

**CITY OF EL MIRAGE  
PLANNING AND ZONING COMMISSION  
REGULAR MEETING MINUTES  
JULY 10, 2012**

**I. CALL TO ORDER AND PLEDGE OF ALLEGIANCE**

Brandon Forrey called the meeting to order at 6:00 p.m. & led the Pledge.

**II. ROLL CALL & ELECTION OF OFFICERS**

Members present were Frank Carnal, Brandon Forrey, Robert Jones, and Justin McCarty. Doug Doede was unable to attend due to issues at work. Staff present were Senior Planner Mark Smith, and IT Tech Aldo Elizondo. Forrey suggested putting off the elections until all members could attend. Carnal moved to continue elections until August 14th, seconded by Jones. The motion passed 4 to 0.

**III. APPROVAL OF THE MINUTES OF JUNE 12, 2012**

Carnal moved for approval of the minutes. McCarty seconded. The motion passed 3 to 0 with Jones abstaining since he was not there.

**IV. CONTINUANCES [None]**

**V. NEW BUSINESS**

**1. Request by Rick Perry for Windy City Dogs at 14402 N. Alto St.**

Smith showed a power point presentation including an aerial photo of the location at the northwest corner of Palm & Well Streets across from the Police Station. The site plan was for the south lot only for a hot dog vendor moving from Wittman to El Mirage. The building has a retail window on the south and three bays toward Palm for hot dog carts. The site will have paved on-site parking, retention and landscaping. There is a title issue on the north lot since it was not included in the foreclosure. The elevation shows the window and bays toward Palm Street. Staff recommended approval with stipulations as follows:

1. Use shall be built according to plans submitted and in accordance with all applicable City codes and policies at time of development.
2. Title to Lot 12 must be cleared, or a masonry fire wall or one-hour fire rated assembly for all parts of the building within 5 feet of the property line shall be required for the north part of new building.
3. Electric line from pole to new building shall be put underground.
4. Paved on-site parking shall be provided per Code for intended uses. [Access to basement must be removed or covered to accommodate 15' parking lot aisle, and spaces behind the house near the new building need to be eliminated to allow access to bay doors.]
5. Landscaping shall be provided per City Code along street frontages and a 3' screen wall or hedge installed in front of parking spaces. [Any other stipulation deemed appropriate by Commission &/or Council.]

Applicant Rick Perry was present. Carnal asked about the location of the building in relation to property lines. Perry said it was all on the south lot and against the fence abutting the utility easement on the west which is 10 feet off the property line. A new split-faced block wall will replace the existing fence on this side.

Forrey asked about the number of carts. Perry said there were three carts that go out in the morning and come back late in the afternoon and are cleaned and stocked. Forrey asked where they are distributed. Perry said they are at Home Depot locations across the Valley. The Vice Chair asked for other questions or public comment but no one spoke.

McCarty moved to recommend approval. Carnal said it would be a nice improvement for the area and may inspire others to spruce up their property. Perry said the dwelling has been totally rebuilt and will be used for new businesses in future. It is right in the middle of City sites and is a high profile location. This is the first commercial in the mixed-use area. Carnal seconded the motion. The Chair asked if the motion included the stipulations recommended by City staff. McCarty amended the motion to include them and Carnal amended the second. The vote was 4 to 0.

## **2. Discussion on code amendments allowing churches and similar uses by right or by conditional use permit in various zoning districts**

Smith noted the existing definition of church but the table uses the term “religious assembly”. State law is more specific than the federal law and requires that such assemblies be treated the same as other types of assemblies, whether permitted by right or by conditional use. The present City Code requires a conditional use in all districts. Staff recommendation is that churches be conditional in Natural Reserve where all uses are conditional because of environmental constraints. In the RA, SN, & MP residential areas should be conditional to preserve low traffic and noise, and EI should be conditional because there are too many things not compatible in industrial areas. But retail areas in MU, UC, TD, & CP where high traffic and activity is common, they could be permitted. If you think they should be conditional in retail, similar uses should be as well.

Forrey asked what the definition of “religious assembly” was. Smith said they used the “religious assembly” to refer to where the church gathers on a regular basis. We could go back to the term “church”. Forrey said it gets a little blurred for Bible study. Smith referred to an article about that that was sent to the Commission. McCarty said it was their responsibility to protect the community either way. It is difficult to say if it is a Bible study or a religious meeting. Forrey said it can start out small and grow bigger. He has seen where parking is an issue. There are two sides to it and it is very touchy.

Forrey said they could not dictate who can or cannot park on the street. If it is an on-street parking issue, citizens can request that the City post signs. If they exceed a fire code in the building itself it is a safety concern that can be addressed as well. He liked the recommendations as a start. I did not agree with conditional in industrial. He has seen it work all right.

McCarty noted that private clubs are permitted now in residential zones. State law says churches should be as well. Smith said the question is whether we want the Elks club meeting in the residential areas either. Most other uses in residential areas are conditional. It doesn't say they can't but under certain conditions it may work. Jones said any time a church meets it is open to the public so they could have one or a hundred which could create havoc in a residential neighborhood. Smith agreed they are semi-public. Carnal said they should keep control in the neighborhoods because of parking and the number of people coming in. It is comparing apples to oranges to talk about Bible study which happens once a year to a church that meets one to three times a week. If they outgrow the occupancy of the building or parking, they need to find another location. The individual in the article lied to officials about the use of the building. He's going to jail for that. McCarty said it was his home, not owned by a religious organization, so it did not meet the City's definition of a church. Smith clarified that when he called it a game room instead of public assembly it did not meet the building codes for the different occupancy. All buildings have to be modified for different uses. Forrey said if you took a different approach, should someone have the right to build a mega-church on a local street? That certainly doesn't seem appropriate. If we allow them in residential areas there is the potential for that. McCarty said if you took the definition strictly, a new structure should be reviewed and it would not be a problem. Forrey asked Smith to review the zones where it would remain conditional. Smith said anything not residential should not be there without conditional use. It should not be restricted in mixed-use commercial areas except industrial. It should also be conditional in NR.

Forrey asked if a church meeting in the clubhouse of an apartment complex would need a conditional use. Smith said both the church and the clubhouse needs a conditional use. McCarty was concerned about church versus religious assembly. Smith said he was concerned about Bible studies. They could go back to the definition of church. Forrey said they can't exceed the capacity of the building. McCarty said they may have to have two separate designations. Forrey said he did not think they could dictate what people did. Smith said that what the state is saying. We should treat them the same. We could just call it 'assembly' but most people are not as familiar with building codes as they are with zoning use.

Forrey said they should hammer out the definitions. Jones said any time you have a church you have a religious assembly. McCarty said he used to get together with friends every week. That was an assembly. Jones said a party is not open to the public like a church. There's a difference. McCarty said they still had property rights to control how many attended. Carnal said they would not turn people away. Forrey asked staff if the Police investigate and address exceeding occupancy. Smith said there are still nuisance laws for noise or disturbing the peace or traffic violations. Building codes just say if you have this use you need to do this; it does not control the location. City Manager Spencer Isom said the City Attorney needs to get the City code to mirror the state. Religious assemblies must match non-religious assemblies. The present code does not do that. McCarty said some are permitted where churches are not. Isom said they should be the same. McCarty said private clubs are permitted in residential so churches should be also. Smith countered that the clubs could be changed to conditional instead. Isom said staff needed to clarify it and would take comments back and take another look at it. Forrey said more work needed to be done. This is just for discussion on the agenda.

Mary Koestner asked if the City changed the ordinance to allow churches would Victory Outreach receive a refund. Smith said the Commission recommended that but it was up to Council. Forrey said it depended on what changes were made. Smith said if they are building new buildings they are charged the same fee either for site plan or conditional use. The concern was for those in existing buildings that needed no added review.

Forrey said he looked forward to what staff recommends. Smith said it appeared that the definition seemed to be more of a concern than where they should be allowed. It was more about those that did not intend to have a church in their house. Forrey said he leaned toward the term church' over 'religious assembly' because it gets into muddy areas.

### **3. Discussion on sign code amendments regarding allowing murals**

Doug Doede asked that this item be continued until the next meeting. McCarty moved to continue it. Carnal seconded, and the vote was 4 to 0.

#### **VI. STAFF REPORT [None]**

#### **VII. COMMISSIONER COMMENTS [None]**

#### **XIII. ADJOURNMENT**

The Vice Chair adjourned the Commission meeting at 7:04 p.m.

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Mark L. Smith, Senior Planner

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Brandon Forrey, Vice Chairman