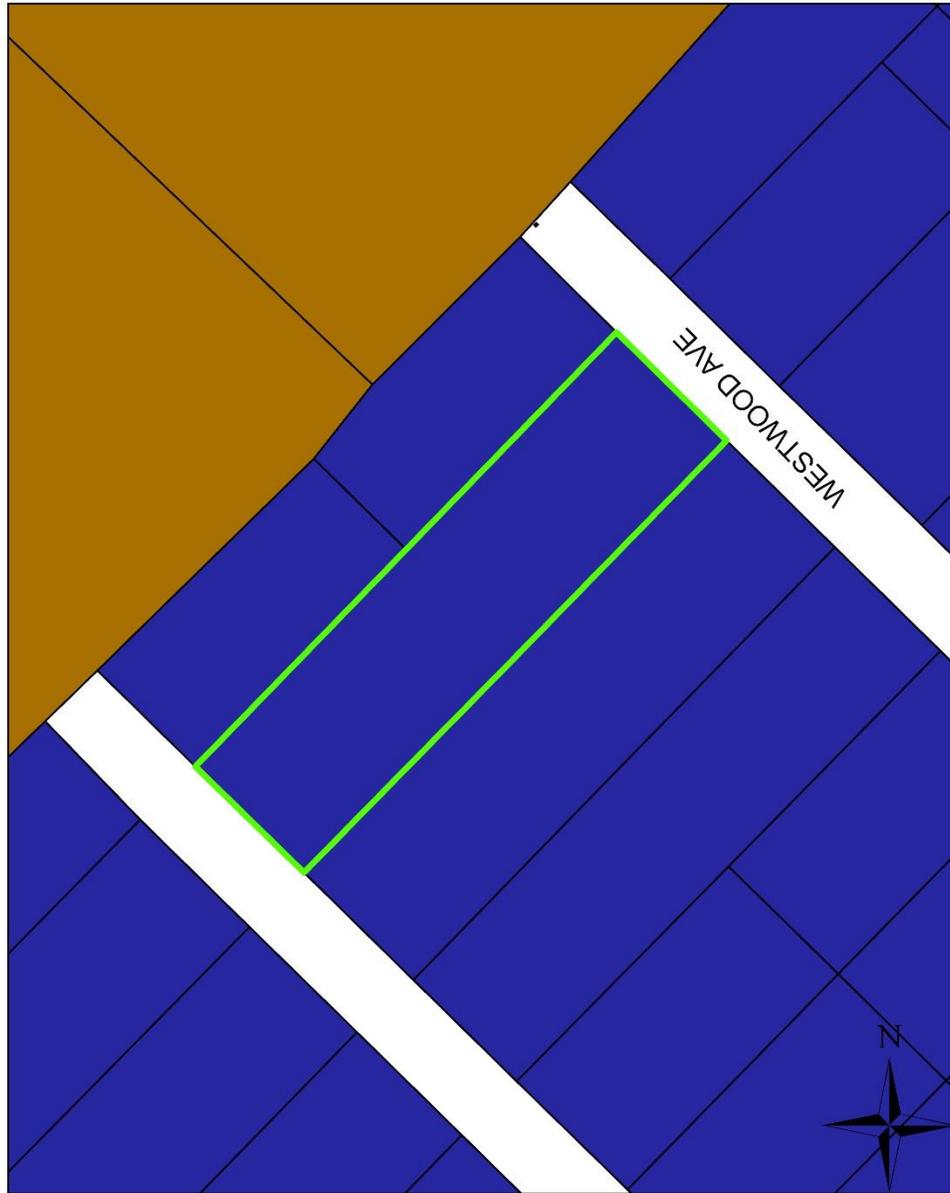


Legend

- COMMERCIAL
- MULTIFAMILY RESIDENTIAL
- Subject Property

ATTACHMENT 4 – FUTURE LAND USE MAP

Future Land Use Map



-  Mesquite City Limits
-  Subject Property
-  Parcels
-  US 80 Special Planning Area
-  High Density Residential

ATTACHMENT 5 – SITE PICTURES

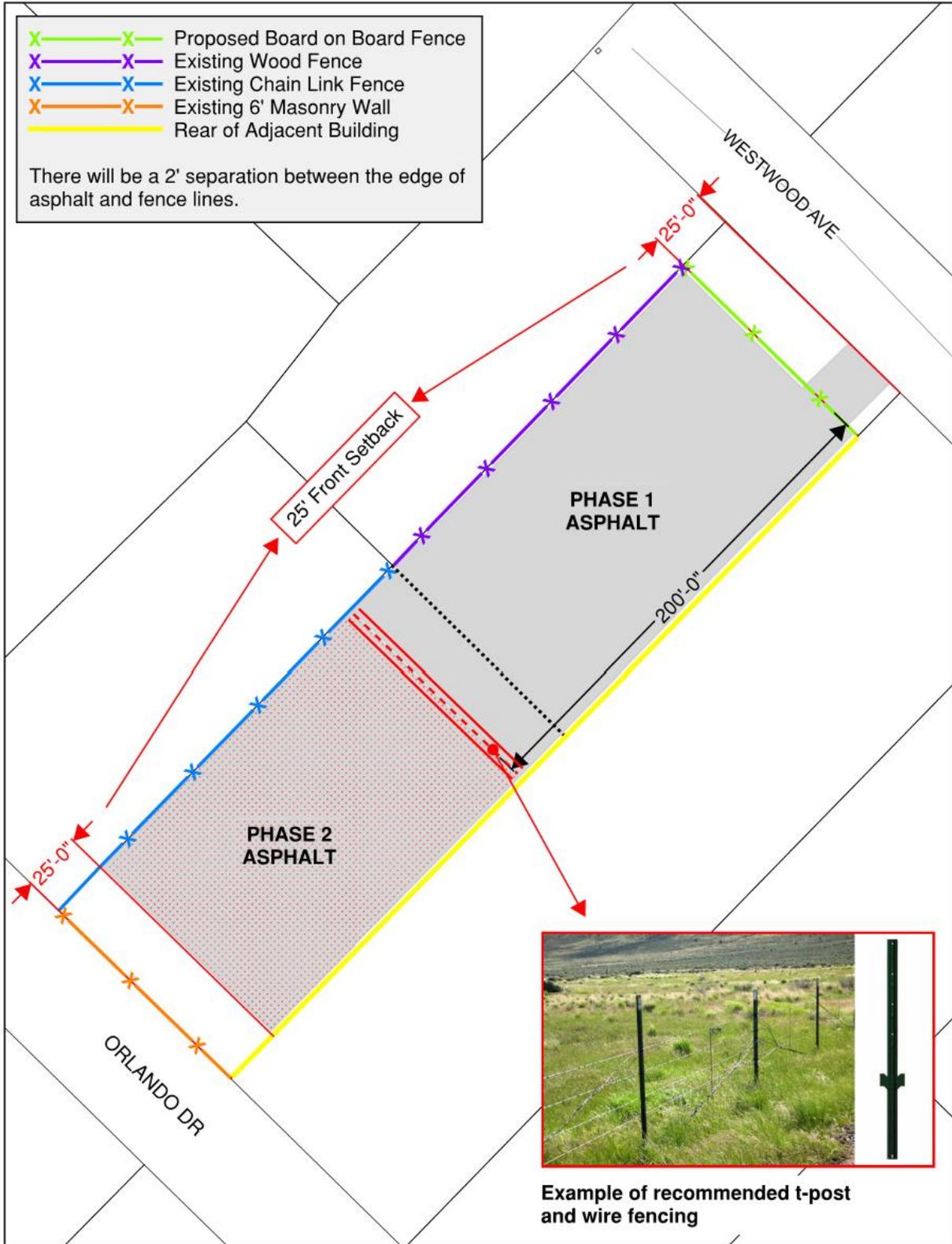


View of property from Westwood Ave with existing fence



View of property from Westwood Ave with existing fence

ATTACHMENT 6 – CONCEPT PLAN



ATTACHMENT 7 – ORDINANCE 4714

ORDINANCE NO. 4714
File No. Z0619-0099

AN ORDINANCE AMENDING THE MESQUITE ZONING ORDINANCE BY APPROVING A CHANGE OF ZONING FROM COMMERCIAL TO COMMERCIAL WITH A CONDITIONAL USE PERMIT TO ALLOW SUBJECT PROPERTIES TO BE USED AS A PRIMARY OUTDOOR STORAGE YARD PER SECTION 3-603.A.2 OF THE MESQUITE ZONING ORDINANCE ON PROPERTY LOCATED AT 2533 WESTWOOD AVENUE SUBJECT TO CERTAIN STIPULATIONS; REPEALING ALL ORDINANCES IN CONFLICT WITH THE PROVISIONS OF THIS ORDINANCE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY NOT TO EXCEED \$2,000.00; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Planning and Zoning Commission and the City Council, in compliance with the Charter of the City of Mesquite, state laws and the zoning ordinance, have given the required notices and held the required public hearings regarding the rezoning of the subject property; and

WHEREAS, the City Council finds that it is in the public interest to grant this change in zoning.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS:

SECTION 1. That the Mesquite Zoning Ordinance (“MZO”) is amended by approving a change of zoning from Commercial to Commercial with a Conditional Use Permit (“CUP”) to be used as a primary outdoor storage yard per Section 3-603.A.2 of the MZO with the following stipulations:

1. Install T-post and wire fencing spanning the southwestern edge of pavement.
2. Two approved trees from Section 1A-500 shall be planted within the front setback along Westwood Avenue.
3. A wrought-iron gate with mesh privacy screening at a height no shorter than six feet and no greater than eight feet shall be installed at the point of access on Westwood Avenue.
4. All outdoor storage shall be screened by a permanently maintained solid masonry wall at least six feet in height along the front property line, the construction of which is deferred for a period of nine months from the date of this ordinance.

SECTION 2. That the subject property is described as being Lots 12 and 15, Block 5, Hilhome Garden Addition, City of Mesquite, Dallas County, Texas, and located at 2533 Westwood Avenue.

Zoning/File No. Z0619-0099/Commercial to Commercial with CUP/September 16, 2019
Page 2 of 2

SECTION 3. That all ordinances, or portions thereof, of the City of Mesquite in conflict with the provisions of this ordinance, to the extent of such conflict are hereby repealed; otherwise, they shall remain in full force and effect.

SECTION 4. That the property described in Section 2 of this ordinance shall be used only in the manner and for the purposes provided for by the Mesquite Zoning Ordinance, as amended.

SECTION 5. That should any word, sentence, clause, paragraph or provision of this ordinance be held to be invalid or unconstitutional, the remaining provisions of this ordinance shall remain in full force and effect.

SECTION 6. That any person (as defined in Chapter 1, Section 1-2 of the Code of the City of Mesquite, Texas, as amended) violating any of the provisions or terms of this ordinance shall be deemed to be guilty of a Class C Misdemeanor and upon conviction thereof, shall be subject to a fine not to exceed Two Thousand (\$2,000.00) Dollars for each offense, provided, however, if the maximum penalty provided for by this ordinance for an offense is greater than the maximum penalty provided for the same offense under the laws of the State of Texas, the maximum penalty for violation of this ordinance for such offense shall be the maximum penalty provided by the laws of the State of Texas. Each day or portion of a day any violation of this ordinance continues shall constitute a separate offense.

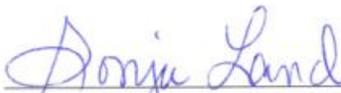
SECTION 7. That this ordinance shall take effect and be in force from and after five days after publication.

DULY PASSED AND APPROVED by the City Council of the City of Mesquite, Texas, on the 16th day of September 2019.



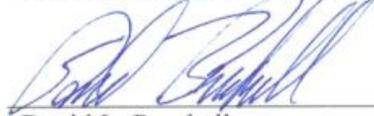
Stan Pickett
Mayor

ATTEST:



Sonja Land
City Secretary

APPROVED AS TO LEGAL FORM:



David L. Paschall
City Attorney

ATTACHMENT 8 – OWNER AUTHORIZATION

| | | | |
|---|---------------|--|-------------|
| CITY OF MESQUITE ZONING APPLICATION | Receipt No. | | Date Stamp: |
| | Fee: | | |
| | Case Manager: | | |

REQUESTED ACTION:

| | | |
|---|---|---|
| Change District Classification to: _____ | Conditional Use Permit for: <u>OUTSIDE STORAGE</u> | Amend Special Conditions of Ordinance # _____ <small>(Explain Below)</small> |
|---|---|---|

Additional explanation of requested action:
AMENDMENT TO CHANGE MASONRY FENCE TO WOOD; NO ONE CAN ADD MASONRY

SITE INFORMATION/GENERAL LOCATION:

LOCATION/LEGAL DESCRIPTION:

| | |
|--|---|
| Current Zoning Classification: <u>COM</u> Site Size: <u>40,000</u> (Acres or Square Feet) Address (if available): <u>2533 WESTWOOD</u> General Location Description: <u>HWY 80</u> <u>635 N E SIDE</u> | Complete one of the following: 1. Platted Property Addition: _____ Block: _____ Lot: _____ 2. Unplatted Property: Abstract: _____ Tract: _____ |
|--|---|

APPLICANT INFORMATION:

| | |
|--|--|
| Contact: <u>BROWN COOKSEY</u> | Phone: <u>(972) 989-5744</u> |
| Company: <u>J MAR</u> | Fax: () - |
| Address: <u>1017 RUPARD ST</u> <u>MESQUITE TX 75149</u> | E-mail: <u>mbc10pc17@adl.com</u> <small>(Required)</small> |
| Signature: <u>MB</u> | Owner <input checked="" type="checkbox"/> Representative <input type="checkbox"/> Tenant <input type="checkbox"/> Buyer <input type="checkbox"/> |

OWNER AUTHORIZATION AND ACKNOWLEDGEMENTS:

1. I hereby certify that I am the owner or duly authorized agent of the owner, of the subject property for the purposes of this application.
 2. I hereby designate the person named above as applicant, if other than myself, to file this application and to act as the principal contact person with the City of Mesquite in the processing of this application.
 3. I hereby authorize the City of Mesquite, its agents or employees, to enter the subject property at any reasonable time for the purpose of 1) Erecting, maintaining, or removing "Change of Zoning" signs, which indicate that a zoning amendment is under consideration and which indicate how further information may be obtained, and 2) Taking photographs documenting current use and current conditions of the property; and further, I release the City of Mesquite, its agents or employees from liability for any damages which may be incurred to the subject property in the erecting, maintaining, or removal of said signs or the taking of said photographs.

Owner: _____ Phone: () -
 Address: _____ Fax: () -
 E-mail: _____

Signature: MB SAME AS ABOVE

ATTACHMENT 9 – APPLICANT LETTER OF INTENT

BROWNY COOKSEY
1017 RUPARD ST MESQ TX 75149
MBC 10 PC 17 @ AOL.COM
972 989 5744

LETTER OF INTENT FOR 2533 WESTWOOD
OUTSIDE STORAGE HAS ALREADY BEEN
APPROVED FOR THIS PROPERTY.
I WOULD LIKE FOR CITY TO LET ME
PUT UP A WOOD FENCE INSTEAD OF
MASONRY. A MASONRY FENCE COST \$300⁰⁰
A H/F NO ONE CAN AFFORD IT.

THANK Y'all VERY MUCH
BROWNY

ATTACHMENT 10 – RETURNED NOTICE



CITY OF MESQUITE
PLANNING AND ZONING COMMISSION
NOTICE OF PUBLIC HEARING

LOCATION: 2533 Westwood Avenue
(See attached map for reference)

CASE NUMBER: Z0420-0138

APPLICANT: Marvin Cooksey

REQUEST: From: "C" Commercial
To: "C" Commercial, with a modification to the existing CUP (Ord. No. 4714) allowing for primary outdoor storage to remove requirement for a masonry wall parallel to Westwood Avenue.

The requested Conditional Use Permit would allow for a primary outdoor storage yard. A list of permitted uses for each zoning district is available on the City's website at www.cityofmesquite.com/1250/Zoning-Ordinance.

LEGAL DESCRIPTION

Hilhome Garden Addition, Block 5, Lots 12 & 15

PUBLIC HEARINGS

The Planning and Zoning Commission held a public hearing on this request at 7:00 p.m. on Monday, **May 26, 2020**, in the City Council Chambers of City Hall located at 757 N. Galloway Ave. The request was approved as presented by the Commission. Please note that the City Council may approve a different zoning district than the one requested, except that the different district may not (1) have a maximum structure height or density that is higher than the one requested; or (2) be nonresidential when the one requested is for a residential use or vice versa.

The City Council will hold a public hearing on this request at 7:00 p.m. on Monday, **June 15, 2020**, in the City Council Chambers located at 757 N. Galloway Ave.

Questions pertaining to this case may be directed to the Planning Division at (972) 329-8543 or jchapman@cityofmesquite.com

REPLY FORM

State law requires that cities notify all property owners within 200 feet of any proposed zoning change. For this reason, we are sending you this notice. As a property owner within 200 feet of the property, you are urged to give your opinion on the request by attending the public hearing or by completing the form below or both. Your written reply is important and will be considered by the Commission and the Council. The reply form (below) is provided to express your opinion on this matter. The form should be returned to the Planning Division by 5:00 pm on **May 22** to be included in the Planning and Zoning Commission packet and by 5:00 pm on **May 27** to be included in the City Council packet. All notices received after the listed dates will still be accepted and presented to Commission/Council, but will not be included in meeting packets.

(Complete and return)

Do not write on the reverse side of this form.

By signing the form, I declare I am the owner or authorized agent of the property at the address written below.

Case Number: Z0420-0138 **Name: (required)** Robert Eull

I am in favor of this request **Address of Noticed Property:** 2540 Westwood

I am opposed to this request **Owner Signature:** _____ **Date:** _____

Reasons (optional): _____

Please respond by returning to: PLANNING DIVISION
JOHN CHAPMAN
CITY OF MESQUITE
PO BOX 850137
MESQUITE TX 75185-0137



MEMORANDUM

TO: Planning & Zoning Commission

FROM: Lesley Frohberg, Planner

DATE: May 20, 2020

SUBJECT: Zoning Case #ZTA-2020-01

The proposed zoning text amendment addresses the requirements for temporary concrete batch plants and temporary material stockpile sites. The Mesquite Zoning Ordinance (MZO) allows specific uses and structures on a temporary basis, including the use of temporary concrete batch plants. The intent of allowing temporary batch plants is to provide contractors an opportunity to have materials near a construction site, which may reduce heavy load trucks on existing roadways and reduce development cost. Currently, a temporary batch plant must obtain a permit through the Engineering Division, which requires the batch plant to be at least 500 feet from any occupied residential lot and have an approved Texas Commission of Environmental Quality (TCEQ) air quality and storm water permit.

Staff proposes a zoning text amendment to Section 1-602.C, Temporary Batch Plant, of the MZO to include additional requirements to obtain a permit for a temporary batch plant and for temporary material stockpile sites. Additions include requiring batch plant equipment and stockpiles to also be located at least 500 feet from any occupied residential lot, removal of the batch plant no more than thirty (30) days after the completion of the associated project, allowing the City Engineer to consider impacts on the existing infrastructure, and requiring a Conditional Use Permit for operations that exceed an eighteen month time period. These additional requirements will give Staff and Elected Officials the opportunity to allow all potential impact of the temporary use to be analyzed before the issuance of a permit.

The City Engineer will consider permit applications for temporary batch plant and material stockpiles sites that are proposed to operate for eighteen months or less. The application will require traffic and material volumes for the site, a truck route map, a stormwater pollution prevention plan (SWPPP), and dust control measures.

1-600 TEMPORARY USES AND STRUCTURES

Previous 1-600 UTILITIES/Deleted by Ord. 2632/10-1-89

Notwithstanding other regulations and provisions of this ordinance, the following uses and structures may be permitted on a temporary basis and shall not be deemed violations of this ordinance when in conformance with the limitations, conditions, and approvals stated below.

1-601 GENERAL REQUIREMENTS AND PROCEDURES

Ord. 2654/2-5-90

A. PERMITS

All temporary uses and structures shall require approval of a permit or temporary Certificate of Occupancy with the application to be submitted to the Building Official, unless otherwise noted. The review and approval of permits shall be by the Development Review Committee, unless otherwise specified. The denial of an application may be appealed to the Board of Adjustment.

B. PERMIT FEES

Fees may be required for temporary use permits in the amount set by the City Council for the purpose of defraying the administrative costs of processing the applications.

C. OWNER APPROVAL

Whenever the property owner is different than the applicant, a letter or contract may be required to show the owner's approval to use the location for the stated purpose.

D. SITE PLAN

Applications shall be accompanied by a site plan showing the location of structures, parking, access drives, electrical and utility connections and other information necessary to determine the appropriateness and impacts of the proposal.

E. USE OF PARKING/ LOADING SPACES

No use or structure shall occupy or eliminate any required parking or loading space. Provided further, that no use or structure shall occupy or eliminate any parking or loading space designated on site and/or on the approved site plan, in a shared parking area, unless at least 51% of the tenants/businesses whose parking is provided by the shared parking lot(s) shall sign a letter or other document, which is submitted with the permit application, indicating that they do not object to the proposed temporary occupancy of such spaces. For the purpose of this requirement, shared parking area shall mean any parking where several tenants or businesses have access to common and/or shared spaces. For example, shared parking areas shall include parking where several businesses are located on a tract, such as a shopping center, as well as situations where businesses on separate tracts can access each other's parking due to continuous parking lot design and/or cross-access parking agreements.

F. SETBACKS

No use or structure shall be located in a required front or exterior side yard.

1-602 PERMITTED TEMPORARY USES AND STRUCTURES

Ord. 2654/2-5-90

A. TEMPORARY CONSTRUCTION OFFICE

The location of a temporary office may be permitted on a site for which a building permit has been issued. Such office permit may be issued for no more than one year, but may be extended if the builder maintains active and continuous construction on the site. Temporary construction office shall mean office and/or storage space related to construction activities.

B. TEMPORARY RESIDENTIAL SALES OFFICE

A residential real estate sales office, located on a platted lot, may be permitted within a subdivision for which building permits have been issued and may be located either in a model home, in a temporary building, or in a portable trailer. Such office permit may be issued for no more than one year, but may be extended if the builder maintains active and continuous construction within the subdivision and a minimum of 10 lots in the subdivision remain unsold. Such sales office shall be used for sales in the subject subdivision only and not for sales in any other subdivision.

~~C. TEMPORARY BATCH PLANT~~

~~A temporary concrete or asphalt batch plant may be permitted for use by a contractor for the period of active and continuous construction requiring concrete or asphalt. Such batch plant shall be located at least 500 feet from any occupied residential lot, and shall not be used for construction at any other location than the project for which it is permitted. An application to permit a temporary batch plant shall be submitted to the Engineering Division and shall include a copy of the approved State permit for such operation.~~

C. TEMPORARY BATCH PLANTS AND TEMPORARY MATERIAL STOCKPILE SITES

1. Permit Required.

a. Temporary Use Permit (TUP).

- (1) A Temporary Use Permit may be issued to a contractor, or other person, for a temporary concrete or asphalt batch plant or for a site to be used to temporarily stockpile material (such as fill material, soil, rock, etc.) when there is active and continuous off-site construction requiring concrete or asphalt.
- (2) A Temporary Use Permit may only be issued for an initial term of 1-year or less.
- (3) A Temporary Use Permit is required prior to seeking a Conditional Use Permit.

b. Conditional Use Permit (CUP).

- (1) A Conditional Use Permit may be issued for a temporary concrete or asphalt batch plant or for a site to be used to temporarily stockpile material to be used on another construction site (such as fill material, soil, rock, etc.) when used by a contractor, or other person, for a period of more than 1-year, when there is active and continuous construction requiring concrete or asphalt.
- (2) A Temporary Use Permit is required prior to seeking a Conditional Use Permit.
- (3) Conditional Use Permits are granted and regulated in accordance with Section 5-300.

2. Term.

a. Temporary Use Permit (TUP) – Term.

- (1) A Temporary Use Permit may be issued for any specified time period of 1-year or less.
- (2) An extension to the initial term may be granted by the City Engineer, as long as the initial time period added together with the extension time period is a total term of 18-months or less.

b. Conditional Use Permit (CUP) – Term. A Conditional Use Permit may be issued for any term in accordance with Section 5-300.

3. Application.

a. Temporary Use Permit (TUP).

- (1) An initial application for a Temporary Use Permit for a temporary batch plant or a temporary material stockpile site shall be submitted to the Engineering Division, along with the associated fee, and considered by the City Engineer, or his or her designee, for administrative approval.
- (2) To request an extension, prior to the expiration of the initial term, an application for an extension to the Temporary Use Permit shall be submitted to the Engineering Division, along with the associated fee, and considered by the City Engineer, or his or her designee, for administrative approval.
- (3) The application for a Temporary Use Permit shall include: (1) a copy of the approved State permit for such operation, (2) truck routes for delivering materials to the batch plant site and delivery of the finished material (concrete or asphalt or stockpiled material) to the construction project site, (3) stormwater pollution prevention plan (SWPPP), (4) dust control measures to be implemented on the site to prevent dust from the site impacting surrounding properties, (5) estimation on the number of truck loads and cubic yards of material that will be delivered to the site and taken from the site to the construction project, (6) listing of the expected time frame the site will be used, and (7) associated application fee.

b. Conditional Use Permit (CUP). An application for a Conditional Use Permit for a temporary batch plant or a temporary material stockpile site shall be submitted in accordance with Section 5-300.

4. Fee.

Unless otherwise authorized, each application for a Temporary Use Permit, any request for an extension to the initial term, or a Conditional Use Permit must be accompanied by the required fee(s) as set in the City of Mesquite Comprehensive Fee Schedule.

Cross reference – The Comprehensive Fee Schedule, Mesquite City Code, Appendix D.

5. Requirements.

The following requirements apply to both a Temporary Use Permit and a Conditional Use Permit.

- a. Distance requirement. Temporary batch plants, including all associated stockpiles and equipment, and temporary material stockpile sites shall be located at least 500 feet from any occupied residential lot, and shall not be used for construction at any other location than the project for which it is permitted.
- b. Restoration of the site after temporary use is completed. After the temporary use is completed, the sites shall be returned to the original conditions and grades, including restoration of vegetative ground cover.
- c. Discontinuance of temporary use. The temporary use shall be abandoned or discontinued for a minimum of six (6) months before a new Temporary Use Permit or Conditional Use Permit may be granted.
- d. Removal of the temporary use after construction project completion. The permitted batch plant or temporary material stockpile site may not remain more than thirty (30) days following the completion of the identified construction project.
- e. Construction activity limited. The construction activity or project identified for which the Temporary Use Permit or Conditional Use Permit is associated shall be for projects partially or fully within the city limits of Mesquite or a publicly designated regional project, as determined by the City Engineer, or his or

her designee.

6. Action by the City Engineer – Temporary Use Permit.

a. The City Engineer, or his or her designee, must evaluate the application for an initial Temporary Use Permit or any application for an extension to the initial term, and other required submittals pursuant to the approval standards of this sub-section and may take any of the following actions regarding the application for the Temporary Use Permit or request for extension:

- (1) approval;
- (2) approval with modifications;
- (3) denial.

b. The City Engineer, or his or her designee, may require that the Temporary Use Permit be:

- (1) revocable;
- (2) effective for a specified time period (but for no more than a 1-year initial term or a total of 18-months or less with an extension);
- (3) non-transferable; or
- (4) subject to one or more conditions.

7. Approval standards. A permit may be granted for a temporary batch plant or a temporary material stockpile site when the City Engineer, or his or her designee, (in the case of a Temporary Use Permit) or the City Council (in the case of a Conditional Use Permit) finds:

a. The City roads to be used to deliver material to the site and take material from the site to the construction project are structurally adequate to accommodate the expected truck traffic from and to the site without significant deterioration; and

b. The operation of the temporary batch plant or the temporary stockpile site will not result in the deterioration of public infrastructure; and

c. No new public infrastructure or improvements to existing public infrastructure will be required for the operation of the temporary batch plant or temporary material stockpile site; and

d. The proposed truck route for the temporary permitted use will generally not utilize local streets; and

e. Dust control measures and other measures to minimize health or environmental impacts, based on industry standards, identified in the application are adequate as determined by the City Engineer; and

f. In order to grant a Conditional Use Permit (CUP), the City Council shall review and find all of the above and shall also take into consideration the review criteria for a CUP as identified in Section 5-300.

D. TEMPORARY OUTDOOR SALES

Temporary outdoor sales events may be permitted as set out below.

- 1. Sidewalk/
Truckload Sales** Special outdoor sales of short duration, such as sidewalk or truckload sales, shall be permitted on the site of a lawful business, by that business or by a nonprofit/charitable organization, provided that no more than 4 sales of no more than 4 days each shall be held at a location during a calendar year. No permit shall be required for outdoor sales in accordance with this section, unless compliance with 1-601E regarding use of shared

parking is required.

2. ***Christmas Tree Sales Lots*** The outdoor sales of Christmas trees may be permitted for a period of not more than 30 days. The sale of firewood shall be permitted in conjunction with a Christmas tree sales lot. Sales lots located on undeveloped property shall provide adequate off-street parking, loading and electrical connections. Sales lots on developed sites which comply with the requirements for incidental outdoor display shall not require a permit under this section.
3. ***Other Outdoor Sales (Ord. 4217/7-2-2012; Ord 4708/3-5-2019)*** All other temporary outdoor sales events may be classified as special events and permitted under the regulations set out in Chapter 8, Article XIV, "Special Events and Parades," of the Mesquite City Code, as amended.

E. MOBILE MEDICAL AND PUBLIC HEALTH SERVICES Ord. 4217/7-2-2012; Ord 4708/3-5-2019

Mobile medical and public health services may be permitted when conducted from a self-contained unit, whether a vehicle or trailer, or from a temporary building, if the following criteria are met:

1. ***Definitions*** For the purposes of this Section, the term *mobile medical services* shall mean blood banks, screening for early detection of cancers, or care to the elderly or poor, conducted on a non-profit basis only, but not including veterinary services. The term *public health services* shall mean the provision of out-patient preventive care, diagnosis or treatment of minor medical conditions and auxiliary functions conducted by governmental agencies, but not including hospital trusts or hospital districts, to protect the general health and welfare, or to promote and maintain wellness and readiness of governmental employees and their families.
2. ***Permits***
 - a. Mobile medical services conducted from a self-contained unit for a period of one week or less at a site shall not require a permit. Permits may be approved for periods exceeding one week, but not exceeding 30 days, at locations within a nonresidential district or at a public facility, such as a school, library, fire station, or church in a residential district. Mobile medical services shall not be conducted from a temporary building.
 - b. Public health services conducted from a self-contained unit shall not require a permit. Except in the event of public emergencies, a unit shall not remain at a location for a period exceeding one week. A permit and temporary certificate-of-occupancy may be approved for conducting public health services from a temporary building for up to three years and is subject to renewal upon expiration as provided in this Section.
3. ***Site Requirements for Temporary Buildings*** Temporary buildings for conducting public health services shall be located on public property occupied by a permanent structure with a valid certificate-of-occupancy exclusively for medical purposes. The temporary building and disposition on the site shall comply with applicable codes for setbacks, parking, circulation, electrical and utility connections, accessibility, drainage and fire protection.
4. ***Exterior Appearance*** Metal exterior siding shall be prohibited on all facades of a temporary building. A permit and temporary certificate-of-occupancy shall not be renewed after the initial three-year period without complying with ordinances for exterior masonry. In lieu of complying with such ordinances, trees and foundation landscaping shall be installed to break the view of the temporary building from public streets and substantially conceal any skirting at the base of the temporary building.

F. TEMPORARY STORAGE VAULTS

The temporary placement of a storage vault shall be permitted on the site of a lawfully zoned business in any nonresidential zoning district, except the O-Office district, subject to the following conditions and requirements. The

permanent placement of storage vaults shall be permitted where their placement is in compliance with the regulations governing outdoor storage.

- 1. Definition** For the purposes of this Section, the term *storage vault* shall mean a vault, unit, or device designed and used specifically for storage, which is constructed of solid steel or metal construction and which is no larger than 8-1/2 feet in width, 22 feet in length, or 9 feet in height. This section shall not authorize the placement of trailers, trailers with wheels removed, export/shipping containers, or any other device designed and/or intended for transportation purposes or any modification of such device.
- 2. Permits** The following types of temporary permits may be issued for storage vaults as indicated below. No permit is required when such vault complies with the regulations for outdoor storage.

 - a. 60 Day Permit:** The Building Official may issue a total of two 60 day permits to a business during a calendar year to allow the placement of a storage vault, subject to compliance with the conditions and requirements stated below. Such permits may be combined to create one 120 day permit period.
 - b. Construction Permit:** The Building Official may issue a permit for the placement of a storage vault upon issuance of a permit for the construction or expansion of a permanent building or a permit for the repair/rehabilitation of a business which has had extensive damage. When a building permit has been issued, the use of a storage vault may be authorized for the period of active construction on the site.
- 3. Required Conditions** Storage vaults permitted pursuant to this section shall comply with the following requirements.

 - a. Location:** Storage vaults shall be located in an interior side or rear yard and on an improved surface of concrete or asphalt. No vault shall be permitted in a location which is nearer to a public street than the main building. No vault shall be placed so as to obstruct or eliminate any drive, fire lane, or required parking or loading space.
 - b. Electrical:** No electrical connections or any source of energy (such as self-contained power plants/ generators) shall be permitted.
 - c. Number:** A maximum of one vault per business shall be permitted, except in the following situations where vaults shall be permitted as stated.

 - (1) Shopping Centers/Multitenant Buildings:* On a shopping center or multitenant building site, the maximum number of vaults which may be permitted shall be one vault for each 25,000 square feet of gross floor area in the shopping center. A vault must be located behind or beside the business for which it is permitted and not behind or beside any other business.
 - (2) Large Businesses:* Businesses in excess of 50,000 square feet, whether freestanding or located in a shopping center, shall be permitted a maximum of two vaults.
- 4. Signage** No signage or advertising shall be permitted on a vault other than identification of the leasing firm, limited to name and telephone number, one time per side, using letters no larger than 3-inch.
- 5. Screening** A solid 6-foot high wood screening fence shall be provided around the vaults and shall be removed at the end of the permit period. Such screening shall not be required on the side of a vault which is against a building or when the vault is generally not visible from the

surrounding streets and parking lots.

1-603 SPECIAL EXCEPTIONS

Ord. 4562/5-7-18; Ord. 2654/2-5-90

The Board of Adjustment may authorize the following exceptions for temporary uses where it determines that such approval can be accommodated without creating adverse impacts on adjacent properties or the surrounding neighborhood. The Board may impose time limitations upon the approval of Special Exceptions for temporary uses and may set out conditions for the termination or extension of such uses.

A. TEMPORARY CLASSROOMS

To allow the use of temporary classroom buildings by elementary and secondary schools, churches, boy/girl scouts and similar organizations. Approval shall be for no more than a three-year period, provided that the Board may specify conditions under which the approval period may be extended. Such temporary buildings shall be considered compatible if the following criteria are met.

1. ***Permanent Site*** A temporary building is prohibited unless it is to be located on a site where an existing permanent building housing an authorized main use is located. For purposes of this requirement, an authorized main use is one for which a valid certificate of occupancy has been issued. The use of the temporary building shall be limited to the main use for which a certificate of occupancy has been issued or an authorized use accessory to that main use.
2. ***Proposed Construction*** The applicant shall submit a proposed schedule and a plan of construction/expansion of permanent facilities that eliminate the need for the long-term use of the temporary buildings.
3. ***Alternate Space*** There are no reasonable alternatives for providing needed space in a functional manner.
4. ***Site Adequacy*** Parking, circulation, electrical and utility connections, drainage, fire protection and all other health and safety considerations can be accommodated and provided for with the addition of temporary buildings in an orderly and safe manner.
5. ***Adjacent Properties*** The placement of the temporary buildings on the site will not be injurious to the use and enjoyment of other property in the immediate area for purposes already permitted.
6. ***Setbacks*** The placement of the temporary buildings on the site will comply with all setback requirements.

B. TEMPORARY RESIDENCES

To permit placement and occupancy of a temporary residence, which may be a mobile home, under the following circumstances. Approval may be for no more than one year, provided that the Board may specify conditions for extension. Temporary residences shall be approved only on a building site of a size sufficient to accommodate such residence and the related construction so as to meet required setbacks and which will not substantially injure the use and enjoyment of other property in the immediate area.

1. ***Emergency Residence*** A temporary residence located on the same lot as a residence made uninhabitable by fire, flood, or other natural disaster and occupied by persons displaced by such disaster during the reconstruction of the permanent residence.
2. ***Construction Residence-Nonresidential*** A temporary residence located on a nonresidential construction site and occupied by persons having construction or security responsibilities over such site.

Previous 1-700 SWIMMING POOLS/Deleted by Ord. 2632/10-1-89

Mesquite Zoning Ordinance

PART 1. – GENERAL PROVISIONS

* * *

1-600 – TEMPORARY USES AND STRUCTURES

* * *

1-602 – Permitted temporary uses and structures.

* * *

C. *Temporary batch plants and temporary material stockpile sites.*

1. Permit Required.

a. Temporary Use Permit (TUP).

- (1) A Temporary Use Permit may be issued to a contractor, or other person, for a temporary concrete or asphalt batch plant or for a site to be used to temporarily stockpile material (such as fill material, soil, rock, etc.) when there is active and continuous off-site construction requiring concrete or asphalt.
- (2) A Temporary Use Permit may only be issued for an initial term of 1-year or less.
- (3) A Temporary Use Permit is required prior to seeking a Conditional Use Permit.

b. Conditional Use Permit (CUP).

- (1) A Conditional Use Permit may be issued for a temporary concrete or asphalt batch plant or for a site to be used to temporarily stockpile material to be used on another construction site (such as fill material, soil, rock, etc.) when used by a contractor, or other person, for a period of more than 1-year, when there is active and continuous construction requiring concrete or asphalt.
- (2) A Temporary Use Permit is required prior to seeking a Conditional Use Permit.
- (3) Conditional Use Permits are granted and regulated in accordance with [Section 5-300](#).

2. Term.

a. Temporary Use Permit (TUP) – Term.

- (1) A Temporary Use Permit may be issued for any specified time period of 1-year or less.
- (2) An extension to the initial term may be granted by the City Engineer, as long as the initial time period added together with the extension time period is a total term of 18-months or less.

b. Conditional Use Permit (CUP) – Term. A Conditional Use Permit may be issued for any term in accordance with [Section 5-300](#).

3. *Application.*

a. *Temporary Use Permit (TUP).*

- (1) An initial application for a Temporary Use Permit for a temporary batch plant or a temporary material stockpile site shall be submitted to the Engineering Division, along with the associated fee, and considered by the City Engineer, or his or her designee, for administrative approval.
- (2) To request an extension, prior to the expiration of the initial term, an application for an extension to the Temporary Use Permit shall be submitted to the Engineering Division, along with the associated fee, and considered by the City Engineer, or his or her designee, for administrative approval.
- (3) The application for a Temporary Use Permit shall include: (1) a copy of the approved State permit for such operation, (2) truck routes for delivering materials to the batch plant site and delivery of the finished material (concrete or asphalt or stockpiled material) to the construction project site, (3) stormwater pollution prevention plan (SWPPP), (4) dust control measures to be implemented on the site to prevent dust from the site impacting surrounding properties, (5) estimation on the number of truck loads and cubic yards of material that will be delivered to the site and taken from the site to the construction project, (6) listing of the expected time frame the site will be used, and (7) associated application fee.

- b. *Conditional Use Permit (CUP).* An application for a Conditional Use Permit for a temporary batch plant or a temporary material stockpile site shall be submitted in accordance with [Section 5-300](#).

4. *Fee.*

Unless otherwise authorized, each application for a Temporary Use Permit, any request for an extension to the initial term, or a Conditional Use Permit must be accompanied by the required fee(s) as set in the City of Mesquite Comprehensive Fee Schedule.

Cross reference – The Comprehensive Fee Schedule, Mesquite City Code, Appendix D.

5. *Requirements.*

The following requirements apply to both a Temporary Use Permit and a Conditional Use Permit.

- a. *Distance requirement.* Temporary batch plants, including all associated stockpiles and equipment, and temporary material stockpile sites shall be located at least 500 feet from any occupied residential lot, and shall not be used for construction at any other location than the project for which it is permitted.
- b. *Restoration of the site after temporary use is completed.* After the temporary use is completed, the sites shall be returned to the original conditions and grades, including restoration of vegetative ground cover.
- c. *Discontinuance of temporary use.* The temporary use shall be abandoned or discontinued for a minimum of six (6) months before a new Temporary Use Permit or Conditional Use Permit may be granted.

- d. *Removal of the temporary use after construction project completion.* The permitted batch plant or temporary material stockpile site may not remain more than thirty (30) days following the completion of the identified construction project.
 - e. *Construction activity limited.* The construction activity or project identified for which the Temporary Use Permit or Conditional Use Permit is associated shall be for projects partially or fully within the city limits of Mesquite or a publicly designated regional project, as determined by the City Engineer, or his or her designee.
6. *Action by the City Engineer – Temporary Use Permit.*
- a. The City Engineer, or his or her designee, must evaluate the application for an initial Temporary Use Permit or any application for an extension to the initial term, and other required submittals pursuant to the approval standards of this sub-section and may take any of the following actions regarding the application for the Temporary Use Permit or request for extension:
 - (1) approval;
 - (2) approval with modifications;
 - (3) denial.
 - b. The City Engineer, or his or her designee, may require that the Temporary Use Permit be:
 - (1) revocable;
 - (2) effective for a specified time period (but for no more than a 1-year initial term or a total of 18-months or less with an extension);
 - (3) non-transferable; or
 - (4) subject to one or more conditions.
7. *Approval standards.* A permit may be granted for a temporary batch plant or a temporary material stockpile site when the City Engineer, or his or her designee, (in the case of a Temporary Use Permit) or the City Council (in the case of a Conditional Use Permit) finds:
- a. The City roads to be used to deliver material to the site and take material from the site to the construction project are structurally adequate to accommodate the expected truck traffic from and to the site without significant deterioration; and
 - b. The operation of the temporary batch plant or the temporary stockpile site will not result in the deterioration of public infrastructure; and
 - c. No new public infrastructure or improvements to existing public infrastructure will be required for the operation of the temporary batch plant or temporary material stockpile site; and
 - d. The proposed truck route for the temporary permitted use will generally not utilize local streets; and
 - e. Dust control measures and other measures to minimize health or environmental impacts, based on industry standards, identified in the application are adequate as determined by the City Engineer; and
 - f. In order to grant a Conditional Use Permit (CUP), the City Council shall review and find all of the above and shall also take into consideration the review criteria for a CUP as identified in [Section 5-300.](#)



MEMORANDUM

TO: Planning & Zoning Commission

FROM: Jeff Armstrong, AICP, Director of Planning & Development Services

DATE: May 21, 2020

SUBJECT: ZTA 2020-03 – Appeal, Variance and Special Exception Procedures

Staff proposes amending Section 5-200 of the Zoning Ordinance regarding appeal, variance and special exception procedures. These are all items that the Board of Adjustment considers. The amendments bring Mesquite into compliance with State legislation passed in 2019. The amendment also significantly reorganizes this section of the Zoning Ordinance, providing clarification on procedural matters and consistency.

Staff recommends approval of the proposed amendment.

A handwritten signature in black ink that reads "Jeff Armstrong".

—
Jeff Armstrong, AICP
Director of Planning & Development Services

Enclosed:
Proposed Ordinance ZTA 2020-03
Attachment 1 – Existing Section 5-200 Strikethrough
Exhibit A – Proposed Section 5-200
Exhibit B – Board of Adjustment Fee Schedule

ORDINANCE NO. _____
Zoning Text Amendment No. 2020 - 03

AN ORDINANCE OF THE CITY OF MESQUITE, TEXAS, AMENDING THE MESQUITE ZONING ORDINANCE, AS PREVIOUSLY AMENDED, BY REPEALING AND REENACTING SECTION 5-200 TO BE TITLED “SPECIAL EXCEPTIONS, VARIANCES, AND APPEALS OF ADMINISTRATIVE DECISIONS”; AMENDING APPENDIX D – THE COMPREHENSIVE FEE SCHEDULE OF THE MESQUITE CITY CODE BY REPEALING AND REENACTING ARTICLE XII, SECTION 12-116, TITLED “BOARD OF ADJUSTMENT FEES”; PROVIDING A REPEALING CLAUSE; PROVIDING A CONFLICTS RESOLUTION CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY CLAUSE IN AN AMOUNT NOT TO EXCEED TWO THOUSAND DOLLARS (\$2,000); PROVIDING FOR PUBLICATION; AND DECLARING AN EFFECTIVE DATE.

WHEREAS, the Legislature of the State of Texas enacted H.B. 2497, codified in Title 7 of the Local Government Code, Subtitle A., Chapter 211 – Municipal Zoning Authority, Subchapter A – General Zoning Regulations, amending Sections 211.008 and 211.010; and

WHEREAS, the City Council previously adopted amendments to the Mesquite Zoning Ordinance, on **November 4, 2019**, in Ordinance No. 4738 (Zoning Text Amendment No. 2019-05) that address the newly revised State law (regarding the requirement for any updated Board of Adjustment Rules to be approved by the City Council) codified in Texas Local Government Code, Chapter 211, Section 211.008; and

WHEREAS, this ordinance makes the necessary revisions to Section 5-200 of the Mesquite Zoning Ordinance to align with the changes to State law (regarding appeals of administrative decisions) codified in Texas Local Government Code, Chapter 211, Section 211.010; and

WHEREAS, this ordinance also reorganizes and updates Section 5-200 of the Mesquite Zoning Ordinance to provide improved clarity to processes and procedures associated with special exceptions, variances, and appeals of administrative decisions; and

WHEREAS, in addition, this ordinance reorganizes Section 12-116 titled “Board of Adjustment Fees” of Article XII of Appendix D – the *Comprehensive Fee Schedule* of the Mesquite City Code, so as to add two new fees and to track with the newly revised Section 5-200; and

WHEREAS, on **May 26, 2020**, the City of Mesquite Planning and Zoning Commission considered the text amendments to the Mesquite Zoning Ordinance and after having given proper public notice and holding a public hearing, the Planning and Zoning Commission recommends the City Council adopt the text amendments to the Mesquite Zoning Ordinance; and

WHEREAS, the City Council gave public notice and held a public hearing regarding the proposed Mesquite Zoning Ordinance text amendments; and

WHEREAS, the City Council finds that it is in the best interests of the citizens of the City to amend the Mesquite Zoning Ordinance as herein provided.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS:

SECTION 1. Recitals Incorporated. The City Council hereby finds and determines the recitals made in the preamble of this ordinance are true and correct, and hereby incorporates such recitals here in the body of this ordinance as if copied in their entirety.

SECTION 2. ZONING ORDINANCE TEXT AMENDMENT: Repealing and Reenacting Section 5-200 of the Mesquite Zoning Ordinance. Part 5 of the Mesquite Zoning Ordinance, as amended, is hereby amended by repealing and reenacting existing Section 5-200 currently titled “Appeal, Variance, Special Exception Procedures” to be retitled “Special Exceptions, Variances and Appeals of Administrative Decisions” and to now read as identified in **EXHIBIT A** attached hereto and made a part hereof, and in all other respects said Zoning Ordinance and Part shall remain in full force and effect.

SECTION 3. MESQUITE CITY CODE, APPENDIX D – THE COMPREHENSIVE FEE SCHEDULE AMENDMENT: Repealing and Reenacting Article XII, Section 12-116, “Board of Adjustment fees.” Article XII of Appendix D – the Comprehensive Fee Schedule of the Mesquite City Code, as amended, is hereby amended by repealing and reenacting existing Section 12-116 titled “Board of Adjustment Fees” to reorganize the fees listed in the section and by adding a fee for a written request for reconsideration; to read as identified in **EXHIBIT B** attached hereto and made a part hereof, and in all other respects, said Code, Appendix and Sections to remain in full force and effect.

SECTION 4. Repealing Clause. That all ordinances or portions thereof in conflict with the provisions of this ordinance, to the extent of such conflict, are hereby repealed. To the extent that such ordinances or portions thereof are not in conflict herewith, the same shall remain in full force and effect.

SECTION 5. Conflicts Resolution Clause. In the event of an irreconcilable conflict between the provisions of another previously adopted ordinance of the City of Mesquite and the provisions of this Ordinance, the provisions of this Ordinance shall be controlling.

SECTION 6. Severability Clause. Should any word, sentence, paragraph, subdivision, clause, phrase or section of this ordinance be adjudged or held to be void or unconstitutional, the same shall not affect the validity of the remaining portions of said ordinance, the Mesquite City Code, as hereby or previously amended, or the Mesquite Zoning Ordinance, as hereby or previously amended, which shall remain in full force and effect.

SECTION 7. Penalty Clause. Generally. Nothing in this ordinance prohibits the City from pursuing civil and criminal enforcement remedies and penalties concurrently or availing itself of any other remedy allowed by law. **Criminal.** Any violation of the provisions or terms of this ordinance by any “person,” (as defined in Mesquite City Code, Chapter 1, [Section 1-2](#)) shall be deemed a Class C Misdemeanor criminal offense, and upon conviction thereof, shall be subject to a penalty of fine not to exceed TWO THOUSAND DOLLARS (\$2,000.00) for each offense, as provided in Mesquite City Code, Chapter 1, [Section 1-6](#), as amended. **Civil.** The City may also file a civil action for enforcement of this ordinance. **Maximum penalties.** If the maximum penalties provided for by this ordinance for an offense or civil action is greater than the maximum penalty provided for the same offense or civil action under the laws of the State of Texas, the maximum penalty for violation of this ordinance for such offense or civil action shall be the maximum penalty provided by the laws of the State of Texas.

SECTION 8. Publication. This ordinance shall be published in the City’s official newspaper in accordance with Mesquite City Charter, Article IV, [Section 24](#).

SECTION 9. Effective Date. This ordinance after its passage and publication shall take effect on, and be in force from and after, five (5) days after publication thereof, in accordance with Mesquite City Charter, Article IV, [Section 24](#), and it is accordingly so ordained.

DULY PASSED AND APPROVED by the City Council of the City of Mesquite, Texas, on this the **15th day of JUNE 2020**.

Bruce Archer
Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

Sonja Land
City Secretary

David L. Paschall
City Attorney

5-200 APPEAL, VARIANCE AND SPECIAL EXCEPTION PROCEDURES

Appeals of an administrative determination and/or requests for interpretation of this ordinance, requests for variance, and requests for approval of a Special Exception require Board of Adjustment review and action and shall be processed as follows:

5-201 APPLICATION

Ord. 2667/4-2-90

A. INITIATION

- 1. Appeals/
Interpretation**
(Ord. 4400/11-2-15) An appeal alleging error in a determination of an administrative official and/or requesting interpretation of the provisions of this ordinance may be made by any person aggrieved by the decision of an administrative official, or by any officer, department, board, or bureau of the municipality affected by the decision. An appeal to the Board must be made within 10 days after notice of the decision of the official.
- 2. Variances/
Special Exceptions** A request for variance or for approval of a Special Exception may be made by the owner of the property on which the variance or Special Exception is sought, or by an authorized agent, provided that the owner indicates his consent in writing.

B. APPLICATION FORM

Requests for Board action shall be submitted on application forms provided by the Planning Division and shall adequately set forth the description and justification of the request and/or specify the grounds for appeal, as is appropriate for the requested action.

C. MAP/DRAWING

The application shall include a map, site plan, plot plan, or other drawing, drawn to scale and/or dimensioned, which indicates the property in question and shows all structures and improvements and their relationship to each other, to the property boundaries, and to the proposed action.

D. APPLICATION FEE

The applicant shall submit with the application a fee in the amount set by the City Council for the purpose of defraying the administrative costs of processing the application. No fee or portion thereof shall be refundable after notices regarding the application have been issued.

5-202 PROCEDURES

Ord. 2667/4-2-90; Ord. 3923/12-17-07

A. STAY OF PROCEEDINGS

An appeal stays all proceedings in furtherance of the action that is appealed unless the official from whom the appeal is taken certifies in writing to the Board those facts supporting the official's opinion that a stay would cause imminent peril to life or property. In such case, the proceedings may be stayed only by a restraining order granted by the Board or a court of record on application, after notice to the official, if due cause is shown.

B. PUBLIC HEARING AND NOTIFICATION

The Board shall hold a public hearing on all actions authorized by this ordinance. Notification of public hearings shall specify the time and place of the hearing, along with information regarding the location and nature of the requested action, and shall be provided as follows:

~~**Mailing**~~ Before the tenth day before the date of the public hearing, written notice shall be sent to each owner of real property within 200 feet of the property which is the subject of the request, as such ownership is indicated by the most recently approved municipal tax roll. The notice may be served by its deposit, properly addressed with postage paid, in the United States mail.

~~**5-203 CRITERIA FOR REVIEW**~~ ~~**Ord. 2667/4-2-90**~~

~~**A. CRITERIA FOR SPECIAL EXCEPTIONS**~~

~~Special exceptions may be granted as set out in this ordinance, when the Board determines that the exception will allow greater use and enjoyment of property without creating adverse impacts on adjacent properties and that it will be compatible with the surrounding neighborhood. The Board shall also consider any criteria set out in this ordinance for a specific Special Exception.~~

~~**B. CRITERIA FOR VARIANCES**~~

~~Variances from the terms of this ordinance which will not be contrary to the public interest may be granted where, due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship, so that the spirit of the ordinance is observed and substantial justice is done. The Board shall consider whether:~~

- ~~1. **Special Conditions** Special conditions and circumstances exist which are peculiar to the land or improvements thereto and which are not applicable to other lands or improvements thereto in the same district.~~
- ~~2. **Unnecessary Hardship** Literal interpretation of the provisions of the ordinance would result in unnecessary hardship to the owner of the property.~~
- ~~3. **Not Self-Imposed** The special conditions and circumstances are not self-imposed, i.e. do not result from the actions of the applicant or owner.~~

~~**C. SPECIAL EXCEPTIONS FOR THE HANDICAPPED**~~ ~~**Ord. 4400/11-2-2015**~~

~~It is the express intent of the City Council to comply with the Federal Fair Housing Amendments Act of 1988, as amended, and to ensure that all handicapped persons have equal opportunity to use and enjoy a dwelling. This section allows a person to seek relief from the enforcement of any regulation contained in this chapter that would result in illegal discrimination against the handicapped. This section does not authorize the Board to grant a change in the use of a building or structure.~~

~~The Board shall grant a special exception to any regulation in this chapter if, after a public hearing, the Board finds that the exception is necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling. The term "handicapped person" means a person with a "handicap," as that term is defined in the Federal Fair Housing Amendments Act of 1988, as amended. The Board may impose reasonable conditions upon the granting of this special exception consistent with the purpose stated in this section.~~

~~**5-204 BOARD ACTION**~~ ~~**Ord. 2667/4-2-90; Ord. 4136/3-21-2011**~~

~~**A. ACTION AUTHORIZED**~~

- ~~1. **Special Exceptions and Variances** The Board may deny or approve a request for Special Exception or Variance. The Board may impose reasonable conditions and limitations to an approval in order to further the purposes and intent of this ordinance.~~
- ~~2. **Appeals Interpretations** The Board may reverse or affirm, in whole or in part, or modify the administrative official's order, requirement, decision or determination from which an appeal is taken and make the correct order, requirement, decision or determination, and for that purpose the Board has the same authority as the administrative official.~~

~~B. — EFFECT OF DECISIONS (Ord. 4400/11-2-15)~~

~~The Board's decision is final unless appealed to the district court within 10 days in accordance with Chapter 211 of the Texas Local Government Code.~~

~~C. — RESUBMISSION (Ord. 3151/4-21-97)~~

~~The submission of an application previously determined by the Board shall not be permitted, unless the Board's determination is made "without prejudice". Except that, where extenuating circumstances exist, an applicant previously denied may appear before the Board to request that resubmittal of their application be permitted. Extenuating circumstances shall mean changed conditions or facts which will substantially alter the criteria for review of the application. This section shall not prohibit the submission of a new application which contains meaningful revisions for consideration. Meaningful revisions shall mean a substantial change in the size, location, or other physical characteristic of the subject of the application.~~

~~D. — LIMITATION ON APPROVAL~~

~~The applicant shall file an application for a building permit or Certificate of Occupancy on or before the expiration of 180 days from the date of favorable Board action, unless an extended period is specifically granted by the Board. If the applicant fails to file such application within the time period, the request is automatically denied without prejudice and a new application must be made.~~

Mesquite Zoning Ordinance

* * *

5-200 – SPECIAL EXCEPTIONS, VARIANCES, AND APPEALS OF ADMINISTRATIVE DECISIONS.

- 5-201 – In General
- 5-202 – Application Procedures
- 5-203 – Notice
- 5-204 – Public Hearing
- 5-205 – Reasonable Accommodations for Persons with Disabilities
- 5-206 – Special Exception
- 5-207 – Variance
- 5-208 – Rules for Motions, Decisions, Request for Reconsiderations, and Appeals to Court
- 5-209 – Expiration
- 5-210 – Appeals of Administrative Decisions to Board of Adjustment

5-200 – SPECIAL EXCEPTIONS, VARIANCES AND APPEALS OF ADMINISTRATIVE DECISIONS.

5-201 – In General.

A. Board of Adjustment.

1. *Board.*

The composition and appointment of the Board of Adjustment shall be in compliance with this Zoning Ordinance.

Cross reference – Sec. 5-402 General Regulations of Boards and Commissions.

Cross reference – Sec. 5-408 Board of Adjustment.

2. *Authority.*

The Board of Adjustment is authorized to hear and decide, including but not limited to, applications for special exceptions, variances, and appeals of administrative determinations or decisions.

Cross reference – Sec. 5-408 Board of Adjustment; (G) Duties and Powers.

Cross reference – Sec. 5-206 Special Exception.

Cross reference – Sec. 5-207 Variance.

Cross reference – Sec. 5-210 Appeals of Administrative Decisions to Board of Adjustment.

B. Definitions.

1. The rules of [Section 6-101](#), regarding interpretation, construction and interchangeability of terms, shall be observed, except when the context requires otherwise.
2. Definitions – The following words, terms and phrases, when used in Section(s) 5-200 have the meanings ascribed to them in this sub-section, except where the context clearly indicates a different meaning.

Board. Board means the Board of Adjustment of the City of Mesquite, Texas.

Board's office. Board's office means the Planning & Development Services Department.

Department. Department means Planning & Development Services.

Director. Director means Director of Planning & Development Services, or his or her authorized designee(s).

5-202 – Application Procedures.

This section applies to applications for special exceptions, special exceptions for reasonable accommodations, and variances.

A. Pre-Application Conference.

1. *Pre-application conference optional.* Prior to the submission of any application for a special exception or variance, applicants are encouraged to schedule and attend an optional pre-application conference with the Department City Staff.
2. *Purpose of pre-application conference.* Pre-application conferences with Department City Staff may be used to discuss, in general, procedures, standards, or regulations relating to the special exception or variance request.

3. *Pre-application conference request.* If a pre-preapplication conference is requested, the Department City Staff may require the applicant to submit information in the form of a *Pre-Application Conference Request Form* prior to the pre-application conference to allow Department City Staff time to review the proposal.
4. *A pre-application conference request form is not an application.* Any *Pre-Application Conference Request Form* materials submitted or discussed as a part of a pre-application conference shall not be considered a special exception or variance application but will be considered an informal request for information prior to the actual application submittal by an applicant.
5. *Scheduling the pre-application conference.* After receipt of a *Pre-Application Conference Request Form*, the Department City staff will schedule the pre-application conference and inform the applicant in writing of the conference date, time and location.
6. *Record of pre-application conference.* The City is not responsible for making or keeping a summary of the topics discussed at the pre-application conference.

B. Application contents.

1. *Application form(s).* All applications for special exceptions and variances (“application(s)”) must be on forms provided by the Director. The Director is authorized to request all information necessary to evaluate the request in the application.
2. *Application contents.* A submitted application must include all information, plans, and data as specified in the application requirements.
3. *Map/drawing.* When requested, the applicant shall include with the application a map, site plan, plot plan, or other drawing, drawn to scale and/or dimensioned, which indicates the property in question and shows all structures and improvements and their relationship to each other, to the property boundaries and to the proposed action. Any required plans must be at a scale sufficient to permit a clear and precise understanding of the proposal, unless specifically required to be at a set scale.
4. *Submittal waivers.* If any application submittal requirement is not applicable or is inappropriate to determine the nature of the special exception or variance, a submittal waiver may be requested with justification for such a waiver. The Director may waive the submittal requirements, except for fees, where the Director finds it is clearly justifiable to make such a waiver. Any person aggrieved by the Director’s determination may appeal in accordance with Section 5-210 (Appeals of Administrative Decisions to Board of Adjustment).

C. Fees.

1. *Fee required.* Unless otherwise herein authorized, each application must be accompanied by the required fee(s) as set in the City of Mesquite Comprehensive Fee Schedule.

Cross reference – The Comprehensive Fee Schedule, Mesquite City Code, Appendix D, Sec. 12-116.

2. *No fees required for City-initiated applications.* There are no fee requirements if an application is submitted by any officer, department, board, or commission of the City.
3. *Fee is required for a determination of a complete application.* An application shall not be considered complete unless it is accompanied by the required fee.

4. *Refunds.* If an application is withdrawn, no fee, or portion thereof, shall be refundable after notices regarding the application have been issued or processed for issuance; however, a refund shall be issued when the applicant requests to withdraw the application due to a City staff error or other error not the fault of the applicant.

D. Submitting the Application.

1. *Submission.* Submission, and completeness review, are both required prior to the City's acceptance and the official filing of an application for a special exception or variance. All applications must be submitted, in such quantity as required by the application instructions, with the Department, unless otherwise specified.
2. *Date of submission.* All applications for special exceptions or variances shall be considered submitted when entered on the City's online application portal before 3 p.m. on a business day during normal office hours. Applications entered on or after 3 p.m. on a business day or on Saturday, Sunday, or holidays shall not be considered submitted until the next business day following the date the information was entered.

Cross reference – City's on-line application portal - [City of Mesquite Citizen Self Service](#).

E. Completeness Review of Application.

1. *Completeness review required.* Submission, and completeness review, are both required prior to the City's acceptance and the official filing of an application for a special exception or variance.
2. *Requirements of a complete application.* A complete application includes, but may not be limited to:
 - a. Required forms.
 - b. All information, plans, and data as specified in the application requirements.
 - c. The appropriate fee(s).
3. *Incomplete applications.* If the application does not include all the submittal requirements for the application, the Director will reject the application and provide the applicant with the reasons for the rejection. The Director will take no further steps to process the application until all deficiencies are remedied.
4. *Completeness determination.* The Director shall make his or her final determination regarding a complete or incomplete application in writing.

F. Acceptance and Official Filing of the Application.

1. *A submitted and complete application shall be accepted and officially filed.* If it is determined that a submitted application is complete, the Director shall accept the application and date stamp the application noting the date of the acceptance and official filing of the application.
2. *City shall notify applicant of the acceptance and official filing date.* Upon acceptance and official filing of an application, the Director shall provide to the applicant notice of City's acceptance and official filing date of the application.

G. Substantive Changes Made After Application is Determined Complete.

After an application is determined complete, any substantive change made by the applicant to the application requires resubmittal of the entire application and a new completeness review. However, such revisions do not require an additional payment of fees, unless notices have been issued or processed for issuance. In addition, if the substantive changes made to the application were made after notices have been issued or processed for issuance and are due to a City staff error or other error not the fault of the applicant, additional payment of fees are not required. Once the application is under consideration by the appropriate body, additional information or revisions requested during review do not constitute a substantive change to the application.

H. Withdrawal of Application.

An applicant has the right to withdraw an application at any time prior to the final decision, including the ability to withdraw the application if it has been tabled or postponed by the Board. The applicant must submit a request for withdrawal in writing. Fees shall only be refunded in accordance with this section. The Director's receipt of a written withdrawal request shall officially terminate the application.

Cross reference – Fees, Section 5-202. – Application Procedures, (C).

I. Consideration of Subsequent Applications.

1. *Prohibited for one year.*

Within one (1) year of the date of denial of a special exception or variance by the Board of Adjustment, a subsequent application for substantially the same request will not be reviewed or heard unless an exception exists.

2. *New application is permissible after the one (1) year wait requirement.*

An application submitted after the required one (1) year wait requirement shall be processed as a new application; however, the new application shall denote the history of any prior requests and/or prior denials associated with the property.

3. *Exceptions to the one (1) year wait requirement.*

A subsequent application for a denied request may be reviewed or heard, prior to the expiration of the one (1) year wait requirement, if extenuating circumstances exist such that changed conditions or facts will substantially alter the criteria for review of the application.

4. *Submitting the subsequent application prior to the expiration of the one (1) year wait requirement.*

a. Any subsequent application submitted prior to the expiration of the one (1) year wait requirement shall be processed in the same manner as all other original applications, including, the requirement to pay all applicable fees associated with an application.

Cross reference – Section 5-202. - Application Procedures.

b. Any subsequent application submitted prior to the expiration of the one (1) year wait requirement shall include a detailed statement of the grounds justifying its reconsideration.

5. *Completeness review of a subsequent application.*

Submission, and completeness review, are both required prior to the City's acceptance and the official filing of any subsequent application prior to the expiration of the one (1) year wait requirement.

Cross reference – Completeness Review of Application, Section 5-202. - Application Procedures., (E).

6. *Acceptance and official filing of the subsequent application.*

If it is determined that a submitted subsequent application is complete, the Director shall accept the application and date stamp the application noting the date of the acceptance and official filing of the application. Upon acceptance and official filing of any subsequent application, the Director shall provide to the applicant notice of City's acceptance and official filing date of the application.

Cross reference – Acceptance and Official Filing of the Application, Section 5-202. - Application Procedures., (F).

7. *Decision regarding resubmittal of a subsequent application for consideration.*

- a. The Director shall make a determination as to whether the subsequent application is appropriate for resubmittal to the Board prior to the expiration of the one (1) year wait requirement.
- b. If the Director finds that there are no new grounds for consideration of the subsequent application prior to the expiration of the one (1) year wait requirement, he/she will summarily, and without hearing, deny the request for consideration of the subsequent application.

8. *Appeal of Director's decision.*

Any person aggrieved by the Director's decision to either deny or approve a subsequent application to be considered by the Board prior to the expiration of the one (1) year wait requirement may appeal in accordance with Section 5-210 (Appeals of Administrative Decisions to Board of Adjustment).

5-203 – Notice.

A. Required Notice.

1. *Public notice pursuant to the Open Meetings Act.*

All public hearings, pursuant to any matter in Section(s) 5-200, shall be held at public meetings of the Board of Adjustment. The public notice for meetings shall comply with the Texas Open Meetings Act.

Cross reference – Sec. 5-402 – General Regulations of Boards and Commissions.

State Law reference – V.T.C.A., Government Code, Open Meetings Act, Notice of Meeting, § 551.041.

State Law reference – V.T.C.A., Government Code, Open Meetings Act, Time and Accessibility of Notice, § 551.043.

2. *Other Notice.*

The following table summarizes the City’s required notice for matters in Section(s) 5-200.

| Table 5-203.01 | | | | |
|--|-------------|-----------|--------------------|---|
| APPLICATION | NOTICE TYPE | | | TIMING |
| | Mailed | Published | Posted on Property | (in days before the hearing date, or decision date if no hearing is required) |
| Special Exception | • | | | 11 days |
| Variance | • | | | 11 days |
| Request for Reconsideration | • | | | 11 days |
| Appeals of Administrative Decisions | • | | | 11 days |

B. Mailed Notice.

1. *Purpose of mailing notice.* The mailing of the notice of a public hearing informs potentially interested parties within the proximity of the property of the date, time and place of such public hearing and the substance of the public hearing agenda items that may be considered or reviewed.
2. *Requirement and deadline for mailing notice.* The Director shall give notice of a public hearing by mailing notice not later than the eleventh (11th) day before the date of the public hearing, unless otherwise provided. The date of the public hearing shall be considered Day Zero (0).
3. *Exceptions to the requirement for mailed notice.*
 - a. *Postponed public hearing.* In the event a public hearing is postponed (prior to opening the hearing), no new mailed notice is required to conduct the hearing at a later date, provided the hearing is postponed to a date specific and a public announcement of the future date, time, and place of the postponed hearing is made during the current meeting and recorded in the minutes.

- b. *Continued public hearing.* In the event a public hearing is opened and continued to a date specific, no new mailed notice is required to continue and conduct the hearing at a later date, provided the hearing is continued to a date specific and a public announcement of the future date, time, and place of the continued hearing is made during the current hearing and recorded in the minutes.
4. *Method of mailing and parties.* A mailed notice of public hearing is properly served by its deposit, properly addressed with postage paid, in the U.S. mail to the:
- a. applicant;
 - b. owners of record of real property, as indicated by the most recently approved municipal tax roll, located within 200-feet of the subject property; and
 - c. parties to an appeal.
5. *Content of notice.* A mailed notice of public hearing shall provide at least the following specific information:
- a. generally describe the subject matter of the public hearing;
 - b. identify the applicant and the location of the subject property;
 - c. identify the body holding the public hearing and the date, time, and place of the public hearing;
 - d. if the decision of the body holding the public hearing may be appealed, describe the procedure and requirements for an appeal; and
 - e. include the address, website, and telephone number of the office from which additional information may be obtained.
6. *Sufficiency of notice.* Minor typographical and grammatical errors contained in the notice shall not invalidate the notice; however, the notice shall contain the correct date, time and location of the public hearing, and a reasonable person should be able to determine the location of the property and subject matter of the application or item being taken up by the Board.

Sec. 5-204 – Public Hearing.

Public hearings for special exceptions, variances or appeals of administrative determinations or decisions to the Board of Adjustment shall be conducted in accordance with this Zoning Ordinance, State law, and any other applicable Board rules and regulations.

A. Pre-Hearing Examination.

Once required notice is given, any person may examine the application and material submitted in support of or in opposition to the application during normal business hours, subject to the exceptions set forth in the Texas Public Information Act. Upon reasonable request, any person is entitled to copies of the application and related documents. A fee may be charged for such copies in accordance with the schedule of charges for producing records pursuant to the Public Information Act.

State law reference – Public Information Act, V.T.C.A. Government Code, [§ 552.001](#).

Cross reference – Schedule of charges for producing records, Mesquite City Code, [Sec. 1-15](#).

B. Conduct of Public Hearing.

1. *Appearances at a public hearing.* A party may appear at the public hearing in person, by agent, or attorney.
2. *Speakers.* A person shall be called to speak at a public hearing in the manner provided by the chairperson (“Chair”) and/or at the time provided in the Agenda. A speaker shall state the speaker's name and address at the beginning of the speaker's presentation when addressing the Board.
3. *Preliminary issues prior to opening a public hearing.* Before opening a hearing, the Board shall decide preliminary issues raised by the parties or City staff, including, but not limited to, requests to postpone the public hearing. In the case of an appeal of an administrative decision, the Board shall decide whether the appellant has standing (which include issues of timeliness, jurisdiction, or ripeness) to appeal.
4. *Process of public hearing.* A public hearing on an individual application, or on a grouping of applications, shall generally proceed as follows:
 - a. Presentation of a report by City staff.
 - b. Opportunity for comments and/or presentation by the applicant (or appellant when applicable).
 - c. The Chair will open the public hearing.
 - d. Opportunity for comments by persons supporting the application (or appeal when applicable).
 - e. Opportunity for comments by persons opposing the application (or appeal when applicable).
 - f. Opportunity for rebuttal by the applicant (or appellant when applicable).
 - g. The Chair may close the public hearing.
5. *Questions.* A member of the Board may ask questions of any person at any time during the hearing. With the approval of the Chair, a person addressing the Board may ask a question of another person in attendance.
6. *Time limits.* The Chair conducting a public hearing may limit speakers' time to address the body.

7. *Postpone holding a public hearing.* The Board may postpone holding a public hearing prior to the opening of the public hearing. No new mailed notice is required to conduct the hearing at a later date, provided the hearing is postponed to a date specific and a public announcement of the future date, time, and place of the postponed hearing is made during the current meeting and recorded in the minutes.
8. *Continuing an opened public hearing.* The Board may continue an opened public hearing to a later date. No new mailed notice is required to continue and conduct the hearing at a later date, provided the hearing is continued to a date specific and a public announcement of the future date, time, and place of the continued hearing is made during the current hearing and recorded in the minutes.
9. *Closing and re-opening a public hearing.* If a public hearing is opened and later in the same meeting closed and adjourned, rather than “continued” to a later date, in order to re-open the public hearing on another day, all mailed notice must be given that would have been required for the initial public hearing.

5-205 – Reasonable Accommodations for Persons with Disabilities.

A. In General.

This section allows a person to seek relief from the enforcement of any regulation contained in this Zoning Ordinance that would result in illegal discrimination against persons with disabilities.

B. Purpose.

Special exceptions may be granted for reasonable accommodations when needed to provide disabled individuals an equal opportunity to use and enjoy a dwelling.

Federal law reference – Federal Fair Housing Act, as amended, 42 U.S.C. §§ 3601-3619.

C. Authority.

Under State law, the Board of Adjustment may hear and decide special exceptions to the terms of this zoning ordinance when the special exceptions are expressly provided for by ordinance. Under federal law, special exceptions for a reasonable accommodation are required to provide disabled or handicap individuals an equal opportunity to use and enjoy a dwelling.

State law reference – Authority of Board, V.T.C.A. Local Government Code, [§ 211.009\(a\)\(2\)](#).

Federal law reference – Federal Fair Housing Act, as amended, 42 U.S.C. §§ 3601-3619.

D. Effect.

Approval of an application for a special exception, for a reasonable accommodation, entitles the applicant to undertake the use or activity authorized under the special exception.

E. Initiation.

All applications for requests for a special exception, for a reasonable accommodation, may be made by any person with a disability, or their authorized representative, and shall be made in accordance with the requirements contained in Section 5-202 (Application Procedures). The request shall state the reason for the special exception for a reasonable accommodation from this Zoning Ordinance and the basis for the request.

F. Notice.

Notice, in accordance with Section 5-203 (Notice), shall be provided to the public regarding a request for a special exception, for a reasonable accommodation, and any associated public hearing.

G. Public Hearing.

A public hearing, in accordance with Section 5-204 (Public Hearing), shall be conducted to determine whether the request for a special exception, for a reasonable accommodation, should be granted.

H. Action by the Director.

Action by the Director for applications for requests for a special exception, for a reasonable accommodation, shall follow the process for special exceptions in accordance with Section 5-206 (Special Exception).

I. Action by the Board of Adjustment.

Action by the Board for applications for requests for a special exception, for a reasonable accommodation, shall follow the process for special exceptions in accordance with Section 5-206 (Special Exception).

J. Limitations.

1. This section does not authorize the Board to grant a change in the use of a building or structure.
2. A reasonable accommodation for an increase in the number of residents for any use terminates if the property ceases to be operated as housing for disabled or handicap persons as defined by the Fair Housing Act, as amended.

Federal law reference – Federal Fair Housing Act , as amended, 42 U.S.C. §§ 3601-3619.

K. Modifications and Conditions.

1. *Granting a special exception approval with a modification.*

The Board may grant a special exception, for a reasonable accommodation, that is less than that requested in the submitted application when it has been decided that the applicant is entitled to some relief, but not to the entire relief requested in the application.

2. *Granting a special exception with conditions and restrictions.*

The Board may impose such conditions and restrictions upon the special exception, for a reasonable accommodation, consistent with the purpose stated in this section.

L. Approval Standards.

To grant a special exception, for a reasonable accommodation, the applicant, or applicant's authorized representative, shall have the burden to demonstrate and the Board must find that:

1. The applicant (or the person on whose behalf the applicant is requesting the accommodation) suffers from a disability as defined by the Fair Housing Act, as amended; and
2. The applicant (or the person on whose behalf the applicant is requesting the accommodation) demonstrates that the accommodation is both reasonable and necessary. An accommodation under this section is "necessary" if without the accommodation the applicant will be denied an equal opportunity to obtain the housing of his or her choice.

5-206 – Special Exception.

A. In General.

A special exception refers to uses or a modification of standards this Zoning Ordinance allows, but that are examined and specially approved by the Board of Adjustment.

B. Purpose.

The purpose of a special exception review by the Board is to determine situational suitability for the requested special exception.

C. Authority.

The Board may hear and decide special exceptions to the terms of this zoning ordinance when the special exceptions are expressly provided for by ordinance.

State law reference – Authority of Board, V.T.C.A. Local Government Code, [§ 211.009\(a\)\(2\)](#).

D. Effect.

Approval of an application for a special exception entitles the applicant to undertake the use or activity authorized under the special exception.

E. Applicability.

An application for a special exception may be filed only for the use or modifications listed below, or as otherwise provided for in this Zoning Ordinance:

1. Nonconforming uses. [1-302](#) (B).
2. Nonconforming structures and premises. [1-303](#) (B).
3. Temporary uses.
 - a. Temporary classrooms. [1-603](#) (A).
 - b. Temporary residences. [1-603](#) (B).
4. Accessory telecommunications facilities - Oversized antenna. [1-702](#) (A)(2).
5. Special exception for tree preservation. [1A-403](#) (G).
6. Principal or accessory uses in residential districts. [2-201](#) (C) and [2-203](#).
7. Minimum unit size in residential districts. [2-305](#) (A).
8. Lighted game courts in residential districts. [2-603](#) (J) and [2-604](#) (C).
9. Accessory dwelling units in residential districts. [2-603](#) (N).
10. Oversized accessory structure in residential districts. [2-604](#) (A).
11. Front carports in residential districts. [2-604](#) (B).
12. Front or exterior porch covers in residential districts. [2-604](#) (C).
13. Principal or accessory uses in nonresidential districts. [3-201](#) (C) and [3-203](#).
14. Off-Site parking in nonresidential districts. [3-403](#) (A).
15. Joint use parking in nonresidential districts. [3-403](#) (B).
16. Parking reduction in nonresidential districts. [3-403](#) (C).
17. Flagpoles over seventy-five (75) feet in height. [3-702](#) (D).
18. Reasonable accommodations for persons with disabilities. 5-205.

F. Initiation.

A property owner, or person expressly authorized in writing by the property owner, may request a pre-application conference and/or submit an application for a special exception in accordance with Section 5-202 (Application Procedures).

G. Notice.

Notice, in accordance with Section 5-203 (Notice), shall be provided to the public regarding a request for a special exception and any associated public hearing.

H. Public Hearing.

A public hearing, in accordance with Section 5-204 (Public Hearing), shall be conducted to determine whether the request for a special exception should be granted.

I. Action by the Director.

All applications for special exceptions, along with the associated fees, must be submitted to the Department in accordance with Section 5-202 (Application Procedures). The Director shall take the following actions upon the City's acceptance and the official filing of the application:

1. Upon receipt of an accepted and officially filed application the Director shall review and produce a staff report for presentation to the Board. The staff report shall include a summary of the requested special exception, staff comments, and a staff recommendation.
2. The Director shall schedule the application for a public hearing and consideration by the Board.
3. The Director shall provide notice in accordance with Section 5-203 (Notice).

J. Action by the Board of Adjustment.

1. *Public hearing and consideration of the application.* After receipt of an accepted and official filed application and staff report from the Director, the Board shall hold a public hearing, at a public meeting, in accordance with Section 5-203 (Public Hearing) and consider the application for a special exception.
2. *Actions.*
 - a. The Board must evaluate the application based upon the evidence presented at the public hearing, pursuant to the approval standards of this section and may take any of the following actions regarding the application for a special exception:
 - (1) approval;
 - (2) approval with modifications;
 - (3) denial; or
 - (4) the Board may also, including but not limited to:
 - (a) postpone holding the public hearing and consideration of the application to a later date; or
 - (b) continue an opened public hearing and consideration of the application to a later date.

- b. The Board may require that a special exception be:
 - (1) revocable;
 - (2) effective for a specified time period; or
 - (3) subject to one or more conditions.

K. Modifications and Conditions.

- 1. *Granting a special exception approval with a modification.*

The Board may grant a special exception that is less than that requested in the submitted application when it has been decided that the applicant is entitled to some relief, but not to the entire relief requested in the application.

- 2. *Granting a special exception with conditions and restrictions.*

The Board may impose such conditions and restrictions upon the special exception as may be deemed necessary for the protection of the public health, safety, and welfare.

L. Approval Standards.

- 1. *Special exceptions.*

Special exceptions may be granted as set out in this Zoning Ordinance, when the Board finds that the special exception:

- a. will allow greater use and enjoyment of property; and
- b. without creating adverse impacts on adjacent properties; and
- c. that it will be compatible with the surrounding neighborhood; and
- d. when applicable, the board shall also consider any additional criteria set out in this Zoning Ordinance for any specific special exception.

- 2. *Special exceptions for a reasonable accommodation for persons with disabilities.*

See Section 5-205 (Reasonable Accommodations for Persons with Disabilities) for the approval standards for a special exception for a reasonable accommodation.

M. Vote Required.

The concurring vote of four (4) members of the Board is required to grant a request for special exception or a special exception for a reasonable accommodation.

State law reference – Authority of Board, V.T.C.A. Local Government Code, [§ 211.009](#) (c).

Cross reference – Motions, Section 5-208. - Rules for Motions, Decisions, Reconsiderations, and Appeals to Court., (A).

5-207 – Variance.

A. In General.

A variance is suspension of the literal enforcement of this Zoning Ordinance. In general, it is the duty of the Board of Adjustment to determine whether the literal application of the Zoning Ordinance to the piece of property would be unreasonable in light of the City's general authority to secure reasonable zoning.

B. Purpose.

Zoning variances are intended to address unnecessary hardships or practical difficulties resulting from the strict application of zoning-related standards. The purpose of the variance process is to provide a narrowly limited means by which relief may be granted from unforeseen applications of this Zoning Ordinance.

C. Authority.

1. Variance from the terms of the zoning ordinance.

The Board may, in specific cases, after written notice and a public hearing, authorize a variance from the terms of this Zoning Ordinance in accordance with the approval standards in this section.

State Law reference – Authority of Board, V.T.C.A. Local Government Code, [§ 211.009](#).

2. Variances prohibited.

The Board shall not grant use variances. A use variance is a request for a variance to allow a use that is not listed as a permitted use within a zoning district.

D. Effect.

Approval of an application for a variance entitles the applicant to deviate from the strict terms of this Zoning Ordinance as authorized by the terms in the variance.

E. Initiation.

A property owner, or person expressly authorized in writing by the property owner, may request a pre-application conference and/or submit an application for a variance in accordance with Section 5-202 (Application Procedures).

F. Notice.

Notice, in accordance with Section 5-203 (Notice), shall be provided to the public regarding a request for a variance and any associated public hearing.

G. Public Hearing.

A public hearing, in accordance with Section 5-204 (Public Hearing), shall be conducted to determine whether the request for a variance should be granted.

H. Action by the Director.

All applications for variances, along with the associated fees, must be submitted to the Department in accordance with Section 5-202 (Application Procedures). The Director shall take the following actions upon the City's acceptance and the official filing of the application:

1. Upon receipt of an accepted and officially filed application the Director shall review and produce a staff report for presentation to the Board. The staff report shall include a summary of the requested variance, staff comments, and a staff recommendation.
2. The Director shall schedule the application for a public hearing and consideration by the Board.
3. The Director shall provide notice in accordance with Section 5-203 (Notice).

I. Action by the Board of Adjustment.

1. *Public hearing and consideration of the application.* After receipt of an accepted and official filed application and staff report from the Director, the Board shall hold a public hearing, at a public meeting, in accordance with Section 5-203 (Public Hearing) and consider the application for a variance.
2. *Actions.*
 - a. The Board must evaluate the application based upon the evidence presented at the public hearing, pursuant to the approval standards of this section and may take any of the following actions regarding the application for a variance:
 - (1) approval;
 - (2) approval with modifications;
 - (3) denial; or
 - (4) the Board may also, including but not limited to:
 - (a) postpone holding the public hearing and consideration of the application to a later date; or
 - (b) continue an opened public hearing and consideration of the application to a later date.
 - b. The Board may require that a variance be:
 - (1) revocable;
 - (2) effective for a specified time period; or
 - (3) subject to one or more conditions.

J. Modifications and Conditions.

1. *Granting a variance approval with a modification.*

The Board may grant a variance that is less than that requested in the submitted application when it has been decided that the applicant is entitled to some relief, but not to the entire relief requested in the application.

2. *Granting a variance with conditions and restrictions.*

The Board may impose such conditions and restrictions upon the variance as may be deemed necessary for the protection of the public health, safety, and welfare.

K. Approval Standards.

In order to grant a zoning variance from the terms of this Zoning Ordinance the Board must find that:

1. The variance is not contrary to the public interest; and
2. Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship; and
3. The unnecessary hardship, if any, is neither self-created nor personal to the owner of the parcel of land; and
4. The requested variance is not needed merely to promote economic gain or to prevent economic loss; and
5. The spirit of this Zoning Ordinance is observed and substantial justice is done.

State Law reference – Authority of Board, V.T.C.A. Local Government Code, [§ 211.009](#).

L. Vote Required.

The concurring vote of four (4) members of the Board is required to grant a request for variance.

State law reference – Authority of Board, V.T.C.A. Local Government Code, [§ 211.009](#) (c).

Cross reference – Motions, Section 5-208. - Rules for Motions, Decisions, Reconsiderations, and Appeals to Court., (A).

5-208 – Rules for Motions, Decisions, Request for Reconsiderations, and Appeals to Court.

This section is applicable to special exceptions, special exceptions for reasonable accommodations, and variances.

A. Motions.

1. *Motions to approve the application.*

The concurring vote of four (4) members of the Board is required to grant a request for special exception, a special exception for a reasonable accommodation, or a variance.

- a. *Motion to approve – carries.* When the motion to approve an application is made, seconded, and receives four (4) affirmative votes, the motion is adopted and the request is approved.

State law reference – Authority of Board, V.T.C.A. Local Government Code, [§ 211.009](#) (c).

- b. *Motion to approve – fails.*

(1) When a motion to approve an application is made, seconded, and fails to receive four (4) affirmative votes, the motion fails and the request is deemed denied, unless otherwise provided.

(2) *Exception.* In the event only four (4) members are present, and a motion to approve an application is made and seconded, and a vote is taken where at least one member abstains from the vote (leaving only three (3) or less members voting):

(a) the motion fails, but the request shall not be deemed denied (unless three (3) members vote against the motion to approve thereby denying the request); and

(b) the public hearing is automatically re-opened and continued so that consideration of the application shall be automatically postponed and placed on the agenda for the first available meeting for which notice of the hearing can be timely provided.

2. *Motion to deny the application.*

A simple majority vote of the members of the Board is required to deny a request for special exception, special exception for a reasonable accommodation, or a variance.

- a. *Motion to deny – carries.* When the motion to deny an application is made, seconded, and receives a simple majority vote, the motion is adopted and the request is denied.

- b. *Motion to deny – fails.* When the motion to deny an application is made, seconded, and fails to receive a simple majority vote, the motion fails, the request is neither denied or approved, and another motion must be made (e.g., “motion to approve,” “motion to postpone,” etc.) to dispose of the case.

3. *All other motions.* A simple majority vote of the members shall be required to adopt any motion other than a motion to approve the application or to decide in favor of an applicant on any matter on which the Board is required to pass under this Zoning Ordinance.

State law reference – Authority of Board, V.T.C.A. Local Government Code, [§ 211.009](#) (c).

Cross reference – Request for Reconsideration, Section 5-208, (C).

B. Decision.

1. The Board’s decision is not an official final decision until it is “filed in the Board’s office.”
2. A final decision is deemed to be “filed in the Board’s office” on the later of:
 - a. The first business day after the expiration of the 7-day time period for the Board’s receipt of a written request for reconsideration; or
 - b. If a timely request for reconsideration is filed, the first business day *after*:
 - (1) the meeting at which the Board denies the request for reconsideration; or
 - (2) if a request to reconsider a matter is granted and the application is reconsidered by the Board – the meeting at which the Board takes action on the case.

Cross reference – Request for Reconsideration, Section 5-208, (C).

3. Unless otherwise provided, the Board’s final decision “filed in the Board’s office” is final unless timely appealed to a court of competent jurisdiction in accordance with Texas Local Government Code, Chapter 211.

State law reference – Judicial Review of Board Decision, V.T.C.A. Local Government Code, [§ 211.011](#).

Cross reference – Appeal of Board of Adjustment Decision to Court, Section 5-208, (D).

C. Request for Reconsideration.

The following applies to a written request for reconsideration filed with the Board within seven (7) calendar days of the decision.

1. *Reconsideration at a subsequent meeting.* A matter on which the Board has acted, with regard to a special exception or variance, may be reconsidered at a subsequent meeting, once by the Board, unless otherwise provided.
2. *Reconsideration distinguished from submission of a subsequent application.* This sub-section applies to written requests for reconsideration. Any person wishing to submit a “subsequent application” shall do so in accordance with Section 5-202 (Application Procedures).

Cross reference – Consideration of Subsequent Applications, Section 5-202. – Application Procedures., (I).

3. *Persons authorized to request reconsideration.* A written request to reconsider may be filed by any of the following persons:
 - a. A person who:
 - (1) Filed the application that is the subject of the decision; or
 - (2) is the owner or representative of the owner of the property that is the subject of the decision; or
 - (3) is aggrieved by the decision and is the owner of real property within 200-feet of the property that is the subject of the decision; or
 - b. any officer, department, board, or commission of the City affected by the decision.

4. *Time period for receipt of a request for reconsideration.* Requests for reconsideration shall be filed within seven (7) calendar days after the Board's decision. For purposes of calculating the City's receipt of a timely request for reconsideration, the date of the Board's decision shall be considered Day Zero (0).
5. *Request for reconsideration must be made in writing.* Requests for reconsideration shall be filed in writing on forms provided by the Director. A request for reconsideration shall state:
 - a. why the action should be reconsidered;
 - b. how the Board erred in its determination (if applicable); and
 - c. any new or clarified evidence (if applicable).
6. *Fee.*
 - a. *Fee required.* Unless otherwise herein authorized, a written request to reconsider must be accompanied by the required fee(s) as set in the City of Mesquite Comprehensive Fee Schedule.

Cross reference – The Comprehensive Fee Schedule, Mesquite City Code, Appendix D, Sec. 12-116.
 - b. *No fee required for City-initiated requests for reconsideration.* There are no fee requirements if a written request for reconsideration is submitted by any officer, department, board, or commission of the City.
 - c. *Refunds.* If a written request for reconsideration is withdrawn, no fee, or portion thereof, shall be refundable after notices regarding the request have been issued or processed for issuance; however, a refund shall be issued when the person requests to withdraw the request for reconsideration due to a City staff error or other error not the fault of the person.
7. *Request for reconsideration is placed on the agenda of the first available meeting.* When a request to reconsider has been properly filed, the Director shall place the request on the agenda of the first available meeting for which notice of the hearing can be timely provided.

State Law reference – V.T.C.A., Government Code, Open Meetings Act, Notice of Meeting, § 551.041.
State Law reference – V.T.C.A., Government Code, Open Meetings Act, Time and Accessibility of Notice, § 551.043.
8. *Notice.* The Board shall provide notice, in accordance with Section 5-203 (Notice), to the public regarding the Board's receipt of a request for reconsideration and the mailed notice shall notify the public that the Board may elect to reconsider the matter and if the request for reconsideration is granted the application will be reconsidered by the Board and a public hearing will be held.
9. *Withdraw of a request for reconsideration.* A person has the right to withdraw their written request for reconsideration at any time prior to the final decision, including the ability to withdraw the request if it has been tabled or postponed by the Board. The person must submit a request for withdrawal in writing. Fees shall only be refunded in accordance with this section. The Director's receipt of a written withdrawal shall officially terminate the request for reconsideration.

Cross reference – Fee, Section 5-208 (C)(6).
10. *Board's consideration of the request for reconsideration.* The Board shall review the request for reconsideration and shall, on the basis of the written material submitted by the applicant in support of the request, determine whether to reconsider the matter because of an error in its original determination or on the basis of new or clarified evidence not presented to the Board at the original hearing that might affect its determination.

11. *Motion to reconsider the matter.*

- a. A Board member may move to reconsider, based on the written request for reconsideration, regardless of the Board member's vote on the original matter.
- b. The affirmative vote of four (4) members of the Board shall be necessary to reconsider a matter. When a motion to reconsider is made, seconded, and receives four (4) affirmative votes, the application shall then next be reconsidered by the Board (immediately following the Board's favorable decision to reconsider the matter).

State law reference – Authority of Board, V.T.C.A. Local Government Code, [§ 211.009](#) (c).

- c. When a motion to reconsider is made, seconded, and fails to receive four (4) affirmative votes, the motion fails and the request is deemed denied and shall constitute final action on the matter.

12. *Vote requirements if the application is reconsidered.* Action on the application, for which reconsideration has been granted, is subject to the same voting requirements as the original determination.

13. *Request for reconsideration NOT a requirement prior to appeal to Court.* A request for reconsideration by the Board is permissible, but not mandatory prior to filing an appeal with a court of appropriate jurisdiction as provided under Sec. 211.011 of the Texas Local Government Code and other applicable law.

D. Appeal of Board of Adjustment Decision to Court.

- 1. Final decisions of the Board may be appealed, to a district court, county court, or county court at law, within ten (10) days of the Board's final decision being "filed in the Board's office" as provided under Sec. 211.011 of the Texas Local Government Code and other applicable law.

State law reference – Judicial Review of Board Decision, V.T.C.A. Local Government Code, [§ 211.011](#).

- 2. A final decision is deemed to be "filed in the board's office" as herein described above.

Cross reference – Defining "filed in the Board's office", Section 5-208 Decision (B)(2).

- 3. The date the final decision of the Board of Adjustment is "filed in the board's office" shall be considered Day Zero (0).

5-209 – Expiration.

This section is applicable to special exceptions, special exceptions for reasonable accommodations, and variances.

A. Expiration of Special Exception and/or Variance.

An approved special exception, special exception for a reasonable accommodation, or variance will expire one hundred eighty (180) days, or an extended time period as the Board of Adjustment may designate, after the date the Board's decision is "filed in the Board's office", unless a building permit or Certificate of Occupancy is issued before the expiration of such period.

Cross reference – Defining "filed in the Board's office", Section 5-208 Decision (B)(2).

B. Effect of Expiration.

If the building permit and/or Certificate of Occupancy is not issued within said one hundred eighty (180) days or such extended period as the Board may have specifically granted, then the special exception, or variance shall be deemed to have been waived and all rights thereunder terminated.

C. Calculation of Time Period.

For purposes of calculation for expiration, the date the Board of Adjustment's final decision is "filed in the Board's office" shall be considered Day Zero (0).

Cross reference – Defining "filed in the Board's office", Section 5-208 Decision (B)(2).

D. Extension of Time Period.

1. *Time period limits.* The Board of Adjustment may grant an extension of time for a period of validity longer than one hundred eighty (180) days, but in no event shall the Board of Adjustment grant a time period of more than three hundred and sixty-five (365) days.
2. *Authorization for extension of time period.* The Board of Adjustment is authorized to extend the time period for validity of the special exception and/or variance on the same day of approval or at any time thereafter in a public meeting prior to the date of expiration.
3. *Application and fee for extension of time period if requested after original day of approval.* A person may apply in writing to the Board of Adjustment for an extension of time at any time prior to the date of expiration of the special exception and/or variance. An application for an extension of time for a period of validity longer than that which was approved by the Board shall be on forms provided by the Director. All applications for extensions of time shall be accompanied by the required fee(s) as set in the City of Mesquite Comprehensive Fee Schedule. When an application for extension of time has been properly filed, the Director shall place the application on the agenda of the first available meeting for which notice of the matter can be timely provided.

Cross reference – The Comprehensive Fee Schedule, Mesquite City Code, Appendix D, Sec. 12-116.

4. *Expiration.* The applicant, holding an expired special exception and/or variance still wishing to pursue the special exception and/or variance, shall be required to file a new application along with the appropriate fees in accordance with Section 5-202 (Application Procedures).

5-210 – Appeals of Administrative Decisions to Board of Adjustment.

A. In General.

Persons aggrieved by an administrative order, requirement, decision, or determination made by a City administrative official, in the enforcement or interpretation of this Zoning Ordinance, may appeal to the Board of Adjustment. An administrative order, requirement, decision, or determination may sometimes herein be referred to collectively as an “administrative decision.”

Cross reference – Appeals of Director’s Interpretation of Zoning Ordinance, [Sec. 1-103](#) (C).

State law reference – Authority of Board, V.T.C.A. Local Government Code, [§ 211.009](#).

State law reference – Appeal to Board, V.T.C.A. Local Government Code, [§ 211.010](#).

B. Purpose.

The appeal process, for a person aggrieved by a decision made by a City administrative official, provides for a secondary review by the Board for the purpose of the Board to determine whether the administrative official correctly applied the Zoning Ordinance and its regulations.

C. Authority.

1. The Board shall hear and decide appeals that allege error in an order, requirement, decision, or determination made by an administrative official in the enforcement or interpretation of this Zoning Ordinance.

State law reference – Authority of Board, V.T.C.A. Local Government Code, [§ 211.009](#) (a).

2. In exercising its authority, the Board may reverse or affirm, in whole or in part, or modify the administrative official’s order, requirement, decision, or determination from which an appeal is taken and make the correct order, requirement, decision, or determination, and for that purpose the Board has the same authority as the administrative official.

State law reference – Authority of Board, V.T.C.A. Local Government Code, [§ 211.009](#) (b).

D. Persons Authorized to Make an Appeal.

1. *Appeals NOT related to a specific application, address or project.* Any of the following persons may appeal to the Board an administrative decision made by an administrative official that is NOT related to a specific application, address, or project:

- a. A person aggrieved by the administrative decision; or
- b. Any officer, department, board, or bureau of the City affected by the administrative decision.

State law reference – Appeal to Board, V.T.C.A. Local Government Code, [§ 211.010](#) (a).

2. *Appeals related to a specific application, address, or project.* Any of the following persons may appeal to the Board an administrative decision made by an administrative official that is related to a specific application, address, or project:

- a. A person who:
 - (1) Filed the application that is the subject of the administrative decision; or

- (2) is the owner or representative of the owner of the property that is the subject of the administrative decision; or
- (3) is aggrieved by the administrative decision and is the owner of real property within 200-feet of the property that is the subject of the decision; or

b. any officer, department, board, or bureau of the City affected by the administrative decision.

State law reference – Appeal to Board, V.T.C.A. Local Government Code, [§ 211.010](#) (a-1).

E. Initiating an Appeal.

1. *Notice of appeal.* The appellant must file with the Board, and the official from whom the appeal is taken, a notice of appeal specifying the grounds for the appeal.
2. *Fee.* Unless otherwise herein authorized, a notice of appeal must be accompanied by the required fee(s) as set in the City of Mesquite Comprehensive Fee Schedule. There are no fee requirements if a notice of appeal is filed by any officer, department, board, bureau, or commission of the City.

Cross reference – The Comprehensive Fee Schedule, Mesquite City Code, Appendix D, Sec. 12-116.

3. *Appellate burden.* The appellant is responsible for establishing the administrative official’s administrative decision being appealed is contrary to the applicable law or regulations.
4. *Content of notice of appeal.* A notice of appeal shall be filed in writing on forms provided by the Director. A notice of appeal shall identify the following:
 - a. The name, address, and telephone number of the appellant.
 - b. The name of the original applicant, if the appellant is not the original applicant.
 - c. The name or title of the administrative official that issued the decision.
 - d. The decision being appealed.
 - e. The date of decision.
 - f. A description of the appellant’s status as a person authorized to make an appeal.
 - g. The reasons the appellant believes the decision is in error and does not comply with the requirements of this Zoning Ordinance.

5. *Deadline.* The appeal must be filed not later than the twentieth (20th) day after the date the administrative decision is made. The date the administrative decision is made shall be considered Day Zero (0).

State law reference – Appeal to Board, V.T.C.A. Local Government Code, [§ 211.010](#) (b).

6. *Acceptance and official filing of notice of appeal.* A notice of appeal is considered accepted and officially filed upon the Planning & Development Services Department’s receipt before 5 p.m. on a business day during normal office hours. Any notice of appeal received on or after 5 p.m. on a business day or on Saturday, Sunday, or holidays shall not be considered officially accepted and filed until the next business day following the date the information was received or entered. A notice of appeal shall not be considered accepted and officially filed unless it is accompanied by the required fee(s) as set in the City of Mesquite Comprehensive Fee Schedule.

Cross reference – The Comprehensive Fee Schedule, Mesquite City Code, Appendix D, Sec. 12-116.

F. Stay of Administrative Proceedings.

1. The appeal stays all proceedings in furtherance of the action that is appealed, unless, after receipt of the notice of appeal, the administrative official from whom the appeal is taken certifies in writing to the Board of Adjustment facts supporting the official's opinion that a stay would cause imminent peril to life or property.
2. If the administrative official files the written statement, the proceedings shall not be stayed, unless, a restraining order is granted by the Board of Adjustment or a court of record. A restraining order allowing the stay of proceedings would require an application to the Board or a court of record, notice to the administrative official, and a showing of due cause.

State law reference – Appeal to Board, V.T.C.A. Local Government Code, [§ 211.010](#) (c).

G. Scheduling of Public Hearing.

A public hearing on an appeal shall be scheduled for the first available meeting for which notice of the hearing can be timely provided and not later than the sixtieth (60th) day after the date the appeal is accepted and officially filed.

State law reference – Appeal to Board, V.T.C.A. Local Government Code, [§ 211.010](#) (d).

H. Notice.

Notice, in accordance with Section 5-203 (Notice), shall be provided to the public and to the parties in interest regarding an appeal and any associated public hearing.

I. Public Hearing.

A public hearing shall be conducted in accordance with Section 5-204 (Public Hearing).

J. Action by the Director.

The Director shall take the following actions upon the City's acceptance and the official filing of the notice of appeal:

1. Upon receipt of a notice of appeal, the administrative official from whom the appeal is taken shall be immediately notified. The administrative official shall immediately transmit to the Board all the papers constituting the record of the action that is appealed.
2. The Director shall review and produce the records of the action(s), including a summary of the record, for transmission and presentation to the Board.
3. The Director shall schedule the appeal for a public hearing on the next meeting of the Board for which notice can be provided and not later than the sixtieth (60th) day after the date the appeal is accepted and officially filed.
4. The Director shall provide notice in accordance with Section 5-203 (Notice).

State law reference – Appeal to Board, V.T.C.A. Local Government Code, [§ 211.010](#) (b).

K. Action by the Board of Adjustment.

1. *Public hearing and consideration of appeal; deadline.* After receipt of an accepted and officially filed notice of appeal, the Board shall hear and decide the appeal at a public meeting and hold a public hearing in accordance with Section 5-203 (Public Hearing) not later than the sixtieth (60th) day after the date the appeal is accepted and officially filed.
2. *Actions.*
 - a. *Preliminary issues prior to opening a public hearing.* Before opening a hearing, the Board shall decide preliminary issues raised by the parties or City staff, including, but not limited to, requests to postpone the public hearing. The Board shall also decide whether the appellant has standing (which include issues of timeliness, jurisdiction, or ripeness) to appeal.
 - b. The Board must evaluate the notice of appeal based upon the record and in exercising its authority, the Board may:
 - (1) affirm;
 - (2) modify the administrative official's order, requirement, decision, or determination from which an appeal is taken and make the correct order, requirement, decision, or determination, and for that purpose the Board has the same authority as the administrative official;
 - (3) reverse; or
 - (4) the Board may also, including but not limited to:
 - (a) postpone holding the public hearing and consideration of the appeal to a later date so long as the appeal is decided not later than the sixtieth (60th) day after the date the appeal is accepted and officially filed; or
 - (b) continue an opened public hearing and consideration of the appeal to a later date so long as the appeal is decided not later than the sixtieth (60th) day after the date the appeal is accepted and officially filed.

State law reference – Authority of Board, V.T.C.A. Local Government Code, [§ 211.009](#) (b).

L. Approval Standards.

In order to grant an appeal modifying or reversing an administrative decision, the appellant must establish the administrative official's decision being appealed is contrary to the applicable law or regulations, and the Board must:

1. find the City staff's administrative decision is erroneous; and
2. provide a statement of grounds in support of the finding; and
3. state what the Board determines to be the correct interpretation of the matter at issue in the appeal.

M. Vote Required.

1. *Motion to affirm, in whole, the administrative decision.*

The concurring vote of a simple majority of the Board is required to affirm in whole, an administrative decision of an administrative official.

- a. *Motion to affirm the administrative decision – carries.* When a motion to affirm in whole, the administrative decision, from which an appeal is taken, is made, seconded, and receives a simple majority vote the motion is adopted and the decision of the administrative official is affirmed.

State law reference – Authority of Board, V.T.C.A. Local Government Code, [§ 211.009](#) (b) and (c).

- b. *Motion to affirm the administrative decision – fails.* When a motion to affirm in whole, the administrative decision from which an appeal is taken, is made, seconded, and fails to receive a simple majority vote the motion fails, the decision of the administrative official is neither affirmed or reversed, and another motion must be made (e.g., “motion to modify,” “motion to reverse,” or “motion to postpone,” etc.) to dispose of the appeal.

2. *Motion to modify the administrative decision.*

The concurring vote of four (4) members of the Board is required to modify an administrative decision of an administrative official.

- a. *Motion to modify the administrative decision – carries.* When a motion to modify the administrative decision, from which an appeal is taken, is made, seconded, and receives four (4) affirmative votes the motion is adopted and the decision of the administrative official is modified.

State law reference – Authority of Board, V.T.C.A. Local Government Code, [§ 211.009](#) (b) and (c).

- b. *Motion to modify the administrative decision – fails.*

(1) When a motion to modify the administrative decision, from which an appeal is taken, is made, seconded, and fails to receive four (4) affirmative votes the motion fails, the decision of the administrative official is not modified, and is neither affirmed or reversed, and another motion must be made (e.g., “motion to affirm,” “motion to reverse,” or “motion to postpone,” etc.) to dispose of the appeal, unless otherwise provided.

(2) In the event only four (4) members are present, and a motion to modify the administrative decision is made and seconded, and a vote is taken where at least one member abstains from the vote (leaving only three (3) or less members voting):

(a) the motion fails; and

(b) the public hearing is automatically re-opened and continued so that consideration of the appeal of the administrative decision shall be automatically postponed and placed on the agenda for the first available meeting for which notice of the hearing can be timely provided , so long as it is not later than the sixtieth (60th) day after the date the appeal is accepted and officially filed.

3. *Motion to reverse, in whole, the administrative decision.*

The concurring vote of four (4) members of the Board is required to reverse in whole, an administrative decision of an administrative official.

- a. *Motion to reverse the administrative decision – carries.* When a motion to reverse in whole, the administrative decision, from which an appeal is taken, is made, seconded, and receives four (4) affirmative votes the motion is adopted and administrative decision is reversed.

State law reference – Authority of Board, V.T.C.A. Local Government Code, [§ 211.009](#) (b) and (c).

- b. *Motion to reverse the administrative decision – fails.*

(1) When a motion to reverse in whole, the administrative decision from which an appeal is taken, is made, seconded, and fails to receive four (4) affirmative votes the motion fails, the administrative decision is neither reversed or affirmed, and another motion must be made (e.g., “motion to modify,” “motion to affirm,” or “motion to postpone,” etc.) to dispose of the appeal, unless otherwise provided.

(2) In the event only four (4) members are present, and a motion to reverse in whole, the administrative decision is made and seconded, and a vote is taken where at least one member abstains from the vote (leaving only three (3) or less members voting):

(a) the motion fails; and

(b) the public hearing is automatically re-opened and continued so that consideration of the appeal of the administrative decision shall be automatically postponed and placed on the agenda for the first available meeting for which notice of the hearing can be timely provided, so long as it is not later than the sixtieth (60th) day after the date the appeal is accepted and officially filed.

4. *All other motions.* A simple majority vote of the members shall be required to approve any motion other than a motion to modify or a motion to reverse.

N. Decision.

1. The Board’s decision is not an official final decision until it is “filed in the Board’s office.”
2. In the case of an appeal of an administrative decision, the Board’s final decision is deemed to be “filed in the board’s office” on the first business day after the meeting at which the Board takes action by affirming, modifying or reversing the administrative decision.
3. Unless otherwise provided, the Board’s final decision “filed in the Board’s office” is final unless timely appealed to a court of competent jurisdiction in accordance with Texas Local Government Code, Chapter 211.

State law reference – Judicial Review of Board Decision, V.T.C.A. Local Government Code, [§ 211.011](#).

Cross reference – Appeal of Board of Adjustment Decision to Court, Section 5-210, (P).

O. Request for Reconsideration – Not Permissible.

In the case of an appeal of an administrative decision, a written request for reconsideration is not permissible.

P. Appeal of Board of Adjustment Decision to Court.

1. Final decisions of the Board may be appealed, to a district court, county court, or county court at law, within ten (10) days of the Board’s final decision being “filed in the Board’s office” as provided under Sec. 211.011 of the Texas Local Government Code and other applicable law.

State law reference – Judicial Review of Board Decision, V.T.C.A. Local Government Code, [§ 211.011](#).

2. In the case of an appeal of an administrative decision, the Board’s final decision is deemed to be “filed in the board’s office” as herein described above.

Cross reference – Defining “filed in the Board’s office” in the case of an appeal of an administrative decision, Section 5-210 Decision (N)(2).

3. The date the final decision of the Board is “filed in the board’s office” shall be considered Day Zero (0).

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APPENDIX D
COMPREHENSIVE FEE SCHEDULE

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ARTICLE XII. PLANNING AND DEVELOPMENT SERVICES

* * *

Sec. 12-116. Board of Adjustment fees.

| | |
|--|------------|
| Special exceptions..... | \$200.00 |
| Special Exception, for a reasonable accommodation..... | \$200.00 |
| Variances: | |
| Residential variances..... | \$200.00 |
| Non-residential variances..... | \$500.00 |
| Sign variances..... | \$500.00 |
| Request for reconsideration..... | \$150.00 |
| Request for extension of time period..... | \$150.00 |
| Appeals of administrative decisions to the Board of Adjustment..... | \$500.00 |
| Termination of nonconforming situations – Request to establish compliance date..... | \$4,300.00 |

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