

**CITY OF EL MIRAGE
PLANNING AND ZONING COMMISSION
REGULAR MEETING MINUTES
SEPTEMBER 11, 2012**

I. CALL TO ORDER AND PLEDGE OF ALLEGIANCE

Chairman Doug Doede called the meeting to order at 6:00 p.m. & led the Pledge.

II. ROLL CALL & ELECTION OF OFFICERS

Members present were Chair Doug Doede, Frank Carnal, Brandon Forrey, and Justin McCarty. Robert Jones was absent due to recent surgery. Staff members present were Senior Planner Mark Smith, and GIS Tech Jose Macias. Smith introduced the new Deputy City Manager & City Engineer Sue McDermott. The Chair delayed elections until all members could be present.

III. APPROVAL OF THE MINUTES OF JULY 10, 2012, & AUGUST 14, 2012

Forrey had some corrections and then moved for approval of the July 10 minutes. Carnal seconded, and the motion passed on a vote of 3 to 0 with Doede abstaining due to his absence. Forrey noted typos and then Carnal moved for approval of the August 14 minutes, seconded by McCarty, The motion passed with 3 in favor and Forrey abstaining due to his absence.

IV. PUBLIC HEARINGS

1. Conditional Use Permit for Title Loans at 12333A NW Grand Ave.

Smith presented a power point on the property and the two requests for conditional use permits. The property is west of Coury's Plaza and east of Acoma Drive. There are no trees in the front of the property as required and the lessee in the rear [A & A Tire] is parking on the City easement which provides access to the site and to Merchant's Metals to the south. The easement is paved but was covered with gravel and debris which is being removed. The title loan company is a non-chartered financial facility. The only other similar facility is a check cashing office on Thunderbird Rd. Staff recommended approval of the request subject to tenant improvements, landscaping, removal of parking and gravel from the access easement, all items except tenant improvements to be done before Council action, and revocation of the conditional uses if conditions are not met.

Doede asked how many parking spaces are available. Smith said about 5 spaces were available on either side within the fenced area in front of the tire shop. The business owner said he would put them all inside. Doede asked how many were outside at present. Smith said he didn't count but they were lined up against the building and in the lot for the building where the proposed businesses would be. Doede said they could not park on City property. Smith said it was not owned by the City but the City had an easement for access so staff told him not to park in it.

Forrey asked if the Commission was discussing both applications. The Chair said to do them individually. Smith said the stipulations were the same for both uses.

Forrey asked if the use aligned with the vision for the mixed-use area and the big picture of what we were trying to create for El Mirage. If you put the pieces together for everything that was coming before them it is not creating a very pretty picture. He did not like the idea of another title loan use even though there was only one other. It did not seem to him to be the vision we were hoping and dreaming for, and since it was a conditional use it gave them some leverage to pick and choose what our city becomes.

Chris Arismendez said he had remodeled the whole building inside. The parking issues would be resolved soon. He understood what was wanted for landscaping. They redid electric, plumbing, and firewalls. He had surgery next month but wanted to start exterior improvements in January. He and his daughter would be doing the business. His mother owned the building but he would inherit it since he as putting the improvements into it. Doede asked about the car business. Arismendez said that was another tenant and he knows he has to clean up. He talked to Mary Dickson in Building about a facelift but he has no money yet. Doede asked about the parking. Arismendez said it would accommodate 19 spaces plus more on the side. They were planting palms and also putting a handicapped walkway in the front as well.

A representative of Security Networks said that if the owner chooses to have them monitor their facilities they will do a professional job. They want their business.

McCarty agreed with Forrey that since it is conditional use as far as fitting in with current uses it did not seem like a great idea. The security agent asked him why. McCarty said it was conditional and not allowed. Doede said it was not a debate. Forrey asked if staff input. Smith said staff recommended approval. The older code required that they be one-quarter mile apart and away from residential areas. This would not affect other uses. Staff has not heard from anyone on it. The thrift shop is taking the majority of the suite with a small area for the title loans. Doede said it did not sound like the remodel was going anywhere soon. Smith said the exterior changes may not be as quick as they would like. He said the building had improved dramatically over the last year inside and outside. The owners took the building back from a tenant and cleaned it up. In the last few weeks staff had them clean up debris. Staff still had issues with parking adjacent to the rear building on the City's easement. The parking in front backs into the easement for access which is fine. Staff recommends approval of the title loans because it is not the majority of the building and not close to other such uses. Forrey said he was happy to see improvement to buildings. The Commission had another case in this area for conditional use where they denied the use but gave the individual recommendations for more vibrant uses to help with the vision for the City. Whatever they decided tonight it is the City Council's decision but let our voices be heard as citizens of the City. Forrey moved to recommend denial, seconded by McCarty. The vote was three for denial with Carnal opposed.

2. Conditional Use Permit for Tattoos at 12333B NW Grand Ave.

Smith said staff had recommended denial but in light of recent activities in the courts on tattoo parlors staff noted that the City code did not specify a maximum number or minimum separations for such uses, staff now recommended approval of the conditional use permit for a tattoo parlor with the same stipulations.

Doede said it appeared that exterior improvements would not be done for a few months. Smith said that they had included them in the packets but since the buildings met code for proposed occupancy they did not tie them to use. The stipulations were tied to bringing the site up to code since the building met codes.

Doede said according to staff reports we had another tattoo parlor one-quarter mile away that has been there for some time. Again the question is if this is the type of opportunity that we want with the exposure on Grand that is has. Forrey said his comments were the same. Carnal asked if El Mirage had the population to support another parlor. Staff said they did not know the demand for it.

Applicants Greg Barrett and Jason Daywitt came forward. Barrett said they were the business owner that wanted to open the establishment. He believed that opening this third salon would bring in folks from outside El mirage and increase income for the City. They do body art and piercings in a fashion that he did not believe it drew any bad element to the area. They cannot do much about the facelift outside, but they are waiting to get this. They got their business license on July 30th. The tenant in the back has a lot of parking. A couple are abandoned. Maybe the City should possibly move in and get them out of there. Doede said that was between the owner and the City and may be in the works. He asked how much experience as a tattoo shop owner. Barrett said he had none as a tattoo shop owner but had been in business for auto transport and towing for over ten years. He relocated from Washington to Arizona. He resides in Wittman. He has been a business owner and manager for over ten years. Daywitt said he had ten years managing tattoo shops as well as owning one in Cheyenne, Wyoming. He has been in Arizona for about 6-1/2 years working in several shops. Most of his clientele is on the West Valley. He has done cops and surgeons. It's not just one crowd; everyone does these days. Doede said he realized that they were popular these days and he had nothing against them.

McCarty asked staff about specific codes for tattoo parlors. Smith said they were listed at the bottom of the Land Use Table as one of the restricted uses that require a conditional use permit. They had no specific requirements as some others do like the sexually oriented businesses.

Robert Kemmerer came to support his friend Jayson. He agreed with him. I thought if the shop is done tastefully outside and the property is kept up he did not see a problem. The owner should be held responsible. There should be a standard in the community, but if they are willing to keep it up they should be given a

chance. The individual shops are small so the type of businesses you can get in there are pretty minor.

Carnal moved to recommend approval as long as stipulations are met by the owner and tenants. Forrey asked if they could delay. Smith said they could, but what do they want to know. Forrey said he was torn. Doede said approval was contingent on improvements being completed, but it sounds like it is not going to be completed until January. Smith said he believed that owner was saying that the remodeling of the building would not be started until then but they plan to do the other improvements as soon as possible. Barrett said once they had revenues coming in they would have the money to start painting the exterior. Now the building is empty and they have no revenue except the back business. Doede asked how much area they had. Barrett said they had about 800 to 850 sq. ft. They have one piercing station and two tattoo chairs plus retail for shirts, body piercing and jewelry. Forrey asked for input from other members. Doede said he was not torn on yea or nay. He wanted businesses to thrive. It was a good location. The General Plan and the kind of exposure that they want on Grand he did not know what other businesses they could get. Barrett said they would bring in sales tax to the City. Doede asked how much he expected to gross. Barrett said \$150,000 per year. Doede asked about expenses. Daywitt estimated about half that. Doede said that \$75,000 at 10% would be \$7500. Smith noted that City sales tax is 3%. Doede said that was much less, about 2,000. Barrett said he would be management only. Doede said that since there was no second, he wanted to amend the motion for denial. He recognized their freedom of speech and had nothing against tattoos but questioned how many parlors the City needed for 30,000 people. Daywitt asked for a chance to prove them wrong. They had an awesome location and clients waiting for them to open. Doede then seconded the motion to approve which passed with three in favor and Forrey against. Smith noted that this item would go to Council after the owner addressed the concerns.

V. DISCUSSION ITEMS

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

Smith recapped that “religious assemblies” is not defined in state law, so staff is not comfortable having a definition that might clash with that. The present code requires a conditional use permit for churches in all districts. State law requires that they be treated the same as non-religious assemblies, so that would include community centers, indoor amusements, and private clubs. Staff recommends that all these uses be conditional in Natural Resource, residential districts, and Employment/Industry, but permitted by right in the commercial zoning districts.

McCarty asked what private clubs included. Smith said it would be like the Elks. McCarty said it was so broad it could include Boy Scouts. He was hesitant to say “No private clubs without a conditional use permits” because it takes away the right to do anything in private. Smith said he thought there was a definition in the code and included things like Elks or Vets.

Forrey said that private clubs were permitted in Rural Area and Suburban Neighborhood. Smith said they are permitted at present but not recommended. The first table shows the present code and the second shows proposed changes. Forrey said he preferred the term “church” rather than “religious assembly” because it is defined and does not get into some of the gray areas like the other. Doede agreed and said that Boy Scouts could be considered “religious assembly” because it is a club that believes in God and country. McCarty said he was hesitant about this in general because to make the churches not permitted you have to take away the right of any private assembly and he was hesitant to do that. Phoenix permitted them in residential areas with conditions. He understood why they could not just have a quarter-acre lot and giant building and just do whatever you want when you can’t get the traffic through there, but it would make sense if it could meet certain conditions.

Doede tended to agree with staying out of residential unless you had the zoning. One gentlemen got in trouble and is going to jail for using his house for assembly.

Forrey took it in a different direction and said even though there is a potential for incompatible use in industrial, he didn’t see any reason for it to be conditional. It should be a permitted location. It is up to individuals choosing a church site if it is appropriate. It did not seem that there was anything inherent about an industrial site that would not work with any of the demands for a typical church or religious assembly. It may not be the prettiest location but it might work. He knew of a few smaller churches meeting on a semi-permanent basis in industrial areas and they work well. They do still have to meet building and fire codes. Doede agreed.

Doede noted that one church meets in two facilities: in a residential apartment area and at a school. He is torn. He thought it should be conditional. Where they meet now is he thought a capacity of 64. Smith said he was referring to the one they approved. He thought it was a capacity of 40 and meeting at the clubhouse of the apartments and working at the present level. All of the schools are zoned commercial so they would be freed of having to worry about conditional uses.

Mary Koestner asked if City code was in compliance with federal and state laws. Is it a level playing field? It is not. It has to be brought into compliance. It has to be sent to City Council. Doede said that is what they are trying to do. He asked what other cities are doing. McCarty said it varied from city to city. In Phoenix it is permitted with conditions. In Glendale it is conditional. In Surprise it is permitted in certain residential areas. Under 5000 square feet it is permitted in all residential areas. It is more like permitted with conditions. Forrey asked if any development would have stipulations or conditions. Smith said they still had site plan review for commercial use. Forrey said it was not like anything would get through where the City had no ability to make sure certain requirements are met. He thought it had come a long way in accomplishing the federal requirement as permitted rather than conditional use. If they need to tweak it in future they can.

McCarty moved to include residential as well as industrial areas. Smith asked if that was for all zones including Natural Resource [NR]. McCarty clarified that they be permitted in all but NR and conditional in NR. Doede asked about stipulations. McCarty said the point he was trying to make is by approving this you are also saying that private clubs and other types of assembly are not permitted in a residential area. With this motion he would want to approve it and leave zoning the same with private clubs in residential areas. Forrey seconded the motion which then passed unanimously. Smith said staff would advertise it for hearings of the Commission and then take it on to the Council eventually.

2. Discussion on sign code amendments regarding allowing murals

Staff had not changed it much since last month. Regulations vary from one community to the other on this issue. He noted that if there are no painted signs permitted in City code and murals are painted, then they are not permitted as a sign. They also do not meet the size regulations. The question is how to allow them if we choose to do so. Murals are art and not advertising, so we could treat it as part of a building's design. Staff provided a definition as a graphic and includes no advertising copy. Staff is recommending that they be approved as a site plan amendment. Staff had recommended that they be reviewed by staff as a minor site plan amendment. Staff is now recommending it as a major site plan amendment because we need the public's input. The Chair mentioned last time a conditional use permit. There is not any difference in the way we review them. The only difference is that they are not allowed by right. As a design you can say yes, no, or under these conditions. Under the recommended wording, if someone proposed a mural they would come before this body and Council for approval. It would be in the sign ordinance but they would be treated differently than a sign. Doede said he liked the wording because it comes through P&Z and Council as part of the site plan because a lot of these buildings are not being structurally remodeled but they want to aesthetically remodel them. Smith said it is part of the design of a building whether added structurally or in paint. Doede agreed. No one on the Commission or in the audience had further comments.

Carnal moved to recommend changes per staff recommendations. Forrey seconded the motion which then passed unanimously. Smith said staff would advertise it for public hearing of the Commission and then for Council after that.

VI. STAFF REPORT

Smith said the Mercado or Plaza El Mirage continues to have violations and it appeared staff will have to go to citations and closure until repairs are done. Doede said he saw a new banner today. Smith said they were trying to move a new one in. Staff had issues not only with sprinklers but other things. It did not look like they would get any cooperation without playing hardball.

Windy City Dogs were in the permit process and should be going up soon. They have begun digging foundations and were getting ready to pour.

VII. COMMISSIONER COMMENTS

Forrey asked if it was common for tenants to invest a lot of money for physical improvements before receiving a conditional use permit. Smith asked if he was asking if it was common or legal. He answered both. Smith said it happens but they would have to have a tenant improvement permit first. He had a call today asking if they could put up a sign. He told them no; if they did not have approval for the use they could not have a sign for it. They get the cart before the horse in some cases. They are supposed to get permits before any interior or exterior changes to the structure. Forrey asked if that was at risk. Smith said at risk.

Doede noticed that the feather signs have been moved back behind property walls so Code Enforcement has been getting out there and that's a good thing. Smith said they would see political signs in rights-of-way since state law allowed them. McCarty said some were in site distance triangle. That should be enforced more closely. He has pulled up to some corners and unable to see oncoming traffic. Smith said they are supposed to be out of sight distance and the City has authority to remove them. Even the state law allows them to be removed for safety issues.

XIII. ADJOURNMENT

The Chair adjourned the Commission meeting at 7:12 p.m.

Mark L. Smith, Senior Planner

Doug Doede, Chairman