

4. REZONING NO. 2010-1 - Vicinity of the southwest corner of 119th Street and Quivira Road

1. APPLICANT: Polsinelli Shughart PC is the applicant for this request.
2. REQUESTED ACTION: The applicant is requesting a rezoning from CP-O, Planned Office Building District, to CP-2, Planned General Business District, to allow a retail building with a drive-thru.
3. LOCATION: The .74-acre tract is located in the vicinity of the southwest corner of 119th Street and Quivira Road.
4. CHARACTER OF THE NEIGHBORHOOD: The character of the neighborhood is commercial, offices, parkland and multi-family residential.
5. LAND USE AND ZONING PATTERNS: The property to the east is developed with an office building zoned CP-O. The property to the south is city owned parkland and is zoned R-1, Single-Family Residential District. Additional parkland property owned by the city is located to the west of the application area and is zoned RP-3, Planned Garden Apartment District. Across 119th Street to the north is a commercial development zoned CP-2, Planned General Business District.
6. ANALYSIS OF APPLICATION: This property was rezoned to CP-O in 2001 and was approved for a bank building. In 2009 a revised preliminary plan and final development plan were approved to allow Little Sunshine Daycare.
 - a. DEVELOPMENT PLAN: The applicant is requesting rezoning from CP-O, to CP-2, to allow the construction of a 4,711 square-foot multi-tenant building. Access to the site is provided from an existing drive off 119th Street. This drive also serves the existing Reece and Nichols building to the east. The parking lot will consist of 27 stalls, which meets ordinance requirements. The stalls along 119th Street will be screened by a wall, which will be finalized at the time of final development plan approval. A drive-thru lane is located around the southern portion of the building to serve a potential restaurant.

The building is proposed to be constructed of brick with a second brick serving as an accent. A cast stone accent band is also provided around the building. A landscape plan has been submitted by the applicant. Additional details about the parking lot lighting, landscaping and building materials will be provided at the time of final development plan approval.

- b. TRAFFIC IMPACTS: The proposed arrangement of the drive-thru lane is different than the drive-thru designs for most conventional fast-food restaurants, which typically provide enough stacking distance for eight vehicles to stack behind the menu board. This lane provides only a five-car stack behind the menu board before the maneuvering area for parking spaces is affected. That short a stacking distance is acceptable in this case because the proposed restaurant is not a free-standing building and includes less floor area than a standard high-volume fast-food restaurant. Those two factors lead staff to believe that the proposed restaurant use and any future users are unlikely to experience a high volume of drive-thru users.

The parking located on the west side of the building is a dead-end aisle design, but because of the relatively short distance involved and the tightness of this site, that design is acceptable to staff. All other aspects of the site plan are properly designed so that no adverse traffic impacts are anticipated. Because of the staff's opinion that the site design is workable from a traffic flow standpoint, the transportation staff supports this application.

- c. ENVIRONMENTAL IMPACTS: A Preliminary Stormwater Management Study has been submitted, reviewed and accepted for this rezoning. No downstream flooding issues have been identified that would warrant flood control stormwater detention. The major engineering issues associated with this lot are discussed below.

Floodplain Issues:

When the original preliminary development plan approval was considered by the Planning Commission in 2001, this development was in the FEMA designated Special Flood Hazard Area (SFHA). As part of the original development approval, a Letter of Map Revision (LOMR) was obtained, removing much of the property from the floodplain. Since that time, Johnson County has completed a re-study of the entire Indian Creek Watershed. With the new study, the base flood elevation has increased, resulting in revised flood maps that place a significant portion of Lot 2 in the SFHA. The proposed building is just outside of the new floodplain limits.

Although the city's floodplain management ordinance allows the construction of properly elevated non-residential buildings in the floodplain, it is advisable for the owner to process a Letter of Map Change clarifying that the new building is outside of the floodplain for insurance purposes. The proposed building is shown elevated in conformance with the city's floodplain ordinance. Since the building is very close to the floodplain boundary, an elevation certificate will be required to verify that the as-constructed building has been properly elevated.

A hydraulic analysis has been completed by the applicant's engineer that verifies development of this property has no impact on flood elevations. A floodplain development permit will be required for all site improvements within the floodplain.

Storm Sewer System:

There is a 20-foot wide permanent drainage easement for an existing 66-inch public storm sewer located on the west end of this site. To meet current stormwater conveyance standards, the easement needs to be widened to a minimum of 25 feet. Typically, drainage easements are centered on the pipe; however, there is insufficient space for additional easement on the east side of the pipe due to the proposed building location. Instead, the applicant proposes to grant additional easement entirely on the west side of the pipe. Staff has reviewed this proposal and believes that granting additional easement on the west side of the existing pipe will be sufficient.

Stream Corridor Deviation:

When the preliminary development plan was originally approved, the Stream Corridor Ordinance was not yet adopted by the city, so a setback was not required. Because this application requires a rezoning, Lot 2 must comply with the ordinance. A 120-foot stream corridor setback is required on both sides of Indian Creek. The proposed drive-thru lane encroaches approximately 20 feet (0.03 acres) into the required 120-foot stream corridor. The applicant has requested a stream corridor deviation to locate a portion of the drive-thru lane in the designated stream corridor, and has offset the encroachment by proposing to dedicate approximately 0.04 acres

of additional stream corridor on the southwest corner of the site. A copy of the applicant's evaluation of the deviation requirements has been included as Attachment A. Staff has reviewed the deviation requirements and is supportive of the applicant's request.

Stormwater Treatment Facilities:

Because the proposed application requires the property to be rezoned, the applicant is required to comply with the city's Stormwater Treatment Ordinance. The applicant is proposing to provide rain gardens, a native vegetation restoration area on-site, and a native vegetation restoration area off-site to meet the requirements. The off-site area includes approximately 0.05 acres on Lot 1. The applicant currently owns both Lot 1 and Lot 2, but has agreed to execute a private agreement stipulating that Lot 2 will be responsible for perpetual maintenance of this area in the event that either lot is sold in the future. A stipulation has been added by staff to ensure that the agreement is recorded with the county.

Staff has concerns with the depths of the proposed rain gardens, but is confident that this issue can be addressed at the time of final development plan approval. Prior to the approval of the final development plan, staff will require that a soil percolation test is performed to verify that the proposed design meets city standards. If the soil percolation test does not meet current standards, the applicant will be responsible for submitting a Revised Preliminary Plan that includes an alternate design.

7. CONFORMANCE WITH THE MASTER PLAN:

- a. FUTURE DEVELOPMENT PLAN MAP: The map identifies this area as appropriate for office uses. Generally, staff does not support commercial rezonings in locations not identified on the future development plan map. However, this rezoning is isolated and no additional commercial creep should occur to the west along 119th Street.
- b. GOALS AND POLICIES: The Comprehensive Plan does provide Commercial Land Use Goals and Policies. These Goals and Policies include Ensure Compatibility of the Development, Contain Commercial Development and Use Appropriate Transition Methods. The proposal is compatible with the commercial uses to

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the north across 119th Street and the office development directly to the east and to the south across the creek. The property around this site is developed and, therefore, no additional commercial requests should occur to the west. The parkland and stream corridor provides a buffer to the multi-family residential to the west. Therefore, this request does meet most of the goals and policies of the Comprehensive Plan.

8. STAFF RECOMMENDATION: The staff recommended approval of Rezoning No. 2010-1, subject to the stipulations approved by the Planning Commission.
9. PLANNING COMMISSION RECOMMENDATION: The Planning Commission considered this item on February 22, 2010. The property owner to the north who owns Stoll Park Commercial voiced opposition to the request. These concerns included this proposal is not consistent with the Comprehensive Plan, traffic congestion in this area, concerns about the entrance from 119th Street and not enough stacking for the proposed drive thru. The Planning Commission felt the request would have limited impact on the adjacent properties and street network and that no additional commercial would occur in the area. After discussion the Planning Commission voted 9 to 0 to recommend approval of Rezoning No. 2010-1, subject to the following stipulations:
 - a. The development shall be in accordance with Exhibit "A" (Site Plan), which is filed in the office of the Planning Commission Secretary at City Hall and which is incorporated by reference as if set out in full herein. In addition, the development shall comply with all regulations and standards of the City of Overland Park, unless specifically exempted by the Governing Body.
 - b. Development of the tract shall be limited to 4,711 square feet.
 - c. The number, location and geometrics of all driveways and parking areas are subject to review and approval by the Planning and Development Services Department.
 - d. Prior to publication of the rezoning ordinance, the owner and/or developer shall submit \$5,752 cash. Said cash shall be deposited with the Chief Financial Officer for the City of Overland Park. The funds collected shall be placed in an escrow account set aside for future unspecified transportation planning, design, construction or

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implementation, and operations in the corridor defined as containing and extending north to College Boulevard, east to Switzer Road, south to 127th Street, and west to Pflumm Road. Said work shall be above and beyond that listed in other stipulations to this rezoning.

In lieu of submission of the total amount of payment for unspecified transportation improvements, the owner or developer may submit partial payments, in cash, prior to the issuance of building permits for each phase of development according to the following schedule:

<u>Year of Application for Building Permit</u>	<u>Contribution/ Square-Foot of Gross Floor Area</u>
2010	1.221
2011	1.343
2012	1.477
2013	1.625
2014	1.788
2015	1.966
2016	2.163
2017	2.379
2018	2.617
2019	2.879

NOTE: Any construction commencing after 2019 will be subject to the same 10 percent per year increase.

- e. One or more weeks prior to submitting an application for final development plan approval, the applicant's engineer shall submit a Revised Preliminary Stormwater Management Study that addresses the outstanding issues outlined in the letter sent on February 10, 2010. The study shall be approved by the Engineering Services Division staff prior to the Planning Commission consideration of the final development plan.
- f. Prior to the submittal of an application for final development plan approval, provide percolation test results that verify the existing soils will drain the proposed rain gardens within 48 hours as required by city standards. If the percolation tests fail, then a revised preliminary plan will be required to be submitted and approved by the Planning Commission.

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- g. At the time of final development plan submittal, a planting plan for the applicable stormwater treatment facilities shall be provided along with the landscape plan for the development.
- h. Prior to recording the final plat, staff must approve the Stream Corridor Maintenance Agreement. The Stream Corridor Maintenance Agreement shall be submitted by the city for recording at the Johnson County Register of Deeds with the recording fee paid by the developer.
- i. The designated stream corridor area shall be delineated on the final plat and include the required language as indicated in Section 18.365.090 of the Municipal Code.
- j. Concurrent with the submittal of construction plans for a Site Development Permit or Building Permit, whichever comes first, the applicant shall provide a Final Stormwater Management Study that addresses any outstanding items from the Revised Preliminary Stormwater Management Study and includes any design changes.
- k. Concurrent with the issuance of a Land Disturbance, Site Development, or Public Improvement Permit for work within 50 feet of the designated stream corridors, the owner/contractor shall erect a visible temporary fence to remain in place throughout construction that delineates the outer edge of the stream corridor boundary that is to remain free of grading, retaining walls or other alterations except those areas that have been approved on the plans.
- l. A Floodplain Development Permit shall be obtained prior to issuance of the associated Site Development or Building Permit for the proposed work within the FEMA designated floodplain.
- m. Prior to the issuance of a Land Disturbance, Site Development, or Building Permit, whichever comes first, for any work in the Special Flood Hazard Area (SFHA), obtain applicable permits from the Kansas Department of Agriculture, Division of Water Resources, and the Corps of Engineers.
- n. Prior to the issuance of a Site Development or Building Permit, whichever comes first, the permanent drainage easement for the 66-inch public storm sewer line shall be dedicated and the recording fee shall be paid by the owner/developer.

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- o. Prior to the issuance of a Site Development or Building Permit, whichever comes first, a Stormwater Treatment Maintenance Agreement shall be submitted, reviewed and approved by the engineering staff with the associated recording fees paid by the owner/developer.
- p. Prior to the issuance of a Site Development or Building Permit, whichever comes first, an Access and Maintenance Agreement between the owner/developer and the adjacent property owner shall be submitted for the designated native vegetation restoration area on 119th and Quivira Office Park, Lot 1. Staff shall approve the agreement prior to recording. The agreement shall be submitted by the city for recording at the Johnson County Register of Deeds with the recording fee paid by the developer.
- q. Prior to the issuance of any Certificate of Occupancy, the owner shall provide an elevation certificate verifying that the lowest floor is at least one foot above the energy grade line of the fully developed condition 100-year flood or two feet above base flood elevation, whichever is higher.
- r. Prior to the issuance of a Final Certificate of Occupancy, the owner shall provide a Certification of Completion and Compliance for all constructed stormwater treatment facilities. Subsequently, the owner shall have a maintenance certification submitted one year after construction is completed, and every two years thereafter. The certification shall be on a form as approved by the city and shall be performed by a registered professional engineer in the State of Kansas, unless the Director approves other qualified individuals to perform the certification.
- s. Prior to the issuance of a Final Certificate of Occupancy, a Maintenance Surety shall be provided by the owner/developer in accordance with Section 16.210.080.E. of the O.P.M.C.