

## CITY OF MESA

### MINUTES OF THE PLANNING AND ZONING BOARD MEETING

Held in the City of Mesa Council Chambers

Date March 24, 2005 Time 4:00 p.m.

#### MEMBERS PRESENT

Mike Cowan, Chair  
Barbara Carpenter, Vice-Chair  
Rich Adams  
Pat Esparza  
Alex Finter  
Frank Mizner  
Bob Saemisch

#### MEMBERS ABSENT

#### OTHERS PRESENT

John Wesley	Jim Smith	Helen Williams	Ahmed Hassan
Dorothy Chimel	Sean Lake	John Giles	Others
Tom Ellsworth	Michelle Dahlke	Neo Escobedo	
Ryan Heiland	Reese Anderson	Paul Gilbert	
Scott Langford	Ralph Pew	Brian Churchill	
Liz Zeller	Harold Decker	Susan Churchill	
Maria Salaiz	Allen Willis	Barbara Markoski	

Chairperson Cowan declared a quorum present and the meeting was called to order at 4:00 p.m. The meeting was recorded on tape and dated March 24, 2005. Before adjournment at 6:37 p.m., action was taken on the following items:

It was moved by Boardmember Mizner, seconded by Boardmember Esparza that the minutes of the February 17, 2005 meeting be approved as submitted. The vote was 7-0.

It was moved by Boardmember Mizner, seconded by Boardmember Adams that the minutes for General Plan Amendment GPMInor05-01 held on February 15, 2005 and February 17, 2005 meetings be approved as submitted. The vote was 7-0.

Consent Agenda Items: All items identified with an asterisk (\*) were approved with one Board motion.

It was moved by Boardmember Adams, seconded by Boardmember Finter that the consent items be approved. The vote was 7-0.

Code Amendment: Amending Sections 11-15-2 of the Zoning Ordinance (Title 11 of the Mesa City Code) pertaining to building, parking, drive aisle and landscape setbacks adjacent to arterial streets.

Zoning Cases: \*Z05-105, Z05-22, \*Z05-31, \*Z05-32, \*Z05-33, Z05-34, \*Z05-35, \*Z05-36, Z05-37, \*Z05-38, Z05-39, \*Z05-40.

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Item: Amending Section 11-15-2 of the Zoning Ordinance (Title 11 of the Mesa City Code) pertaining to building, parking, drive aisle and landscape setbacks adjacent to arterial streets.

Comments: Wahid Alam, Senior Planner, gave an overview stating that this Code Amendment is in response to the Transportation Plan that Mesa has adopted. He added that currently the Design Guidelines have standard setbacks of 30 feet along all arterial streets and this amendment allows a 20 feet setback along arterial streets that are identified in the plan as four lane arterials.

Boardmember Saemisch asked that when and if the plan is updated, and a four-lane arterial turns into a six-lane arterial would it automatically change the setback requirements. Mr. Alam responded, Yes.

Boardmember Mizner stated that this is a positive step for two reasons: 1) the City has recognized that not all arterial streets are going to be six lanes; and 2), the City is providing some relief to the property owners for those designated arterials so that they'll provide adequate landscaping consistent with the rest of the City but not be overly burdened.

It was moved by Boardmember Mizner, seconded by Boardmember Saemisch

That: The Board approve and recommend to the City Council approval of Amending Section 11-15-2 of the Zoning Ordinance (Title 11 of the Mesa City Code) pertaining to building, parking, drive aisle and landscape setbacks adjacent to arterial streets.

Vote: Passed 6-0-1 (Boardmember Carpenter abstaining).

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Item: **Z04-105 (District 6)** The 1600 block of South Signal Butte Road (west side). Located south of US 60 and west of Signal Butte Road (66.7 ac.). Requesting a Council Use Permit to allow the development of a Freeway Landmark Monument sign in conjunction with the construction of group commercial center. Bojer Land/Signal Butte, owner; Diversified Partners – Elizabeth Gaston, applicant. **CONTINUED FROM THE DECEMBER 16, 2004, JANUARY 20, 2005 AND FEBRUARY 17, 2005 MEETINGS.**

Comments: This item was on the consent agenda, therefore, it was not discussed individually.

It was moved by Boardmember Adams, seconded by Boardmember Finter

That: The Board continue zoning case Z04-105 to the April 21, 2005 meeting.

Vote: Passed 7-0.

Reason for Recommendation: The Board felt a continuance was warranted.

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Item: **Z05-22 (District 5)** 1725 N. Quail. Located south of McKellips Road and east of Greenfield Road (4.11 ac.). Rezone from M-1 to M-1 PAD and site plan review. This case is to allow development of industrial condominium buildings. Mark Hughes, owner; Todd Spencer, Cawley Architects, applicant. Also consider the preliminary plat. **CONTINUED FROM THE FEBRUARY 17, 2005 MEETING.**

Comments: Sherman Cawley, applicant, stated that they are requesting a PAD overlay for a condominium development for an industrial development in the Mesa Commerce Center. They are proposing a two building, eight condominium complex for industrial users including office warehouse. He mentioned that this case has already been through the Design Review Board and approved.

Helen Williams, 3051 North Redrock Drive, resident, stated that their property is directly east of this proposal and mentioned that the Board should have received their letter of opposition. She stated that they are against this proposal because the west wall of Lots 44 and 45 opens up their property, which houses their plumbing trucks, copper piping, supplies, etc., to security risks; adding that it is a good project but they do not care for the openness of the lot.

John Giles, 44 West University, #301, on behalf of the Mesa Commerce Center Association stated that the association opposes this particular development for a variety of reasons. The first is that it is inconsistent with the Master Plan of this development. This proposal constitutes four lots in the center, which are going to be split into several smaller industrial condominiums that are also inconsistent with the current users. These smaller users would create traffic, encourage outside storage and that parking was insufficient.

Mr. Giles stated that this project is detrimental to the City's economic development plan in this area and that there are several commerce parks in the area that would be a great location for this project. This property is intended for large industrial users. He encouraged the Board to stick with the plan. He stated that the Association had several concerns that are fully explained in the letter delivered to them and that the project would violate the CC&R's of the Association. He pointed out that in addition to the Williams, other property owners have expressed concerns over this property and would be filing a legal protest should this matter proceed.

Boardmember Mizner noted that one of the letters had some very firm language regarding the Association's position. Mr. Giles responded that they felt strongly about this proposal being incompatible with the remainder of the lots and that it would have a very detrimental effect on the development of the area. Mr. Mizner asked if they or the other law firm had communicated with the developer. Mr. Giles stated that there was some delay because in their negotiations with the developer they initially seemed very receptive to their concerns and had indicated that they would be submitting a revised plan. It was only today that they learned from the developer that he had abandoned any thoughts of addressing their concerns.

Boardmember Saemisch asked Mr. Giles if there was anything in the CC&R's that restrict multi-tenant buildings and if this was a lot split or a horizontal regime condominium. Mr. Giles responded that the CC&R's prohibit lot splitting and it was their understanding that the applicant was seeking to split the lots into multiple ownership among the eight condominiums.

Discussion ensued between Boardmember Saemisch and Mr. Giles regarding the ownership of the buildings and subcontractors in this development. Mr. Giles stated that it was not his intention to say that it was a bad project but that it would be a great project at another location.

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The market is certainly very strong for subcontractors and they need a place to conduct their business but it does not belong in the middle of this group of very large industrial users. The City needs to focus on bringing in large economic users for that piece of property.

Mr. Saemisch asked if there was any wording specific to the ordinance that would support his point that this is a non-compatible use. Mr. Giles stated that it is contrary to the CC&R's for this development and for the reasons he talked about earlier.

Boardmember Adams asked Mr. Giles that if the project moves forward is there a possibility that the association would initiate some form of litigation. Mr. Giles responded Yes, in order to maintain the integrity of this community.

Boardmember Mizner noted that the Board had seen a similar case with the same argument about whether the zoning ordinance or the CC&R's should have ultimate authority and asked what happened with that case.

Jim Smith, Assistant City Attorney, responded that he didn't remember the case, but pointed out that the CC&R's are not a relevant consideration for the Board. The CC&R's are a third party agreement and if they wish to enforce them in some subsequent litigation they may do that. He added that the Board and City Council are not bound by a third party agreement and it doesn't affect the Board's determination as to whether or not to rezone the property to allow a permitted use.

Boardmember Adams stated he needed further clarification because he could recall cases when they have discussed deed restrictions as potential solutions. Mr. Smith responded that in the past there have been cases in which the developer and the neighborhoods have either before or during the board meeting and on their own, agreed to deed restrictions but that the Board had never put the deed restrictions or engaged in those deed restrictions.

Boardmember Finter noted that what he was hearing from the speakers is that there may have been a breakdown in communications and was hoping that there might be an opportunity for these people to meet before this progresses.

Sherman Cawley, applicant, stated that they strongly believe that this project is completely compatible with the existing development; adding that there are two 20,000 sq.ft. buildings and they are proposing that each building be divisible into units as small as 5,000 sq.ft. He stated that there is no guarantee that any particular unit would go singly and that some buyers might be interested in two or three units making a total ownership of 10-15,000 sq.ft. He also stated that there is not a lot split involved and they were tying four lots together into one lot for two buildings on a lot. The condominium proposal is strictly a horizontal regime and there are no other property lines involved.

Mr. Cawley stated that this proposal is not detrimental to the neighborhood and felt that the project had been properly designed. We're open to the Board's recommendation and want the opportunity to continue to convince the Architectural Committee that this is an appropriate project in that park and deserves their consideration. He added that they exceed the parking requirements and have no intention of parking on the street and would follow through on all the City's requirements.

Liz Zeller, Planner, gave an overview stating that this is a request to develop two large office industrial buildings that could be divided into eight possible suites in the future. The applicant is

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asking for the PAD overlay, which would allow for individual ownership. She stated that an ownership brings with it pride and responsibility and allows for less of a turnover than a lease user. This proposal is in conformance with the General Plan and with the Falcon Field business plan. Staff does not have any concerns with the project and are recommending approval with conditions.

Boardmember Saemisch noted that a horizontal regime needs to be described as the land in itself is maintained as one. The applicant has taken the two properties and made them into one, so he has reduced the amount of subdivision. He stated that this is not a subdivision technical review process for lot splits, but truly a horizontal regime where it's just a space within the building walls and confines that are fenced and that would be the ownership. He added that there is nothing about this project that seem lesser than the surrounding neighborhood and that it may enhance it, from the point of view that, that it breaks down some of the large box scale into something that is more personable and more attractive. He stated that he is in favor of this project.

Boardmember Finter motioned to continue this case to the April 21, 2005 meeting to allow the applicant and the neighbors more time to work out some issues.

Boardmember Mizner seconded the motion stating that the Board has heard some valid concerns, not only from the adjacent property owner, but concerns about the ownership, compatibility of development and future economic development opportunities. He stated he supports Boardmember Finter's motion.

Boardmember Adams asked Mr. Cawley that, knowing the level of opposition from the Board of Directors, why was he still moving forward? Mr. Cawley responded that he was hoping to get approval from the Planning and Zoning Board, which would help them in presenting the Board of Directors a broader view of how the projects are actually perceived throughout the City.

Boardmember Carpenter noted that the Economic Development Office has actively tried to market this area as Commerce Park and if this case is being continued she would like to hear a little more perspective from the Economic Development staff.

Ms. Liz Zeller stated that she had received an email from Harold Decker, Economic Development Office, stating they did not have any problems with either leasing or private ownership of land or suites, or office industrial buildings in the Falcon Field area and that this project does falls in part with their action plan for the long term goals of Falcon Field.

Mr. Giles stated he also spoke to Mr. Decker and after explaining the project a little more, Mr. Decker expressed some concerns and said that the opinion he expressed in the email was limited only to the issue of whether or not the Economic Development staff had a problem with individual ownership of lots within a larger development. Mr. Giles stated he was looking forward to getting a more formal opinion from Mr. Decker.

Boardmember Saemisch stated he was pretty sure that things would not change in the next 30 days and that these people had the right to develop this property, a right to own it, and a right to work within the system and that the other party has the right to enforce their CC&R's. He stated he would not be voting in favor of the motion.

Boardmember Esparza asked Ms. Zeller if the memo by Mr. Decker was specific to the case. Ms. Zeller responded that she referenced this case and gave specifics.

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A vote was taken to continue zoning case Z05-22 to the April 21, 2005 meeting. Motion failed 4-3 (Saemisch, Adams, Cowan, and Esparza voting nay).

Boardmember Saemisch made a motion to approve zoning case Z05-22 with the added stipulation to raise the north fence to 8 feet. Ms. Esparza seconded the motion to approve.

The motion to Approve failed 4-3 (Mizner, Adams, Carpenter and Finter voting nay).

Boardmember Mizner made a motion to deny this case on the grounds that the ownership pattern is incompatible with the area and the proposed design represents a security hardship for adjacent property owners. Boardmember Finter seconded the motion.

Boardmember Saemisch asked if the applicant had an opportunity to table this case; he added that this puts the applicant in jeopardy of losing over what he felt was entrenchment on the Board's part. He recommended that they not vote on it and table it, but to totally deny it at this point would be a poor choice.

Boardmember Adams noted that there was a calculated decision made by the applicant in coming to the Board with the position that was presented and the applicant should have understood the risks.

Boardmember Finter pleaded for the opportunity to have the people work it out and find some common ground then come back to the Planning and Zoning Board.

Mr. Cawley agreed to tabling the case to allow them the opportunity to work with the Association.

Chairperson Cowan stated he was leaning towards tabling this case and asked Mr. Smith to help with the status of the current motion. Mr. Smith stated they could ask for a withdrawal of the motion. Boardmember Mizner withdrew the motion with concurrence of the second.

It was moved by Boardmember Mizner, seconded by Boardmember Finter

That: The Board table zoning case Z05-22, and prior to this case coming back to the Board, it would have to be re-advertised and re-noticed.

Vote: Passed 7-0.

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Item: **Z05-31 (District 6)** 5416 East Baseline Road. Located north and east of Baseline Road and Higley Road (4.4 ac). Council Use Permit. This request is to allow an Everest College to operate in an existing building zoned C-1. Kurt Waltz, Diessner Development Company, owner; Ralph Pew, Pew and Lake, PLC, applicant.

Comments: This item was on the consent agenda, therefore, it was not discussed individually.

It was moved by Boardmember Adams, seconded by Boardmember Finter

That: The Board approve and recommend to the City Council approval of zoning case Z05-31 conditioned upon:

1. Compliance with the basic development as described in the project narrative and as shown on the exhibits as submitted.
2. Compliance with all City development codes and regulations.
3. Compliance with all requirements of the Development Services Department (Engineering, Traffic Engineering, Solid Waste and Facilities, etc.).

Vote: Passed 7-0.

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Item: **Z05-32 (District 1)** 2711 N. Horne. Located north and east of McKellips Road and Horne Road (3.19 ac.). Rezone from R1-43 to R1-43 PAD and Site Plan Review. This case is to allow for a 3-lot residential subdivision. Marlin Porter, owner/ applicant. Also consider the preliminary plat.

Comments: This item was on the consent agenda, therefore, it was not discussed individually.

It was moved by Boardmember Adams, seconded by Boardmember Finter

That: The Board approve the preliminary plat and recommend to the City Council approval of zoning case Z05-32 conditioned upon:

1. Compliance with the basic development as described in the project narrative and as shown on the site plan submitted, except as noted below.
2. Compliance with all requirements of the Development Services Department (Engineering, Traffic Engineering, Solid Waste and Facilities, etc.).
3. Compliance with Residential Development Design Guidelines.
4. Compliance with all requirements of the Subdivision Technical Review Committee.

Vote: Passed 7-0.

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Item: **Z05-33 (District 6)** The 9200 block of East Southern Avenue (south side) and the 1200 block of South Ellsworth Road (east side). Located south of Southern Avenue and east of Ellsworth Road (20.83 ac.). Site Plan Modification. This case is to allow for a Lowe's home improvement store with commercial pads. Ray Downs, owner; Don Andrews, applicant. Also consider the preliminary plat.

Comments: This item was on the consent agenda, therefore, it was not discussed individually.

It was moved by Boardmember Adams, seconded by Boardmember Finter

That: The Board approve the preliminary plat and recommend to the City Council approval of zoning case Z05-33 conditioned upon:

1. Compliance with the basic development as described in the project narrative and as shown on the site plan submitted, except as noted below.
2. Compliance with all City development codes and regulations.
3. Compliance with all requirements of the Design Review Board.
4. All pad buildings to be architecturally compatible with the center and approved by the Design Review Board.
5. Compliance with all requirements of the Subdivision Technical Review Committee.
6. Compliance with all requirements of the Development Services Department (Engineering, Traffic Engineering, Solid Waste and Facilities, etc.).
7. Dedicate the right-of-way required under the Mesa City Code at the time of application for a building permit, or at the time of the City's request for dedication whichever comes first.
8. All street improvements and street frontage landscaping to be installed in the first phase of construction.
9. Recordation of cross-access easements between all lots proposed in the subdivision plat.
10. Owner granting an Avigation Easement and Release to the City, pertaining to Williams Gateway Airport, which will be prepared and recorded by the City (concurrently with the recordation of the final subdivision map, prior to the issuance of a building permit).
11. Review and approval of a Special Use Permit by the Board of Adjustment / Zoning Administrator for a comprehensive sign plan.
12. Future Site Plan Review shall be required for Phase Three (3).

Vote: Passed 7-0

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Item: **Z05-34 (District 3)** 2950 South Alma School Road. Located south and west of Alma School Road and Guadalupe Roads (1.63 ac). Site Plan Modification. Development of a Dairy Queen restaurant and pad building. SWC Guadalupe and Alma School Road Ltd Partnership (Gary Davidson), owners; Paul Gilbert, applicant.

Comments: Paul Gilbert, 4800 North Scottsdale Road, applicant stated that this is a request for a Site Plan Modification and mentioned that they had come forward in 2003, with the Dairy Queen and ran into some opposition and withdrew the case. He stated that this is a substantial improvement to the previous Site Plan Modification. Mr. Gilbert showed exhibits of the site plan and briefly went over the existing and proposed changes. He pointed out that they have eliminated the PAD closest to the neighbors, reduced the square footage and have staffs' recommendation for approval. He also mentioned that they have major opposition from owners of two of the existing buildings and what made this case difficult is that there are several owners of the property.

Mr. Gilbert stated they have been asked by Mr. Anderson to rotate their building to preserve the view of his client, which would reduce their frontage along Alma School Road adding that the existing site plan give them less of a view of Alma School than the new proposed site plan. The original site plan limits the amount of parking that is contiguous to the existing two buildings. He also stated that they were given revised wording of stipulation #6 and mentioned that they were not in favor of the old stipulation #6, which he stated was an illegal stipulation. He also read the new stipulation and stated they did not have any problems with keeping those uses in mind. He mentioned that there was a very detailed legal agreement that delegates and specifically divides up the parking between these individuals, and that this stipulation would modify an existing contract between the two parties. For that reason, they would not be amenable to agreeing to stipulation #6.

Neo Escobedo, 2754 S. Alma School Rd. owner of the Dairy Queen, stated he had been renting at his current location since March of 1989 and he had offered to buy the pad in this proposal. In September of 2001 they came to an agreement and they have been in escrow since February 2002. He stated that his contract at his current location expired and contract extensions have caused his rent to increase from 8% of gross sales to 19%, and soon to 150%, which he could not support and would have to close his business until the Board made a decision.

Reese Anderson, 400 East Van Buren, Phoenix, AZ 85004, representing Mesa Shopping Center, stated that this case is not about the Dairy Queen or Mr. Escobedo, this case is about the location of PAD B. He stated that they did not get notice of the latest site plan until a few weeks ago and mentioned that the applicant had done a major improvement to the overall plan and he stated that the alleged reason for wanting to preserve the sight lines was not necessarily true. He gave a brief history of this site and explained the concern his client had about the location of PAD B. He showed an exhibit of the site plan approved in 1986, which showed his client's building at the back, preserving the common parking field for everyone at the front and visibility for all. He also showed the approved site plan, which they were not aware of or given the chance to respond because it was done through a minor site plan amendment process. He noted that when they learned of this minor site plan, his client had drafted a letter in protest but was denied any recourse at that time, so this is what they are living with today with PAD B in the middle of what is the existing parking field for Nello's,

Mr. Anderson stated they would prefer to have the building located as they were with the 1986 Plan; adding that if they flip the building 90 degree they keep the parking spaces and preserve the common parking field and sight line back to that existing building; adding that visibility

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equals viability. He also stated that there is a safety concern with PAD B because the drive aisles stick out and this could lead to stacking problems. There is also no deceleration lane on Alma School Road. He requested that the site plan be denied or that the Board make a recommendation that PAD B be rotated. He mentioned that they are open to further discussions with the applicant.

Paul Gilbert, applicant, stated that Mr. Anderson represented Mr. Singh and the owner of two of the other buildings and mentioned that this plan gives them more parking and more visibility than they have now, which was already a major compromise. He pointed out that Mr. Singh knew that there was a court case and signed off knowing that this modification existed. He questioned Mr. Anderson's statement that the view from Alma School was not important but added that this is what the case was all about. He stated that the reason this shopping center hadn't developed was because it was an infill parcel and needed, in order for it to go forward, the visibility from Alma School Road. He reiterated his statement about giving them more visibility than what they have now and with regards to the safety concern they could work that out. For these reasons, they hoped that the Board would agree with the staff report and recommend approval.

Dorothy Chimel, Principal Planner, stated that as with all small infill properties, this was not an easy case to consider and often times they encounter a legal protest. She gave a brief history stating that this site was approved for a group commercial center in 1982 and since that time there have been numerous modifications. She stated that staff did speak to the applicant prior to the submittal and analyzed the case based on compliance with the Zoning Ordinance and conformance with the site standards as defined in Chapter 14 and 15. She mentioned that the Design Review Board did see this case and had some items of consideration for the applicant to look at, as far as improving the aesthetics of the Dairy Queen but did not have too many comments regarding the site design. She also gave an overview on the process for Commercial Office or Industrial development (COI).

Ms. Chimel stated that the redefined condition is in order to be in conformance with the way the Zoning Ordinance is written and apologized for the lateness in getting the revised language to the applicant. She stated that staff is recommending approval, however; staff heard today that there would be a legal protest unless PAD B is rotated and in order for this case to proceed they would need a 2/3 vote at City Council. She addressed the comments made about visibility and added that the existing site plan works well and there are many COI centers in the city where the access is perpendicular to the arterial street. She mentioned that if the Board feels more comfortable with deleting Condition #6, that it would not delete the requirements for having the tenant spaces considered with the parking calculations. She noted that in June 2003, the Design Guidelines (Chapters 14 and 15) of the Zoning Ordinance were approved, so any development on this site would need to go through a Substantial Conformance Improvement Permit (SCIP) process in order to legitimize the modification to the current standards of development.

Boardmember Mizner stated that he had consulted with Mr. Smith, Assistant City Attorney, and asked if he should abstain from this case because he had worked on this when he was the Planning Director. Mr. Smith advised him No. He stated he approved an Administrative Amendment in 1993, and Mr. Singh and the owners of Nello's were not pleased with that Amendment. He added that customers for Nello's have been parking on this property for over 15 years, which is owned by another individual and now they have a proposal to make a further change to that amendment. He stated that Mr. Singh has a right to contest this proposal and file a legal protest when it goes to City Council. The proposal before us is a reasonable

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compromise, which allows visibility for the new retail building and preserves the visibility for the existing retail building. It's better for the neighborhood than the previous proposal and it allows the owner of the Dairy Queen to remain in this area.

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Mr. Mizner stated with regard to Condition #6, staff had been very careful to craft a condition that does not ban future restaurants it simply states that future shopping center would have to comply with code requirements. City parking requirements do not guarantee adequate parking or a successful user, they are minimums and we have many shopping centers because of their mix of tenants that have parking problems. He also noted that Nello's is a victim of their own success and their parking demand is far greater than the center can support. He stated he would be supporting the proposal.

Boardmember Finter asked Mr. Anderson about the stacking concern. Mr. Anderson responded that the natural drive aisle extends off of the existing curb and jets around into the existing aisle so cars coming in or exiting Alma School Road would cause a stacking problem.

Discussion ensued between Boardmember Adams, Mr. Anderson and Mr. Gilbert regarding the visibility of the buildings from Alma School Road and the location of the building on the lot.

Boardmember Finter asked staff if there was an opportunity for additional signage through the Board of Adjustment that might help mitigate the loss of visibility to the back buildings. Ms. Chimel responded Yes, and as with any COI development there is always an opportunity for a Comprehensive Sign Plan and the goal is to afford visibility to all tenants.

Boardmember Carpenter mentioned that there were other options presented to the Board with the rotation of PAD B and asked Mr. Gilbert what that would do for to the visibility for PAD B. Mr.

Gilbert responded that it reduces the visibility between 1/3 and 50% along Alma School Road. Under the existing site plan they have full visibility and if they had to rotate the building they would lose major visibility.

Ms. Carpenter also asked if it could be mitigated with a Comprehensive Sign Plan? Mr. Gilbert responded that they had tried, but Mr. Davidson had informed him that the sign does not make up for the visibility along Alma School Road. Furthermore, they have no guarantee that a Comprehensive Sign Plan would be approved and that was not an acceptable option to them. He reiterated that this is a "terrific" improvement over what has been approved and added that they had increased their visibility and their parking and they had tried to craft this so it's a "win-win" situation.

Ms. Chimel read the modified condition into the record stating: Parking calculations for Future Pad Building B to be per Zoning Ordinance requirements, with consideration of all existing uses within the Group COI Development.

Boardmember Carpenter stated that the visibility of this shopping center was not good and would not be getting any better, but that a couple of the tenant suites including PAD A was going to be a draw for the shopping center. She stated she didn't care for PAD B but didn't know what you can do with a difficult arrangement and the way the motion reads, is that when they come back to develop PAD B they'll deal with it then. She stated she would personally like to see it back where the retention is but understood why everyone wanted to be on the sidewalk.

Boardmember Adams explained that he would be supporting the motion and, although there had been good arguments made on both sides of this case, the applicant's proposal is an improvement over the previous one.

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Boardmember Esparza agreed that the applicant's proposal is an improvement, however; PAD B and the parking was not attractive to the whole center and agreed with Mr. Anderson in rotating PAD B. She stated she would not be supporting the proposal.

Boardmember Finter also stated he would be supporting the motion and hoped that all can agree to a reasonable sign package that would benefit the whole group.

Chairperson Cowan stated he was in favor of this case and the current approved plan negates the opportunity for any street appeal for that back building and this is an appropriate compromise. He also mentioned that he was not opposed to the 90-degree rotation.

It was moved by Boardmember Carpenter, seconded by Boardmember Mizner

That: The Board approval zoning case Z05-34 with the modified conditions as read into the record conditioned upon:

1. Compliance with the basic development as described in the project narrative and as shown on the site plan, and elevations submitted.
2. Compliance with all City development codes and regulations.
3. Compliance with all requirements of the Development Services Department (Engineering, Traffic Engineering, Solid Waste and Facilities, etc.).
4. Dedicate the right-of-way required under the Mesa City Code at the time of application for a building permit, at the time of recordation of the subdivision plat, or at the time of the City's request for dedication whichever comes first.
5. Compliance with all requirements of the Design Review Board.
6. Parking calculations for Future Pad Building B to be per Zoning Ordinance requirements, with consideration of all existing uses within the Group COI Development.
7. Review and approval of a Substantial Conformance Improvement Permit.

Vote: Passed 5-1-1 (Boardmember Esparza nay and Boardmember Saemisch abstaining)

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Item: **Z05-35 (District 1)** The 3000 Block of East McKellips Road. Located south and east of McKellips Road and Lindsay Road (3.7 ac). Site Plan Modification. This request is to allow development of a restaurant building. Wayne Wyatt, owner; Chris Neal, Neptune Design Group, applicant.

Comments: This item was on the consent agenda, therefore, it was not discussed individually.

It was moved by Boardmember Adams, seconded by Boardmember Finter

That: The Board approve and recommend to the City Council approval of zoning case Z05-35 conditioned upon:

1. Compliance with the basic development as described in the project narrative and as shown on the site plan and elevations as submitted.
2. Compliance with all City development codes and regulations.
3. Compliance with all requirements of the Development Services Department (Engineering, Traffic Engineering, Solid Waste and Facilities, etc.).
4. Compliance with all requirements of the Design Review Board.
5. Owner granting an Avigation Easement and Release to the City, pertaining to Falcon Field Airport which will be prepared and recorded by the City prior to the issuance of a building permit.

Vote: Passed 7-0.

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MINUTES OF THE MARCH 24, 2005 PLANNING AND ZONING MEETING

Item: **Z05-36 (District 1)** The 1200 to 1300 block of East McKellips Road (south side) and the 1800 to 1900 block of North Stapley Drive (east side). Located south and east of McKellips Road and Stapley Drive (10.25 ac). Site Plan Modification. This request to development commercial retail buildings. Ryan Gaston, Barclay Group, owner; Martin Flood, applicant. Also consider the preliminary plat "Fry's Shopping Center at Stapley & McKellips".

Comments: This item was on the consent agenda, therefore, it was not discussed individually.

It was moved by Boardmember Adams, seconded by Boardmember Finter

That: The Board approve the preliminary plat of "Fry's Shopping Center at Stapley & McKellips" and recommend to the City Council approval of zoning case Z05-36 conditioned upon:

1. Compliance with the basic development as described in the project narrative and as shown on the site plan, preliminary plat and elevations submitted, (without guarantee of lot yield, building count, lot coverage) except as noted below.
2. Compliance with all requirements of the Development Services Department (Engineering, Traffic Engineering, Solid Waste and Facilities, etc.).
3. Dedicate the right-of-way required under the Mesa City Code at the time of application for a building permit, at the time of recordation of the subdivision plat, or at the time of the City's request for dedication whichever comes first.
4. Compliance with all requirements of the Subdivision Technical Review Committee.
5. Compliance with all requirements of the Design Review Board.
6. Review and approval of a Substantial Conformance Improvement Permit.
7. Retention basins to be 6:1 slopes maximum when adjacent to public rights-of-way or pedestrian walkways.

Vote: Passed 7-0.

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## MINUTES OF THE MARCH 24, 2005 PLANNING AND ZONING MEETING

Item: **Z05-37 (District 5)** The 3700 block of East McLellan Road (north side). Located south and east of McKellips Road and Val Vista Drive (22.64 ac). Rezone from R1-35 to R1-35 PAD and Site Plan Review. This request is to allow for the development of a gated single-residence subdivision. Jeff Blandford, owner/applicant. Also consider the preliminary plat.

Comments: Brian Churchill, 3805 East Ivy Glen St, resident, stated that he had concerns with the access to the alley when the owner was no longer farming, who was going to pay for the wall and what would happen to his 2-foot wall.

Boardmember Saemisch asked Mr. Churchill for clarification of his lot location and mentioned that there would be a fence built in lieu of his 2-foot wall.

Susan Churchill, 3805 East Ivy Glen St, resident, added that the gates allowing Mr. Armistead access to the alley are left open a lot and mentioned that their home had been broken into because of this access. She stated she talked to Mr. Dugas about having an automatic gate opener for Mr. Armistead but he was not receptive to that idea.

Barbara Markoski, 3658 East Indigo, resident, thanked Mr. Ellsworth for his assistance on this case. She also thanked Mr. Dugas for their compromise in allowing all nine owners access to their irrigation valve through this development. She thanked him for preserving the citrus in the area and for reorienting lots adjacent to them for privacy. She mentioned that the current wall is 25 years old and that it would be appropriate to have a new wall along that property line; adding that the neighbors of Ann Lynn Estates are in favor of this development.

Paul Dugas, 3321 East Baseline Rd., addressed Ms. Markoski's concerns stating that they would have an access code into their community that would be good 24 hours a day for irrigation. He also stated they are amenable to adjusting the wall height making them all consistent and if the 25 year old wall is crumbling and not structurally sound they would repair or replace it. Mr. Dugas also addressed the Churchill's concerns stating that as part of the sale, the easement access would continue until Mr. Armistead stops farming the property. He noted that they have added three more wrought iron gates to the development, which will be at least 6-feet high and kept locked. He mentioned that Mr. Ellsworth had a crime prevention officer look at the situation and their suggestions had been incorporated into their plans, which would increase the safety of the area. He stated that when the access easement is extinguished or abandoned the gates would be replaced with a wall and the 2-foot wall on the Churchill's property would be raised at no cost to them.

Tom Ellsworth, Senior Planner, stated that staff has outlined the concerns the neighbors had and the mitigation efforts that had been put forth by the applicant. He added that staff addressed the alley concerns with the Crime Prevention Office. He also stated that the landscape tract had been extended by the Board to 20' in addition to the 10'. The Board also stipulated that citrus would be put into that area. Mr. Ellsworth noted that the applicant would add language to the CC&R's, that states when Mr. Armistead no longer needs that access easement it would be extinguished and the wall completed. He stated staff is in support of this request.

Boardmember Saemisch stated that at the Study Session the developer had agreed to a 20-foot setback instead of the 9-foot setback with citrus trees at the end of the street for better and safer visibility. He added that the Churchills would have to put up with hardships related to the alley because that's an existing condition. He also stated that at the Study Session the Board applied a one-foot vehicular easement, so that in the future nobody could put a driveway into

## MINUTES OF THE MARCH 24, 2005 PLANNING AND ZONING MEETING

their back yard. He asked if this condition applied to the new gates when they come down.

Discussion ensued between Boardmember Saemisch and staff regarding the one-foot vehicular easement.

Ahmed Hassan, 3710 East McClellan, resident, spoke in the support of the case and mentioned that Mr. Dugas has assured him that the citrus trees would be retained.

Boardmember Saemisch stated that the developer is required to have a six-foot wall between subdivisions and at the option of the Churchill's, replace the two-foot wall with the detail accent wall along Ivy Glen.

Boardmember Adams asked what the process was for abandoning the use of the easement and whom the agreement is between. Mr. Smith responded that abandoning the easement depends on the language that is on the easement and that it is a third party contract that gets recorded.

It was moved by Boardmember Saemisch, seconded by Boardmember Esparza

That: The Board approve the preliminary plat and recommend to the City Council approval of zoning case Z05-37 with the revised conditioned upon:

1. Compliance with the basic development as described in the project narrative and as shown on the site plan, preliminary plat, (without guarantee of lot yield, building count, lot coverage).
2. Compliance with the Residential Development Guidelines.
3. Compliance with all City development codes and regulations.
4. Compliance with all requirements of the Development Services Department (Engineering, Traffic Engineering, Solid Waste and Facilities, etc.).
5. Dedicate the right-of-way required under the Mesa City Code at the time of application for a building permit, at the time of recordation of the subdivision plat, or at the time of the City's request for dedication whichever comes first.
6. Compliance with all requirements of the Subdivision Technical Review Committee.
7. View fences on residential lots shall comply with the City of Mesa pool fence barrier regulations.
8. Written notice to be given to future residents that this subdivision is within one (1) mile of Falcon Field Airport.
9. Owner granting an Avigation Easement and Release to the City, pertaining to Falcon Field Airport, which will be prepared and recorded by the City (concurrently with the recordation of the final subdivision map, prior to the issuance of a building permit).
10. Record a one-foot non-vehicular access easement along the cul-de-sac on Ivy Glen, except to allow access as permitted under the existing easement.
11. Provide a 20-foot landscape tract along Ivy Glen to be landscaped with existing and/or replacement citrus trees.

Vote: Passed 6-0-1 (Mizner excused).

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MINUTES OF THE MARCH 24, 2005 PLANNING AND ZONING MEETING

Item: **Z05-38 (District 5)** The 4200 to 4400 Block of East Brown Road (north side). Located west and north of Greenfield Road and Brown Road (3.3 ac). Site Plan Modification. This request is to allow development of three office buildings. David Gillette, FCF UTAH, LLC and Dr. Douglas A. Bobb, Legacy Investments, L.L.C., owner; Allen Willis, Amberwood Homes, applicant. Also consider the preliminary plat for "Amberwood Homes".

Comments: This item was on the consent agenda, therefore, it was not discussed individually.

It was moved by Boardmember Adams, seconded by Boardmember Finter

That: The Board approve the preliminary plat of "Amberwood Homes" and recommend to the City Council approval of zoning case Z05-38 conditioned upon:

1. Compliance with the basic development as described in the project narrative and as shown on the site plan and elevations as submitted.
2. Compliance with all City development codes and regulations.
3. Compliance with all requirements of the Development Services Department (Engineering, Traffic Engineering, Solid Waste and Facilities, etc.).
4. Recordation of cross-access easement with property to the east for the shared drive entrance from Brown Road.
5. Compliance with all requirements of the Subdivision Technical Review Committee.
6. Compliance with all requirements of the Design Review Board.
7. Future review by the Design Review Board of "Building A" Parcel 2.

Vote: Passed 7-0.

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## MINUTES OF THE MARCH 24, 2005 PLANNING AND ZONING MEETING

Item: **Z05-39 (District 6)** Properties located between the Signal Butte Road alignment and Mountain Road, and between the Galveston Road alignment and 1320' north of Warner Road (558± ac). Rezone from R1-43 to R1-6 (conceptual R-2 and PF), R1-6 PAD, R1-7 PAD, and R-2 PAD all within the Mountain Horizons Development Master Plan. This request is to allow the development of a residential master planned community. Pulte Homes (Tim Loughrin), owner; Sean Lake, Pew & Lake, PLC, applicant. Also consider the preliminary plat.

Comments: Sean Lake, applicant, gave an overview of the proposal stating that this is a 550 acre master plan development for Pulte Homes. He stated that there was a problem with the realignment of Ray Road and because of the realignment the bottom two-fifth of the project was separated and will be coming before the Board in the next few months. He stated that this is a residential community and they have tried to design it to integrate trails and open space with a substantial amount of amenities for the future residents of this community. Mr. Lake stated that the project is consistent, in terms of density, with the General Plan. He addressed the issue that was brought up during the study session that dealt with the proximity of this property to the Williams Gateway Airport overflight areas. He made it very clear to the Board and to the public that they are not adding residential units near Williams Gateway Airport that are not already designated on the General Plan. He stated that they have added Condition #9, which deals with overflights and notification to future residents. He also commented that this is an outstanding project and merits the Board's recommendation of approval, and they agree with all of staff's stipulations.

Tom Ellsworth, Senior Planner, concurred with Mr. Lake's description of the project, adding that it is an exciting master plan community. He stated that the only concern staff noted dealt with the side setbacks for the R-2 parcel. In dealing with R-2 densities and single-family type developments there is an issue of what are appropriate side setbacks for homes. Originally this proposal was for 5' and 5' side setbacks, we met at a halfway point of 5' and 8' side setbacks and staff was comfortable with those setbacks. He commented that he brings this to the Board's attention because there will be a request for R-2 type density on the southern portion and staff may revisit this issue in the future. He mentioned that staff is recommending approval with conditions.

Boardmember Mizner noted that this project would generate a considerable number of school age children, nearly 150 in the Gilbert School District and over 600 in the Queen Creek District, he asked Mr. Lake if he would talk about their negotiations with those two Districts and how they would address those impacts. Mr. Lake responded that they have met with the school district and have identified a site and they are comfortable with how that is being handled.

Boardmember Mizner also pointed out that the Arizona Department of Transportation (ADOT) was conducting hearings on the alignment of a new freeway and those prospective alignments have not been decided. He asked Mr. Lake if he has had discussions with ADOT and where they stand. Mr. Lake responded they have had discussions with ADOT and planning staff and mentioned that they have tried to set aside a portion of the property in the event that that alignment does come across this property. Mr. Mizner also asked that if this alignment was not chosen would the property be incorporated into the proposed R-2 zoning. Mr. Lake responded that depending upon how they structure the zoning case to come, they would try to design it to incorporate into that parcel.

Boardmember Saemisch noted that this was a good presentation and stated he wanted the opportunity to show the public what he considers a quality development. When you add the landscaping and the major features of entry this has a very wholesome community design to it.

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He stated that this is the kind of community that, in the future, could have a voice because the residents would want to protect their homes and neighborhood and they are going to take a lot of pride in them. Mr. Saemisch stated it was also important that they know in advance that they are going to be near an airport but they are certainly not "in harms way". He mentioned that they look forward to seeing more examples like this.

Boardmember Esparza stated that with the 600 children that are going to be generated from this project she was delight with the amenities. This is just a great project that incorporates the entire family into the community.

Chairperson Cowan thanked Mr. Lake and mentioned that the Board was very pleased with this development and that it is going to be a great addition to the community.

It was moved by Boardmember Finter, seconded by Boardmember Esparza

That: The Board approve the preliminary plat and recommend to the City Council approval of zoning case Z05-39 conditioned upon:

1. Compliance with the basic development as described in the project narrative and as shown on the site plan, exhibits, and preliminary plat (without guarantee of lot yield, building count, lot coverage).
2. Compliance with the Residential Development Guidelines including product elevations.
3. Compliance with all City development codes and regulations.
4. Compliance with all requirements of the Development Services Department (Engineering, Traffic Engineering, Solid Waste and Facilities, etc.).
5. Dedicate the right-of-way required under the Mesa City Code at the time of application for a building permit, at the time of recordation of the subdivision plat, or at the time of the City's request for dedication whichever comes first.
6. Compliance with all requirements of the Subdivision Technical Review Committee.
7. View fences on residential lots shall comply with the City of Mesa pool fence barrier regulations.
8. Written notice to be given to future residents that this subdivision is within one (2) miles of Williams Gateway Airport.
9. Owner granting an Avigation Easement and Release to the City, pertaining to Williams Gateway Airport, which will be prepared and recorded by the City (concurrently with the recordation of the final subdivision map, prior to the issuance of a building permit).

Vote: Passed 7-0.

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MINUTES OF THE MARCH 24, 2005 PLANNING AND ZONING MEETING

Item: **Z05-40 (District 6)** The 4700 to 4800 block of East Baseline Road (north side). Located north and west of Baseline Road and Higley Road (12 ac). Rezone from AG to PEP PAD and Site Plan Review. This request is to allow for the development of an industrial office complex. Frank Richards, owner; Steve Nevala – Cawley Architects, applicant. Also consider the preliminary plat “Pierpont Business Court”.

Comments: This item was on the consent agenda, therefore, it was not discussed individually.

It was moved by Boardmember Adams, seconded by Boardmember Finter

That: The Board approve the preliminary plat of “Pierpont Business Court” and recommend to the City Council approval of zoning case Z05-40 conditioned upon:

1. Compliance with the basic development as described in the project narrative and as shown on the site plan, preliminary plat and elevations submitted, (without guarantee of lot yield, building count, lot coverage) except as noted below.
2. Compliance with all requirements of the Development Services Department (Engineering, Traffic Engineering, Solid Waste and Facilities, etc.).
3. Dedicate the right-of-way required under the Mesa City Code at the time of application for a building permit, at the time of recordation of the subdivision plat, or at the time of the City's request for dedication whichever comes first.
4. Compliance with all requirements of the Subdivision Technical Review Committee.
5. Compliance with all requirements of the Design Review Board.
6. Full compliance with all current Code requirements, unless modified through appropriate review and approval of the modifications outlined in the staff report.
7. Retention basins to be 6:1 slopes maximum when adjacent to public rights-of-way or pedestrian walkways.

Vote: Passed 7-0.

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Respectfully submitted,

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John Wesley, Secretary  
Planning Director

MS:  
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