

11. REZONING NO. 2009-6 - Vicinity of the northwest corner of 129th Street and Quivira Road

GENERAL COMMENT: A valid protest petition representing 32.48 percent of the protest area has been submitted.

1. APPLICANT: Dennis J. Eskie & Associates, L.L.C. is the applicant for this request.
2. REQUESTED ACTION: The applicant is requesting a rezoning from RP-OS, Planned Open Space Single-Family Residential District, to RP-3, Planned Garden Apartment District, to allow a multi-family development.
3. LOCATION: The 26.2-acre tract is located in the vicinity of the northwest corner of 129th Street and Quivira Road.
4. CHARACTER OF THE NEIGHBORHOOD: The character of the neighborhood is residential development with religious facilities adjacent to the site.
5. LAND USE AND ZONING PATTERNS: The property is an undeveloped parcel of land. The property is bordered by Nottingham by the Green, a single-family residential subdivision, on the west. Heartland Christian Fellowship, an eight-acre developing church campus is to the north. 127th Street is north of the church campus. Quivira Road and the developing Heritage United Methodist Church campus are to the east. The property to the south is a large residential lot containing approximately eight acres. Nottingham by the Green, a single-family residential subdivision, is south of this large tract of land.
6. CONFORMANCE WITH THE COMPREHENSIVE PLAN:
 - a. FUTURE DEVELOPMENT PLAN MAP: The Future Development Plan map identifies this property for low-density residential development. The density range for low-density residential development is zero to five units per acre. The density for the proposal is 8.6 units per acre. This property was zoned in 2005 to the RP-OS district and prior to the 2005 rezoning was planned for future Heritage United Methodist Church expansion.

This request does not conform to the Comprehensive Plan but staff is supportive of the request. Staff is doubtful that single-family homes are a viable option on the property with the amount of open space required due to the stream corridor on the western side. This reduces the amount of homes able to be constructed on-site, which reduces the developers return on investment. Staff is

REZONING NO. 2009-6 - Vicinity of the northwest corner of 129th Street and Quivira Road- continued

supportive based upon the plan providing significant amount of buffering and landscaping from the single-family homes closest to the project. Finally, the proposed buildings are all two-stories in height which is similar in scale to the adjacent single-family homes.

- b. GOALS AND POLICIES: It is staff's opinion that the applicant's proposal is consistent with the goals and policies of the Comprehensive Plan for medium-density development.

Specific goals listed in the Comprehensive Plan that the project includes are the access to a thoroughfare, transitioning from higher density to lower density, and buffering with open space and landscaping. These goals and policies are listed below, which staff believes have been met by this application.

Goal 1: Create a Functional and Aesthetic Living Environment - Create and maintain living environments that are aesthetically pleasing as well as functionally efficient and practical.

Policy 1.1: Ensure Quality Development - Encourage emphasis on open space, access to light and air, pedestrian access and connectivity, and the provision of amenities generally associated with and available to low-density residential development in all medium- and higher-density residential developments.

Policy 1.2: Preserve and Protect the Environment - Encourage the preservation and protection of trees, natural vegetation, wetlands, stream corridors, and environmentally sensitive areas in medium- and higher-density residential developments to serve as site amenities.

Policy 1.3: Provide for Extra Buffering in Special Circumstances - Encourage project design that provides extra buffering between structures and adjacent freeways or thoroughfares and increases the distance of structures from such uses to reduce the impact of off-site noise. Extra buffering can be accomplished by using any of the following methods or a combination thereof:

REZONING NO. 2009-6 - Vicinity of the northwest corner of 129th Street and Quivira Road- continued

- a. Berms
- b. Landscape screening
- c. Solid walls

Policy 1.5: Provide Open Space -

Encourage the purposeful integration of common open space on-site by clustering buildings to minimize the creation of narrow strips of unusable open space in front of and between buildings.

Goal 3: Compatible Transition from Medium- and Higher-Density Residential Development to both More Intensive and Less Intensive Uses -

Ensure compatible transition from medium- and higher-density residential developments to nonresidential land uses or to low-density residential land uses.

Policy 3.5: Allow the Option of Parks, Recreation and Open Space as a Transitional Use -

Allow the use of medium- to low-intensity recreation facilities such as neighborhood parks, bike/hike trails, and natural areas as a transitional land use into medium- and higher-density residential neighborhoods. (See Parks, Recreation and Open Space Land Use Goals)

7. ANALYSIS OF APPLICATION:

- a. 2008 REZONING REQUEST: In 2008, the applicant requested to rezone this property to RP-4, Planned Cluster Housing District, and RP-5, Planned Apartment House District. This request proposed 22 three-unit buildings totaling 66 residential units on the westerly two-thirds of the site, zoned RP-4. In the eastern one-third of the site, which was requested for RP-5, the request included three two-story buildings and seven three-story buildings totaling 156 units. The project proposed a total of 222 units on 26 acres for an overall density of 8.5 units per acre.

The City Council denied the rezoning request 9 to 4 after the Planning Commission recommended approval 10 to 1. The concerns addressed by the City Council dealt mostly with the three-story buildings along Quivira Road proposed as part of this first

REZONING NO. 2009-6 - Vicinity of the northwest corner of 129th Street and Quivira Road- continued

application. Some council members also addressed the amount of density proposed.

- b. DEVELOPMENT PLAN: The applicant is requesting rezoning from RP-OS to RP-3, to allow a 28-building apartment complex. A total of 228 units are proposed on the 26.27 acres for a density of 8.68 units per acre. No density bonuses are required for this application.

The applicant is buying these 26 acres from the Heritage United Methodist Church, which this application wraps around on the north and west sides of the church. Access to the complex is provided through the church property as well as 129th Street on the south. 129th Street is being constructed by the developer with right-of-way being obtained from the landowner to the south of the application area. This proposal and the church development are complimentary and will not likely conflict when these uses have peak traffic demands.

The complex is proposed to be gated at all three access points shown on the plan. The gates will have stone column entry features and metal gates. Staff is not opposed to gating the development, and the city's ordinances do not prohibit gating a multi-family development at the points of access from the public street system. The Governing Body has established a policy against gating detached, or single-family residential communities.

Combinations of six-unit, eight-unit and 16-unit buildings are proposed on-site. All of the buildings are two-story in height. Along Quivira Road three eight-unit buildings are proposed, which will be setback 30 feet from the Quivira Road right-of-way. Three 16-unit buildings and four eight-unit buildings are located around a courtyard near the entrance to the complex from the church, just west of the three eight-unit buildings. This courtyard will serve as a walking trail with a gazebo and statues in it, as well as stormwater detention area. Three eight-unit buildings are located north of the proposed clubhouse and tennis court.

South of the clubhouse is a combination of six- and eight-unit buildings. Most of these buildings have attached garages unlike those buildings on the north side of the development. The closest building to the single-family residential property line to the west is about 105 feet. This is closer than the application which was denied in 2008 by approximately 28 feet. A large internal island is

REZONING NO. 2009-6 - Vicinity of the northwest corner of 129th Street and Quivira Road- continued

surrounded by parking and drives. This island will have a sand volleyball court located in it.

A total of 495 parking spaces are provided on-site. One-bedroom units account for 104 of the units with the remainder being two-bedroom units. Therefore, there are a total of 380 spaces required by ordinance. Of the 495 parking spaces, 90 spaces will be located in garages. These detached garages are located around the site. Along the north property line with the Heartland Christian Fellowship Church, garages are proposed in the parking area. These garages are located within 20 feet of the property line which requires a deviation. This is discussed further in a later paragraph.

A total of 11.69 acres (44.5 percent gross acreage) of open space is provided; a majority is located along the west property line adjacent to the single-family homes. The conceptual landscape plan shows more landscaping around the perimeter of the development than what is required by the design guidelines. A plan that identifies the number and types of plant materials is not required with the rezoning plans. The developer has committed to landscaping the project beyond the minimum requirements as well as providing for native grasses in the large open space on the western side of the development. Throughout the development there are linear rain gardens located adjacent to curbs or sidewalks. Additional details will be provided with a landscape plan submitted at the time of final development plan approval.

The architectural style of the buildings is drawn from English Tudor character; the project is named "Edinburgh." The buildings use steep pitched roof forms, articulated wall planes, arch features and divided windows. The exterior finish materials are stone, cementitious horizontal siding, wood trim and brackets, pre-cast trim, and asphalt shingles. The detached garages will use the same materials. They are proposed to be primarily stone and will have decorative garage doors with windows. The architecture is considered conceptual at the time of rezoning the property. The developer has committed to these features and will be confirmed at the time of a final development plan review.

The staff reviewed the project against the recently approved Site and Architectural Design Standards, even though the project was submitted prior to the January 1, 2010, cut-off. This allows the project to meet the Multi-Family Design Guidelines because the

rezoning was submitted prior to the January 1, 2010, deadline. However, all requirements of the new design standards and ordinances have been met except for the garage setback along the north property line. The garages are required to be setback 20 feet from a perimeter property line zoned R-1, Single-Family Residential District. Setbacks for the garages vary from greater than 20 feet down to 11 feet for the most northeastern garage. Therefore, a deviation is required which is evaluated below:

1. **That the deviation requested arises from a condition which is unique to the property in question, is not ordinarily found in the same zoning district, and is not created by an action or actions of the landowner or the applicant.** This property is unique in that the property to the north zoned R-1 is actually a church and is unlikely to be developed as a single-family residence. The ordinance was established to protect single-family properties which this deviation request will not impact.
2. **That the granting of the deviation will not adversely affect the rights of adjacent landowners or residents.** The church property which is closest to the garages should not be adversely impacted by the reduced setback.
3. **That the strict application of the provisions of this ordinance would constitute unnecessary hardship upon the landowner represented in the application.** This deviation allows the applicant to provide a little more open space internal to the site, which improves the layout and green area internal to the site.
4. **That the deviation desired will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare.** The requested deviation will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare.
5. **That granting the deviation will not be opposed to the general spirit and intent of this ordinance.** This deviation request will not be opposed to the general spirit and intent of the ordinance. The spirit and intent of the code is to increase accessory structure setback from adjacent single-family homes. As this adjacent use is a church it does not seem that this deviation violates the spirit and intent of the code.

REZONING NO. 2009-6 - Vicinity of the northwest corner of 129th Street and Quivira Road- continued

Based upon the five criteria being met, staff supports the deviation request to reduce the garage setback from 20 feet to 11 feet.

- c. SITE PLAN REVIEW COMMITTEE: The Site Plan Review Committee (SPRC) reviewed this project and voted 3 to 0 to recommend approval of the request. Architecture was the main discussion item, which the applicant has amended to meet the SPRC approval.
- d. TRAFFIC IMPACTS: This project includes the construction of 129th Street as a collector street from Quivira Road westward to its current terminus near Century Street. That construction will complete the collector street network in this immediate area. In this square mile, 129th Street will extend all of the way between Pflumm Road and Quivira Road. Staff does not anticipate that the extension of 129th Street to Quivira Road will have a major impact on traffic volumes or speeds on the existing sections of 129th Street to the west. That is because a less direct connection to Quivira Road, via 129th Terrace and Long Street, has existed for years. The construction of the “missing link” will have the effect of reducing the volume of traffic that uses 129th Terrace and Long Street, which are constructed as 28-foot wide local streets.

The increase in density on this site will impact the trip generation totals. The table below shows a comparison between the trip totals associated with the previously approved RP-OS (single-family residential) project on this property and the current proposal for multi-family uses.

Trip Generation Totals

	Average Daily Traffic	AM Peak	PM Peak
Current Proposal			
228 apartment units	1,505	115	143
Previously Approved Plan			
68 single-family units	<u>729</u>	<u>57</u>	<u>74</u>
Difference	776	58	69

REZONING NO. 2009-6 - Vicinity of the northwest corner of 129th Street and Quivira Road- continued

The trip generation differences between the two proposals are significant on a percentage basis (approximately doubling in all of the time periods analyzed), but from a practical impact standpoint will not result in major impacts on the surrounding street system. The overall volumes are not extremely high and the added trips will be split between the two driveways – one on Quivira Road and the other on proposed 129th Street.

If the project were to be developed as proposed, the trips from the new plan would increase traffic volumes on 129th Street, compared to what would have occurred with the previously approved development. But the increase would be relatively small compared to the total volume of traffic on 129th Street, especially on the portion of 129th Street west of the project.

Staff has included stipulations requiring the construction of 129th Street concurrent with the development of this project. A portion of 129th Street lies either partially or entirely on the property to the south, so that the property owner will need to cooperate with the right-of-way dedication when 129th Street is constructed.

The applicant has opted not to show the construction of a cul-de-sac at the east end of 128th Street. The plans that were approved in 2005 for the currently zoned RP-OS project on this site included that cul-de-sac. Consistent with city ordinance requirements and standard practice in other locations, staff believes that the cul-de-sac bulb should be required to provide a permanent terminus to the street. Refer to Figure 1 for a representation of the proposed cul-de-sac. The cul-de-sac would allow drivers in cars, delivery vehicles, garbage trucks and fire equipment to exit the street without having to back-out or turn-around in a private driveway. Staff has included a stipulation at the end of these comments addressing the construction of the cul-de-sac.

The internal layout of the drives and parking areas is generally acceptable to the transportation staff. Considering the acceptable traffic flow within the site and the relatively minor impacts associated with the added traffic resulting from the increased density on this site, the transportation staff supports this request.

- e. ENVIRONMENTAL IMPACTS: A Preliminary Stormwater Management Study was originally approved in March 2005. The study was updated and approved by staff to incorporate a change

REZONING NO. 2009-6 - Vicinity of the northwest corner of 129th Street and Quivira Road- continued

in the development that replaced the proposed church expansion and single-family residential use with a multi-family residential use.

Stream Corridor Issues:

There are two existing streams on the site. The larger stream runs north-south along the western edge through the site and fully complies with the stream corridor ordinance, providing a 60 feet buffer on each side of the stream. The other stream runs east-west through the property.

When the plan was originally approved in 2005, the Planning Commission granted a deviation to enclose 350 feet of the stream that runs east-west across the property in the location of a farm pond that has since been removed. The applicant is now requesting an additional deviation from the stream corridor ordinance to remove about 180 feet of existing stream located upstream from that breached farm pond. Instead, the applicant proposes to install an extended wet detention basin just downstream from the existing breached pond. The applicant has indicated that no existing drainage channel or native ground cover currently exists in this area.

The city's stormwater treatment standards allow for extended wet detention basins to be constructed at the headwaters of streams with a maximum drainage area of 40 acres. In this instance, the drainage area at the extended wet detention basin is about 56 acres. The short section of stream preserved by strict adherence to the stormwater treatment standards provide little additional benefit to stormwater quality and preserves only an isolated stub of the existing stream. Proposed restoration of native vegetation adjacent to the north-south stream corridor approximately offsets the stream corridor area lost by granting the deviation. Because of these factors, staff supports the deviation request. An analysis prepared by the applicant in response to the deviation requirements outlined in Section 18.365.100.B and 18.365.100.C of the O.P.M.C. are included as Attachment A.

Stormwater Detention:

Run-off will be collected in a storm sewer system and discharged at the northwest corner of the site, which is consistent with the existing drainage patterns. Some of the proposed storm sewer

lines will be required to be public since drainage from adjacent properties will be conveyed through the site. An analysis of the proposed project was done by the applicant, and no downstream flooding was identified within the required study area. As such, detention is not proposed for this development.

Stormwater Treatment:

Substantial changes to the previously approved preliminary development plan require compliance with the stormwater treatment ordinance. The proposed plan is a substantial change to the previously approved plan, and therefore must comply with the ordinance.

The stormwater treatment facility plan includes a combination of rain gardens, native vegetation swales, an extended wet detention basin, and restored native vegetation areas in order to meet the required Level of Service for the site. Staff has reviewed the plan and determined that some minor changes need to be made. Staff is comfortable with allowing these changes to be incorporated into a Revised Stormwater Management Study at the time of final development plan submittal.

The plan proposes several stormwater treatment facilities within the multi-family development, and staff was initially concerned about the perpetual maintenance of these facilities. However, because the multi-family development is proposed to be a rental community with one owner, staff is comfortable with allowing several smaller facilities instead of fewer centralized facilities. Because of the multitude of facilities, blanket stormwater treatment facility and access easements will be provided for the entire development. These easements will be finalized in the Stormwater Treatment Maintenance Agreement.

8. STAFF RECOMMENDATION: Staff is supportive of the request based upon the large amount of open space (11.69 acres or 44 percent of the gross acreage) being maintained, with a majority of the open space being located adjacent to the closest single-family homes to the west, buffering and landscaping provided to protect the single-family homes, comparable size and height of buildings for the complex and the single-family homes to the west, and east across Quivira Road, and the unlikelihood of the property developing with single-family homes. The staff recommended

REZONING NO. 2009-6 - Vicinity of the northwest corner of 129th Street and Quivira Road- continued

approval of Rezoning No. 2009-6, subject to the stipulations approved by the Planning Commission.

9. **PLANNING COMMISSION RECOMMENDATION:** The Planning Commission considered this item at a public hearing on March 22, 2010. Two neighboring property owners spoke in opposition to the request. Their concerns included this application does not conform to the Comprehensive Plan, no transition to the single-family residential properties to the west, the six and eight-unit buildings nearest to the single-family homes are not compatible, the increase in density, safety concerns, increased traffic, negative impact on single-family homes property values, and a restrictive covenant on the application property which kept the property from being marketed for several years after it was rezoned to RP-OS in 2005. The applicant did address the Planning Commission about not wanting to construct the cul-de-sac at the terminus of 128th Street. The Planning Commission considered these concerns but did not feel the property would be developed with single-family homes, the cul-de-sac should be built based upon life/safety concerns and felt the proposal would fit well into the neighborhood with limited impact on the adjacent properties. After this discussion the Planning Commission voted 11 to 0 to recommend approval of Rezoning No. 2009-6, subject to the following stipulations:
- a. The development shall be in accordance with Exhibit "A" (Site Plan), and Exhibit "B" (Building Elevations), which are filed in the office of the Planning Commission Secretary at City Hall and which are incorporated by reference as if set out in full herein. In addition, the development shall follow and comply with all regulations and standards of the City of Overland Park, unless specifically exempted by the Governing Body.
 - b. Development on the site shall be limited to 228 units.
 - c. Prior to the issuance of a Building Permit for any buildings or parking areas on the site, the Planning Commission shall review and approve final development plans.
 - d. Prior to the issuance of a Building Permit for any buildings on the site, the property shall be preliminary and final platted.
 - e. Concurrent with construction of any improvements on this site and prior to the issuance of any form of Certificate of Occupancy, the following improvements shall be constructed, subject to review and

REZONING NO. 2009-6 - Vicinity of the northwest corner of 129th Street and Quivira Road- continued

approval by the Planning and Development Services Department. Prior to, or concurrent with, the submittal of construction plans for this site, plans for the public improvements shall be submitted for staff review. Prior to the issuance of a Foundation or higher-level permit, the Public Street, Storm Sewer, and Streetlight Plans must be approved by the Engineering Services Division of the Planning and Development Services Department.

1. 129th Street as a standard collector street; with streetlights, sidewalks and storm sewers; from its current terminus east of Century Street to Quivira Road.
- f. The right-of-way for all of 129th Street required to be constructed with this project shall be dedicated to the city prior to the approval of construction plans for the construction of street improvements in this project.
 - g. Concurrent with construction of any improvements on this site and prior to the issuance of any form of Certificate of Occupancy, the following improvements shall be completed, subject to review and approval by the Planning and Development Services Department. Prior to, or concurrent with, the submittal of construction plans for this site, plans for the public improvements shall be submitted for staff review. Prior to the issuance of a Foundation or higher-level permit, the Public Street, Storm Sewer, and Streetlight Plans must be approved by the Engineering Services Division of the Planning and Development Services Department.
 1. A standard public cul-de-sac bulb at the east end of 128th Street, including the dedication of the public right-of-way needed to construct the cul-de-sac.
 - h. 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 includes all design changes associated with the updated preliminary plan. The study shall be approved by the Engineering Services Division staff prior to the Planning Commission consideration of the final development plan.
 - i. Concurrent with the submittal of construction plans for a Site Development or Building Permit, whichever comes first, the applicant shall provide a Final Stormwater Management Study that

REZONING NO. 2009-6 - Vicinity of the northwest corner of 129th Street and Quivira Road- continued

addresses any outstanding items from the Revised Preliminary Stormwater Management Study and includes any design changes.

- j. Prior to, or concurrent with, the submittal of construction plans for a Site Development or Building Permit, whichever comes first, submit a separate set of public improvement plans for the storm sewer serving the multi-family residential development that conveys stormwater from adjacent properties. The plans shall be approved by city staff prior to the issuance of a Site Development or Building Permit.
- k. Prior to the issuance of a Public Improvement Permit, all necessary easements for access, construction, and maintenance of public storm sewer facilities shall be dedicated with the recording fee paid by the owner/developer.
- l. Prior to, or concurrent with, submittal of the final plat including the stream corridor, submit a Stream Corridor Maintenance Agreement. Staff must approve the maintenance plan prior to recording of the final plat.
- m. Prior to recording the final plat that includes stream corridor, 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.
- n. Concurrent with the issuance of a Land Disturbance or 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 other than the approved restoration activities.
- o. Delineate the designated stream corridor area on the final plat and include the required language as indicated in Section 18.365.090 of the O.P.M.C.
- p. 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

REZONING NO. 2009-6 - Vicinity of the northwest corner of 129th Street and Quivira Road- continued

engineering staff with the associated recording fees paid by the owner/developer.

- q. Prior to, or concurrent with, the submittal of construction plans for a Site Development or Building Permit, whichever comes first, a separate set of final stormwater treatment facility plans for any deferred facilities serving multiple or future lots shall be submitted for review and approval by the city. A Site Development Permit for said stormwater treatment facilities shall be obtained prior to the issuance of a Site Development or Building Permit for that phase of construction. Any deferred facilities shall be constructed only when 90 percent of the upstream tributary area is permanently stabilized and shall be commenced within six months following permanent stabilization or when directed by the city.
- r. Prior to the issuance of a Certificate of Occupancy, the owner shall have a Certification of Completion and Compliance submitted 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. 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.
- t. At the time of final development plan submittal, a phasing plan shall be provided that indicates when each stormwater treatment facility will be constructed.
- u. 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.
- v. Prior to the issuance of a Site Development or Building Permit, whichever comes first, a Performance Surety shall be provided by the owner/developer in accordance with Section 16.210.080.C of the O.P.M.C. for any deferred facilities.