



AGENDA
PLANNING & ZONING COMMISSION REGULAR MEETING
THURSDAY, FEBRUARY 27, 2020
1371 WEST FM 550 - MCLENDON-CHISHOLM, TEXAS 75032
6:30 PM

Page

- | | |
|---------|--|
| | 1. CALL TO ORDER |
| | 2. INVOCATION AND PLEDGE OF ALLEGIANCE TO U.S. AND TEXAS FLAGS |
| | 3. CITIZEN COMMENTS |
| | 4. ITEMS TO CONSIDER |
| 3 - 15 | 4.1. Consider approval of Minutes for January 16, 2020 Planning & Zoning Commission Regular Meeting
January 16, 2020 Draft Minutes
February 20, 2020 Draft Minutes |
| | 4.2. Public hearing to consider comments for or against enacting a temporary moratorium on residential and commercial development in the City of McLendon-Chisholm's Extraterritorial Jurisdiction (ETJ). (Requested by Palomba) |
| 16 - 38 | 4.3. Discussion and possible action regarding enacting a temporary moratorium on residential and commercial development in the City of McLendon-Chisholm's Extraterritorial Jurisdiction (ETJ). (Requested by Palomba)
Staff Report - Building Moratorium
Proposed Moratorium Ordinance
Interlocal Agreement Subdivision in ETJ |
| | 4.4. Public hearing regarding a request by Muhammed Polani on behalf of MFS Group, LLC. requesting a zoning change from GB General |

Business to a Planned Development District for General Business on a 1.5 acre tract in the King Latham Survey, Rockwall CAD Property ID 10132, generally located at the south corner of FM 550 and State Highway 205.

- 39 - 81 4.5. Discussion and action considering a request by Muhammed Polani on behalf of MFS Group, LLC. requesting a zoning change from GB General Business to a Planned Development District for General Business on a 1.5-acre tract in the King Latham Survey, Rockwall CAD Property ID 10132, generally located at the south corner of FM 550 and State Highway 205.

[Staff Report - Proposed Zoning Change \(MFS Group\)](#)
[Restrictive Covenants Agreement](#)
[Strip Mall Preliminary Design](#)

5. ADJOURN

As authorized by Section 551.071 of the Texas Government Code, this meeting may be convened into closed Executive Session in order to seek confidential legal advice from the City Attorney on any agenda item herein.

I, Shelly Green, do hereby certify that the above Notice of Meeting of the Planning & Zoning Commission of McLendon-Chisholm, Texas was posted or before 5:00 p.m., February 24, 2020 on the outside bulletin board at City Hall, a place convenient and readily accessible to the public at all times.



**Planning & Zoning Commission
City of McLendon-Chisholm, Texas
Regular Meeting Minutes
Thursday, January 16, 2020**

The Planning & Zoning Commission of the City of McLendon-Chisholm convened in Regular Session on Thursday, January 16, 2020 at City Hall, 1371 West FM 550, McLendon-Chisholm, Texas, with the following members present:

Members Present:	Robert Rohde	Chairperson
	Jody Wright	Commissioner
	Daniel Tucker	Commissioner
	Tommy Baugh	Commissioner
	Daniela Swindoll	Commissioner (Alternate)
Members Absent:	Jason Linscott	Commissioner (Alternate)
	Lesley Schwalje	Vice Chairperson
Staff Present:	Lisa Palomba	City Administrator
	Rochelle Green	Interim City Secretary
	Karl Crawley	City Planner (Masterplan)

1. CALL TO ORDER

Chairperson Rohde called the meeting to order at 6:30 p.m.

2. INVOCATION AND PLEDGE OF ALLEGIANCE TO U.S. AND TEXAS FLAGS

Chairperson Rohde provided the Invocation and led the Pledge of Allegiance to the U.S. and Texas Flags.

3. CITIZEN COMMENTS

None

4 ITEMS FOR CONSIDERATION

4.1 Consider approval of Minutes for October 3, 2019 Planning & Zoning Commission Regular Meeting

MOTION: Approval of minutes of October 3, 2019 as presented.

MADE BY: Commissioner Baugh
SECONDED BY: Commissioner Tucker
APPROVED: Unanimously by members present

4.4. Discussion and action considering a request by Clifford and Rhonda Rogers seeking approval of a Final Plat for 4.25 acres, part of Rockwall CAD Parcel ID No. 46603, W.W. Ford Survey, Tract 39-8, generally located at 1000 Pullen Road.

City Planner, Karl Crawley, presented the following report:

APPLICANT: Clifford and Rhonda Rogers
1009 Native Trail
Heath, TX 75032

LOCATION: 1000 Pullen Road / Rockwall County ID#46055

ZONING: AG District

REQUEST:

Approval of a final plat of a 39.79-acre property to create an approximately 5.2 area lot to construct a single-family residence on the portion of the property zoned A District with frontage on Pullen Road.

PROPERTY OWNER: Clifford and Rhonda Rogers
1009 Native Trail
Heath, TX 75032

REPRESENTATIVE: Tracy Fetty

STAFF RECOMMENDATION: **APPROVAL**, the plat meets all the technical requirements and complies with zoning and subdivision regulations.

CONDITIONS:

Prior to the issuance of any authorization for construction of infrastructure, drainage, or structures, the final civil engineering plans be reviewed and approved by the City's Engineer.

BACKGROUND INFORMATION:

The proposed final plat consists of two proposed lots of record in the A District. The applicant has conveyed the purpose of the plat is to create two legal building sites in order to allow the construction of a new single-family residence. In the A District, Single-Family is an allowed use. The proposed plat divides the large tract into two lots. The remaining portion will not comply with the minimum width in an A District, but it contains an existing home and will be considered as non-conforming as to lot width. The present larger tract has been in the current configuration since 1995 which predates the Subdivision Ordinance. The proposed plat complies with the following zoning regulations of the A District:

DEVELOPMENT STANDARDS	A DISTRICT (minimum)	PROPOSAL
Lot area (smaller lot)	2.5 acres	5.3 acres*
Lot width	300 feet	300.00 feet
Lot depth	200 feet	764 feet

*Excludes 0.2-acre portion of property to be dedicated to the city for Pullen Road.

STAFF RECOMMENDATION: APPROVAL.

The final plat meets all technical requirements and complies with all zoning and subdivision regulations. Staff recommends approval subject to the conditions listed below.

CONDITIONS:

1. Engineering/Utility Connection: Prior to the issuance of any authorization for construction of infrastructure, drainage, or structures, the final civil engineering plans be reviewed and approved by the City's Engineer.
2. Thoroughfare/Streets: The applicant is dedicating 30 feet of property to the centerline to align with a proposed right-of-way of 60 feet for Smith Road. The right-of-way dedication will leave 5.28 acres for private development

MOTION: APPROVE A REQUEST BY CLIFFORD AND RHONDA ROGERS SEEKING APPROVAL OF A FINAL PLAT FOR 4.25 ACRES, PART OF ROCKWALL CAD PARCEL ID NO. 46603, W.W. FORD SURVEY, TRACT 39-8, GENERALLY LOCATED AT 1000 PULLEN ROAD.

MADE BY: Commissioner Baugh
SECONDED BY: Commissioner Tucker
APPROVED: Unanimously by Members Present

- 4.2. Public hearing regarding a request by Muhammed Polani on behalf of MFS Group, LLC. requesting a zoning change from GB General Business to a Planned Development District for General Business on a 1.5-acre tract in the King Latham Survey, Rockwall CAD Property ID 10132, generally located at the south corner of FM 550 and State Highway 205.

City Planner, Karl Crawley, presented the following report:

APPLICANT: MFS Group, LLC. - Muhammed Polani
2357 Jupiter Road
Plano TX 75074

LOCATION: 5763 South State Highway 205

ZONING: GB General Business

REQUEST:

The applicant requests approval of a Planned Development District for GB General Business uses and a Conceptual Plan

PROPERTY OWNER: MFS Group, LLC
3645 Capstone Lane
Plano, TX 75074

REPRESENTATIVE: Muhammed Polani

BACKGROUND INFORMATION:

The request site is located at the corner of State Highway 205 and FM 550. It is located at the southeast corner of the intersection. The site is approximately 1.5 acres with approximately 230 feet of frontage on SH 205 and approximately 250 feet of frontage on FM 550.

The site and surrounding area are zoned GB General Business. The purpose of the GB District is to provide for a wide range of retail and service establishments for the community. The existing GB District allows a maximum height of 35 feet and a maximum lot coverage of 35%. These two development standards are limiting factors, along with provisions of the Zoning Ordinance under the Commercial development standards which limits the overall size of any development. Under the existing GB District, the maximum footprint of all buildings would be approximately 22,800 square feet. Current GB zoning would limit any one building to a maximum floor area for a single floor to 6,000 square feet however with a maximum height of 35 feet, a two-story building could be erected bringing the likely maximum floor area to 12,000 square feet. As mentioned earlier the maximum lot coverage (building footprint) for the site is approximately 22,800 square feet, thus with a two-story building the maximum floor area allowed on the site would be approximately 45,600 square feet. It is highly unlikely the site could be developed with anywhere near that much floor area because parking would have to accommodate that much building area.

Recent State Law changes, effective September 1, 2019, have precluded the City from enforcing certain provisions the Zoning Ordinance has as it pertains to required exterior building materials. The City cannot dictate materials over and above the minimum standards required by the International Building Code (IBC). This basically means requiring masonry or other similar building materials if the IBC allows other materials which would meet minimum building code standards. How that is to be handled will be discussed later in this material. Other provisions of the Zoning Ordinance contained in the Commercial development standards can still be required. These include building articulation, building form, roof type (not material), architectural features and floor area and building size.

The requested site is an important development site within the City and careful consideration should be given to any development on the site. The proposed PD for limited GB District uses along with the staff proposed conditions will help to protect the importance of this site and allow the development of a new and needed retail site. The requested PD will be conceptual in nature at this time and will require the developer to return to both the P&Z and City Council for approval of a Development Plan and Elevations prior to the issuance of a building permit. Part of the development process for the site includes the developer bringing sanitary sewer to the site. The developer is currently working with the City on a Development Agreement for both the required infrastructure improvements and development standards which will satisfy the architectural standards which the State no longer allows the City to enforce. Although this Development Agreement is not part of the zoning request and should not be considered in making a decision on the request, it will play an important part in developing the site.

The staff proposed PD conditions (attached) would prohibit certain existing GB District uses which might not be appropriate for this intersection or this small of a site. With the developer proposing a small retail/office center with a possible restaurant use, many uses are not appropriate. The PD would also modify the restaurant uses in order to limit size and require some outdoor seating area. This provision was inserted in order to discourage a large fast food drive-thru restaurant and to encourage the likelihood of a smaller sit-down restaurant with some outside seating. This is further encouraged by limiting the amount of parking required for outdoor covered seating for the first 200 square feet of area.

The existing Commercial development standards are also proposed to be modified in order to develop a small retail/office center. The maximum floor area for a single building has been increased to 12,000 square feet but no single tenant may be over 5,000 square feet; this would preclude a large single tenant building, by reference a stand-alone drug store is in the 6,000 square foot range. The maximum length of any wall would be increased to 200 feet. As mentioned earlier, the exterior façade material portion of the standards has for the most part been eliminated (as required by State law). The off-street parking requirements have been modified in order to limit a single building (under the existing GB zoning) the rows of parking between the building and the street, this will eliminate the possibility of a 'sea' of parking.

Finally, since the applicant has submitted the request as a Conceptual PD, staff is in agreement with this portion of the request, a Development Plan and Elevations, as required by the Zoning Ordinance, will have to be approved at a later date. The PD modifies those requirements to include the P&Z in that process by reviewing and making a recommendation to the City Council.

COMPREHENSIVE PLAN: The Future Land Use Map of the Comprehensive Plan (see attached) recommends Commercial uses for this Site. The requested Plans comply with the Comprehensive Plan.

STAFF RECOMMENDATION: APPROVAL, subject to the attached PD Conditions and Conceptual Plan.

The proposed new PD for modified GB District uses and development standards and Conceptual Plan will allow the development of the site and provide protections to help ensure a quality development on this important site.

USES: Those uses allowed in a GB General Business District with the following uses prohibited or restricted:

Amusement center, indoor (S)
Veterinarian office, large animal practice (S)
Auto repair garage
Auto sales, new and used
Auto service station
Farm machinery and implement sales and service
Motorcycle sales
Ambulance service
Auction house, indoor
Building material sales/lumber yard
Contractor, no outside storage permitted
Contractor outside storage, permitted
Contractor storage or equipment yard
Cosmetic tattoo establishment
Extended-stay hotel/motel
Exterminating service
Factory outlet, retail or wholesale store
Hotel or motel
Kennel
Landscape Service
Laundry, self service
Pawn shop
Mini-warehouse
Cargo container

The following uses are modified:

Restaurant, drive-in/drive-thru (allowed by right); limited to one with a maximum floor area of 3,000 square feet and include a minimum of 200 square feet of outdoor seating area,

Restaurant, with or without alcohol sales (allowed by right), must include a minimum of 200 square feet of outdoor seating area.

Density, area, yard, height and lot coverage requirements: Per GB District

Off-street parking and loading requirements:

Off-street parking and loading requirements shall conform to the provisions of Section 6-7. Off-street parking and loading requirements, with the following exception. Covered seating in association with an allowed restaurant use does not require parking for the first 200 square feet of area; any additional covered seating must be parked per the requirements for a restaurant use.

Landscaping. Per GB District requirements.

Screening and buffering requirements. Per GB District requirements.

Masonry requirement. This provision does not apply in this PD.

Commercial Development Standards.

Any development on the Property must comply with Section 4-13 Commercial development standards of the Zoning ordinance with the following exceptions:

E. Building form. 1. The minimum area of a single floor shall be 2,500 sf. The maximum area allowed for a single floor shall be 12,000 sf, no single tenant may exceed 5,000 sf. The maximum length for any building wall shall be 200 ft. No single tenant may exceed 5,000 square feet in either a larger building or a stand-alone building.

G. External façade materials. Does not apply except as noted below:

1. Windows and glazing shall be a maximum of 30% of each building elevation.

K. Off-street parking and loading requirements.

2. No more than three (3) rows of angled or parallel parking shall be allowed between the primary building and the street right-of-way.

Development plan and elevations. A development plan that complies with Section 5.1D.2. must be submitted to and recommended by the Planning and Zoning Commission and approved by the City Council prior to the issuance of a building permit. Elevations illustrating compliance with Section 4-13, as modified in this Ordinance, must also be submitted to and recommended by the Planning and Zoning Commission and approved by the City Council prior to the issuance of a building permit.

Chairman Rohde opened the public hearing at 6:45 p.m.

Commissioners held discussions regarding the proposed sewer, the future TxDot project and anticipation of land being taken from Mr. Polani's property, and the anticipated businesses to be located in the strip center.

Valerie Bodart, 402 Cattle Barron Dr. – spoke in opposition of the proposed zoning.

Chairman Rohde closed the public hearing at 7:15 p.m.

- 4.3. **Discussion and action considering a request by Muhammed Polani on behalf of MFS Group, LLP. requesting a zoning change from GB General Business to a Planned Development District for General Business on a 1.5-acre tract in the King Latham Survey, Rockwall CAD Property ID 10132, generally located at the south corner of FM 550 and State Highway 205.**

City Planner Crawley recommended approval, on behalf of the Staff, of the zoning change.

MOTION: Approve the request by Muhammed Polani on behalf of MFS Group, LLP. requesting a zoning change from GB General Business to a Planned Development District for General Business on a 1.5-acre tract in the King Latham Survey, Rockwall CAD Property ID 10132, generally located at the south corner of FM 550 and State Highway 205.

MADE BY: Commissioner Baugh

Motion died due to lack of a second.

MOTION: Deny, without prejudice, the request by Muhammed Polani on behalf of MFS Group, LLP. requesting a zoning change from GB General Business to a Planned Development District for General Business on a 1.5-acre tract in the King Latham Survey, Rockwall CAD Property ID 10132, generally located at the south corner of FM 550 and State Highway 205.

MADE BY: Commissioner Wright
SECONDED BY: Commissioner Swindoll
MOTION APPROVED: Ayes: Commissioner Swindoll
Commissioner Tucker
Commissioner Wright
Noes: Commissioner Baugh
No Vote: Chairman Rohde

4.5. Schedule Future Agenda Items

No Discussion

4. ADJOURN

There being no further business to discuss, the meeting was adjourned at 8:06 p.m.

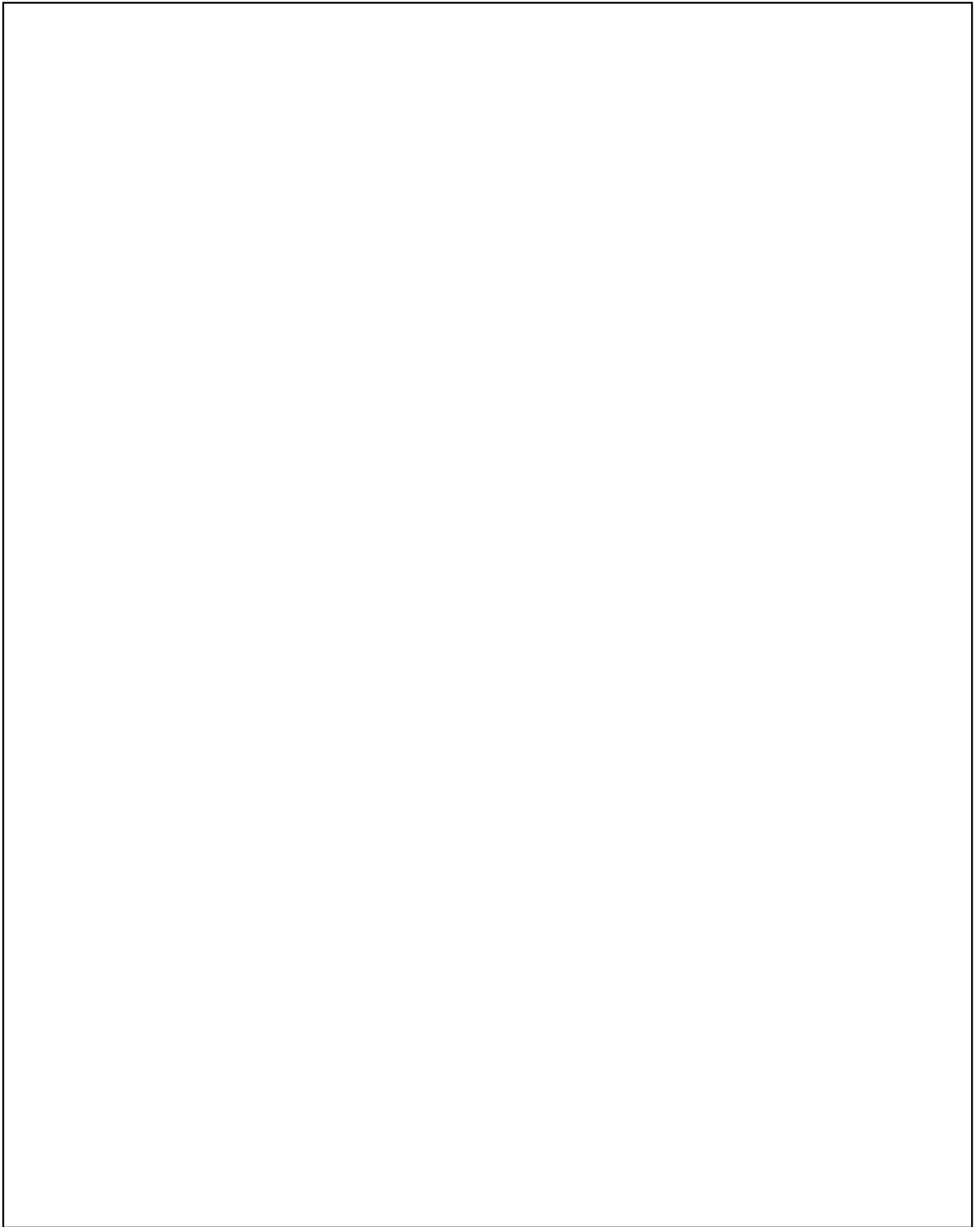
ATTEST:

APPROVED:

Rochelle Green
Interim

City

Robert Rohde, Chairman
Secretary





**Planning & Zoning Commission
City of McLendon-Chisholm, Texas
Work Session Minutes
Thursday, February 20, 2020**

The Planning & Zoning Commission of the City of McLendon-Chisholm convened in Work Session on Thursday, February 20, 2020 at City Hall, 1371 West FM 550, McLendon-Chisholm, Texas, with the following members present:

Members Present:	Robert Rohde	Chairperson
	Jody Wright	Commissioner
	Daniel Tucker	Commissioner
	Tommy Baugh	Commissioner
	Leslie Schwalje	Vice Chairman
	Shari London	Commissioner (Alternate)
Absent:	Daniela Swindoll	Commissioner (Alternate)
Staff Present:	Lisa Palomba	City Administrator
	Shelly Green	City Secretary
	Karl Crawley	City Planner (Masterplan)

1. CALL TO ORDER

Chairperson Rohde called the meeting to order at 6:30 p.m.

2. WELCOME NEW P&Z COMMISSIONER ALTERNATE SHARI LONDON

City Administrator Palomba introduced Shari London as the new alternate on the commission.

**3 INVOCATION AND PLEDGE OF ALLEGIANCE TO U.S. AND TEXAS
FLAGS**

Chairperson Rohde provided the Invocation and led the Pledge of Allegiance to the U.S. and Texas Flags.

4 CITIZEN COMMENTS

None

5. ITEMS FOR CONSIDERATION

5.1. The City Planner will present information related to P&Z Commissioner roles and responsibilities and the development review process

including purpose of the Comprehensive Plan as well as the zoning and subdivision process. General discussion and a question/answer session may follow the presentation.

City Planner Crawley gave a presentation covering Planning, Zoning and Development. He included the following items in his presentation:

- USA and TX Zoning Enabling Acts
- Comprehensive Plan
- City Boards
- Planning and Zoning Commission
- Board of Adjustment
- Development Review Process
- Zoning Districts
- Zoning Regulations
- Zoning/Development Requests before P&Z
- Change of Zoning / SUPs
- Planned Development Districts
- Site Plans
- Landscape Plans
- Subdivision of Land/Platting

General discussion followed with Planner Crawley fielding questions.

- 5.2. Review and discussion only regarding a request by Muhammed Polani on behalf of MSF Group, LLC. requesting a zoning change request form General Business (GB) to Planned Development (PD) for General Business on a 1.5-acre tract in the King Latham Survey, Rockwall CAD Property ID 10132, generally located at the south corner of FM 550 and State Highway 205. No action will be taken. Discussion is in preparation for the zoning change request scheduled for consideration during the regular P&Z Commission Meeting on February 27, 2020.**

Chairman Rohde introduced this item and expressed his concerns and questions regarding the proposed project. General discussion followed among the commissioners.

Planner Crawley addressed questions.

4. ADJOURN

There being no further business to discuss, the meeting was adjourned at 8:55 p.m.

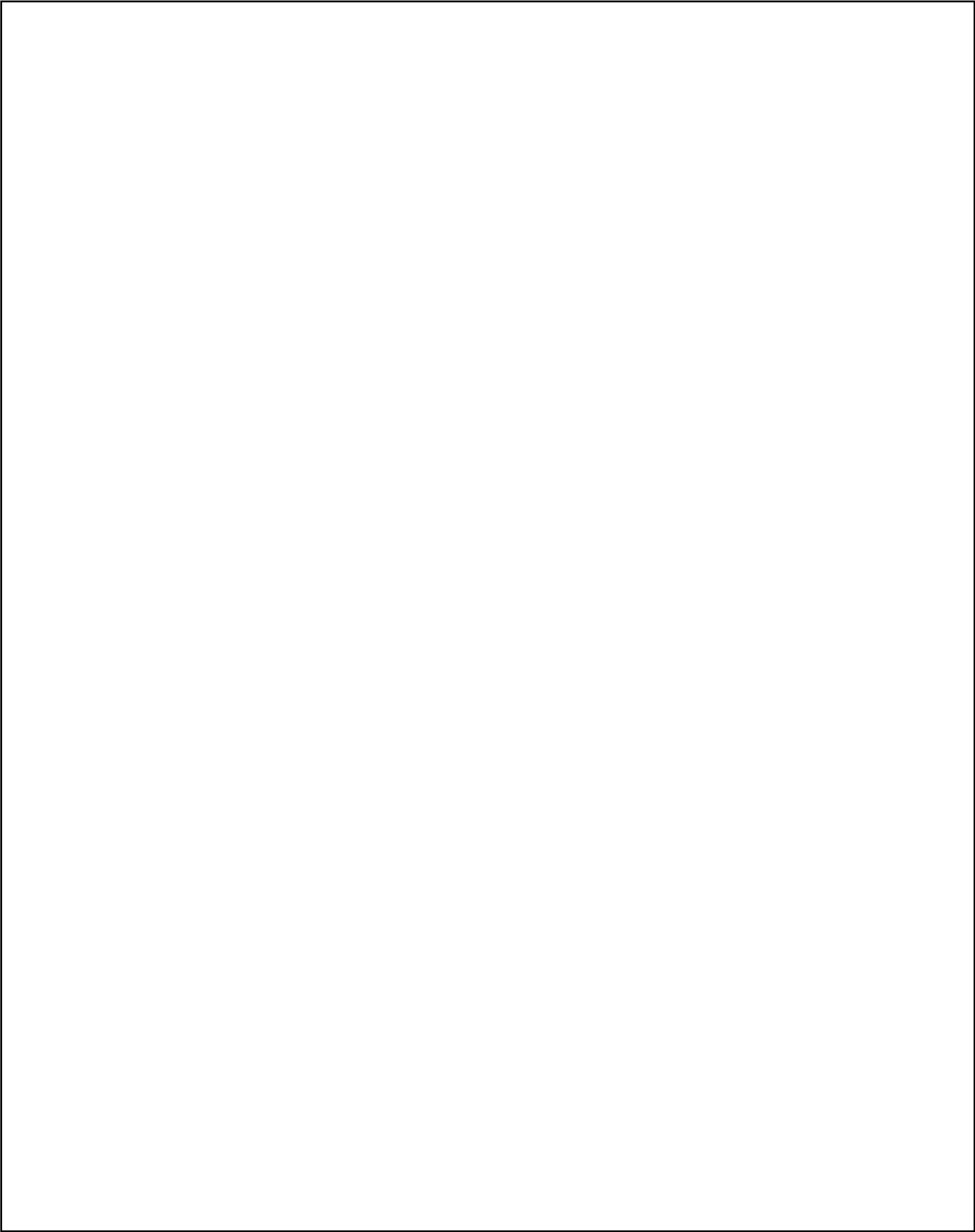
ATTEST:

APPROVED:

Shelly Green, City Secretary

Robert Rohde, Chairman

DRAFT





City of McLendon-Chisholm

P&Z Staff Report

Public hearing to consider comments for or against enacting a temporary moratorium on residential and commercial development in the City of McLendon-Chisholm's Extraterritorial Jurisdiction (ETJ).

DATE:

February 27, 2020

BACKGROUND OF ISSUE:

Rockwall County Commissioner Dennis Bailey presented information to Council on January 28th explaining the county hired a planning firm to rewrite the County Subdivision Regulations. Bailey further explain that the current regulations are outdated and not compliant with state law. The Interlocal Agreement between McLendon-Chisholm and the County regarding subdivision regulations in the ETJ is also outdated and will need to be updated once the County regulations have been approved in late spring or early summer. Bailey expressed concern regarding building in the ETJ during the interim period. He also informed Council that the City of Rockwall intends to implement a building moratorium in their ETJ.

On February 11th, Council considered the moratorium and directed staff to move forward in scheduling the required public hearings. One public hearing must be held at a P&Z Meeting and a second public hearing will be held during a Special City Council Meeting on March 4th with final consideration scheduled for March 10th.

No action is required by P&Z other than to hold the public hearing. P&Z may forward a recommendation to Council, but it is not required.

CONSIDERATIONS:

Implementing a building moratorium in the ETJ will not affect development projects previously approved. Other exceptions include small subdivisions where no infrastructure is required and developments for which there are already existing Development Agreements in place.

There are several steps involved to create an approved building site. The first step is typically zoning but the City does not have zoning authority in the ETJ so a developer may move straight to the platting process for a project. The purpose of platting is to ensure that proper public facilities, infrastructure, drainage and fire protection can be provided to a development and to protect the health, safety and general welfare of residents who will reside in the new development as well as surrounding property owners.

Plat approval is not discretionary, and plats must be approved if they meet all technical

requirements and now the state requires that cities consider plats within 30 days. A moratorium would prevent a developer from applying for a plat in the ETJ and possibly getting around any newly proposed County Subdivision Regulation which may be more stringent than current regulations.

The procedure for adopting a moratorium is attached. Public hearings were properly noticed. The Interlocal Agreement with the County and the proposed ordinance is attached for reference.

RECOMMENDATION:

Hold the public hearing and receive comments.

Lisa Palomba, City Administrator

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF MCLENDON-CHISHOLM, TEXAS, ADOPTING AND ENACTING A TEMPORARY MORATORIUM TO SUSPEND THE ACCEPTANCE OF PERMITS, SUBDIVISION PLAT APPLICATIONS, AUTHORIZATIONS AND APPROVALS NECESSARY FOR THE SUBDIVISION, DEVELOPMENT OF OR CONSTRUCTION OF REAL PROPERTY WITHIN THE CITY'S EXTRATERRITORIAL JURISDICTION; PROVIDING FINDINGS OF FACT; PROVIDING EXEMPTIONS; PROVIDING A WAIVER PROCEDURE; PROVIDING A TERMINATION DATE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR PUBLICATION AND AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of McLendon-Chisholm (the "City") seeks to provide for the health, safety, and welfare of its residents; and

WHEREAS, the City of McLendon-Chisholm finds that subdivision plats are a necessary mechanism to ensure that proper public facilities, infrastructure, drainage, and fire protection can be provided to support future development within the City's Extraterritorial Jurisdiction (ETJ), and to protect the health, safety, natural environment, quality of life, and general welfare of McLendon-Chisholm residents; and

WHEREAS, in conformance with Chapter 242, of the Texas Local Government Code the City of McLendon-Chisholm is required to enter into an interlocal agreement with Rockwall County regarding the processing and review of subdivision plats in the City of McLendon-Chisholm's Extraterritorial Jurisdiction (ETJ); and

WHEREAS, in order for the City of McLendon-Chisholm and Rockwall County to have adequate and reasonable time to review, evaluate, and revise and approve an interlocal agreement and to consider the impact of the review criteria for subdivision plats on the provision of adequate public facilities, infrastructure, drainage, and fire protection for future developments within the City's Extraterritorial Jurisdiction (ETJ), the City intends on imposing a temporary moratorium lasting for a period of ___ days for commercial property and ___ days for residential property, during which no applications for subdivision plats in the City of McLendon-Chisholm's Extraterritorial Jurisdiction (ETJ) will be accepted; and

WHEREAS, the purpose of prohibiting subdivision plat applications for commercial and residential property in the City's Extraterritorial Jurisdiction (ETJ) during this temporary moratorium is to preserve the status quo, facilitate thoughtful and consistent planning, avoid exploitation of the delays inherent in the municipal legislative process, and prevent applications from undermining the effectiveness of the forthcoming review criteria by submitting a subdivision plat to avoid the application of a new interlocal agreement; and

WHEREAS, the Planning and Zoning Commission of the City of McLendon-Chisholm and the City Council of the City of McLendon-Chisholm, in compliance with the laws of the

State of Texas have given the requisite notices by publication and otherwise, and have held public hearings and afforded a full and fair hearing to all persons interested in and situated in the affected area and in the vicinity thereof, the City Council in the exercise of its legislative discretion has concluded that a moratorium on residential and commercial development for property in the City's Extraterritorial Jurisdiction ("ETJ") is necessary and in the interest of good governance, and ultimately in the best interest of the City of McLendon-Chisholm.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MCLENDON-CHISHOLM, TEXAS:

SECTION 1. FINDINGS OF FACT

The foregoing recitals are adopted as facts and incorporated fully herein.

SECTION 2. ENACTMENT

PURPOSE AND DEFINITIONS

A. Purpose. This temporary moratorium prohibiting applications for subdivision, building permits or development permits is adopted so that the Council may promote the public health, safety and general welfare within the City through the regulation of the subdivision of land and laying out of neighborhoods and commercial, industrial or residential developments. The purpose of this ordinance includes, but is not limited to, preserving the status quo in order to allow the Council reasonable time to review, conduct research, receive public input, evaluate and establish reasonable policies, and prepare comprehensive subdivision and building ordinances, as well as enter into an interlocal agreement with the County in compliance with State law. This ordinance provides temporary regulations while the Council enacts the appropriate administrative and regulatory rules and procedures.

B. Applicability. The provisions of this ordinance shall apply within the ETJ, including but not limited to, properties used for the following purposes: Agricultural; Conservation; Single-Family Residential; Multi-Family Residential; Office; Business;

Religious/Charitable/Fraternal; Government/Utility/Institutional; Industrial; Parks and Recreational; and Utilities.

C. Definitions. The following words, terms, and phrases shall have the meanings ascribed to them in this section except where the context clearly indicates a different meaning. A word or term not defined herein shall be read in accordance with its common or standard definition. Headings and captions are for reference purposes only.

Build: to form by ordering and uniting materials by gradual means into a composite whole. The term includes the acts of developing or expanding upon buildings or structures. The term also includes the installation or placement upon land of a pre-fabricated building. The term also includes the paving of the surface with gravel or impervious cover.

Clear: to make a material change in the character of the land, including but not limited to the extraction of vegetation, removal of brush, cutting of trees, or modification of the natural grade or slope of the land.

Commercial Property: Commercial property is defined as any property that is being platted for the purpose of authorizing any land use other than single-family or agricultural land uses (e.g. multi- family, industrial, commercial, etc.).

Cut: to excavate dirt, stone or other material in order to modify land or alter drainage patterns.

Fill: to deposit or stockpile dirt, stone, construction debris or other material in order to modify land or alter current drainage patterns.

Ordinary Maintenance: activities relating to a property that would be considered ordinary or common for maintaining the property, including but not limited to repairs, or the replacement of materials with identical or in-kind materials. The term expressly omits activities involving the

expansion, modification, enlargement, reduction, renovation or remodeling of buildings or structures. The term also omits the cutting away of walls or partitions, cutting or removal of a structural beam or load bearing support; removal or change of means of egress.

Person: any human individual or corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, and any other legal entity.

Residential Property. Residential property is defined as any property that is being platted for the purpose of authorizing single-family and agricultural land uses.

REQUIRED PERMITS

A. Site Plans Required. It is an offense for a person to build or install any streets, alleys, sidewalks, drainage ways, waterlines, or sewer lines ETJ without first applying for and receiving a permit from the City.

B. Site Clearance Required. It is an offense for a person to grade a tract of land, perform a cut of a tract of land deeper than one-foot above natural ground level, or fill a tract of land above one-foot below natural ground level, in the City Limits without first applying for and receiving a permit from the City. This requirement does not apply to ordinary maintenance, or routine farming or agricultural activities.

C. Subdivisions Required. It is an offense for a person to divide a tract of land into two or more parts to lay out a subdivision of the tract, to lay out suburban, building, or other lots, or to lay out streets, alleys, squares parks or other parts of the tract intended to be dedicated to public use, or for the use of the purchasers or owners of lots fronting or adjacent to the streets, alleys, squares parks or other parts, in the ETJ, without first submitted a plat to the City and receiving plat approval from the City.

TEMPORARY MORATORIUM

A. Permit Suspension. The City will neither accept nor process applications for these permits:

(1) Site Plans: The City's acceptance, review and approval of all site plans in the ETJ is hereby temporarily suspended and prohibited.

(2) Site Clearance: The City's acceptance, review and approval of permits for site clearance, excavation grading or filling for projects in the ETJ is hereby temporarily suspended and prohibited.

(3) Subdivisions: The City's acceptance, review and approval of plat applications for projects in the ETJ is hereby temporarily suspended and prohibited.

B. Duration. This temporary moratorium shall be in effect as of the date of passage for a period of ____ () days and may be extended by a simple majority vote of the Council.

WAIVER

A. Requirements. An owner of property may request a waiver from the requirements of this ordinance if one or more of the following three (3) requirements are satisfied:

(1) Special circumstances or conditions imposing an undue hardship on the property owner because of a unique situation upon the land that is different from other tracts of land.

(2) The owner can demonstrate in writing a legal right to proceed under regulations that predated incorporation of the City.

(3) The proposed construction is necessitated by concerns for public safety and will serve to protect the public health, safety and welfare. Specifically, the waiver request must establish that the proposed construction will further one or more of the legitimate public concerns:

- (a) vehicular traffic safety; or
- (b) pedestrian traffic safety; or
- (c) fire prevention and protection; or
- (d) emergency medical services; or
- (e) flood damage prevention and protection; or
- (f) water quality pollution prevention; or
- (g) sanitary urgency.

B. Process for Application.

(1) Applicants for a waiver must submit a completed form with attachments to the City Administrator. The application, accompanying documentation, and administrative fees must be rendered to the City at least two (2) weeks prior to the public hearing.

(2) The Applicant must provide written notice to all property owners within two hundred (200) feet of the footprint of the property line for which a waiver is sought. The notice shall contain a description of the waiver and the time, date, and place of the public hearing on the application. Notice must be provided at least ten (10) days prior to the hearing.

(3) Applications for a waiver shall be reviewed by the City Administrator and Planner prior to submission to the Council for consideration.

(4) A waiver may be granted by the Council after a public hearing and upon issuance of written findings that special circumstances or conditions affecting the property in question justify the waiver, and that the granting of the waiver will not have an adverse effect on neighboring properties, or hinder the accomplishment of the goals of the moratorium established by this ordinance.

(5) An applicant for a waiver may voluntarily request that the application be postponed or withdrawn prior to final action by the Council. In the event of voluntary postponement, no additional administrative fees are due. In the event of re-submission following

voluntary withdrawal or denial, the file shall be processed as a new application and additional fees may be collected.

EXCEPTIONS AND EXEMPTIONS:

A. Exceptions.

1. No Impact Projects. The temporary moratorium implemented by this Ordinance does not apply to a project that does not:

- (a) increase density,
- (b) increase or impact impervious cover,
- (c) expand the footprint of an existing structure, or
- (d) alter the current drainage pattern on the property.

2. Ongoing Projects. The temporary moratorium implemented by this Ordinance does not apply to any projects that are currently, actively in progress for which valid City permits have been issued and have not expired (as of the date of this temporary moratorium).

3. Grandfathered Projects. The temporary moratorium implemented by this Ordinance shall not apply to projects that are grandfathered under as provided by state law. Property owners asserting grandfathered rights under Texas Local Government Code Chapter 245 must submit an application claiming an exception to this temporary moratorium to the planning department for review in accordance with City policy.

B. Exemptions. Any property owner who does not assert rights under Texas Local Government Code Chapter 245, but who seeks authorization to proceed with the development permitting process during the time of the temporary moratorium can request the following alternative forms of approval:

1. Planned Development District: Property owners with an approval granted by the City Council including enactment of customized zoning regulations through negotiations of specialized rules applicable solely to the proposed project may apply for waiver in accordance with City policy.

2. Alternate Design Standards: Property owners with a negotiated approval granted by the City Council for the construction of drainage infrastructure that exceeds the current standards in the code of ordinances may apply for waiver in accordance with City policy.

3. ETJ Development Agreement: Property owners with a negotiated approval granted by the City Council providing for construction standards, platting and development rules pursuant to Local Government Code Chapter 212, Subchapter G may apply for waiver in accordance with City policy.

SECTION 3. ENFORCEMENT

A. Civil Action. The City shall have the power to administer and enforce the provisions of this ordinance as may be required by governing law. Any person violating any provision of this ordinance is subject to suit for injunctive relief.

SECTION 4. REPEALER AND SEVERABILITY

REPEALER: All ordinances, or parts thereof, that are in conflict or inconsistent with any provision of this Ordinance are hereby repealed to the extent of such conflict, and the provisions of this Ordinance shall be and remain controlling as to the matters regulated, herein.

SEVERABILITY: If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid, unconstitutional or otherwise unenforceable by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and

independent provision and such holding shall not affect the validity of the remaining portions thereof.

SECTION 5. EFFECTIVE DATE

This Ordinance shall be effective immediately upon passage and publication in the city's official newspaper.

SECTION 6. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid, unconstitutional or otherwise unenforceable by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions thereof.

DULY PASSED and approved by the City Council of the City of McLendon-Chisholm, Texas on this the _____ day of _____, 2020.

APPROVED:

Keith Short, Mayor

ATTEST:

Lisa Palomba, City Secretary/City Administrator

**INTERLOCAL COOPERATION AGREEMENT BETWEEN
ROCKWALL COUNTY AND THE CITY OF MCLENDON-
CHISHOLM FOR SUBDIVISION REGULATION WITHIN THE
EXTRATERRITORIAL JURISDICTION OF THE CITY OF
MCLENDON-CHISHOLM**

THIS INTERLOCAL COOPERATION AGREEMENT ("Agreement") executed by and between Rockwall County, Texas, a political subdivision of the State of Texas (hereinafter referred to as "County"), and the City of McLendon-Chisholm, a municipal corporation of the State of Texas (hereinafter referred to as "City"), dated Nov. 12, 2013, is made pursuant to Tex. Loc. Gov't Code Ch. 242.

WHEREAS, the Agreement is in accordance with the requirements of Tex. Loc. Gov't Code Chapter 242, which requires that the City and the County enter into a written agreement pertaining to regulation of subdivision plats in the Extraterritorial Jurisdiction ("ETJ") of the City; and

WHEREAS, the City and the County believe it is in the best interest of both entities to combine their respective procedures into one seamless operation with each retaining certain responsibilities as hereinafter provided in this Agreement; and

NOW, THEREFORE, in order to carry out the intent of the Parties as expressed above, and for and in consideration of the mutual promises contained herein and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged by both Parties, the County and the City agree as follows:

Article I. PURPOSE

- 1.01** The purpose of this Agreement is to establish and clarify each Party's obligations, costs, and the manner and method of approving subdivision plats for real property located within both the County and the ETJ of the City.
- 1.02** The ETJ of the City may fluctuate from time to time during the term of this Agreement as a result of City Council action. The City agrees to notify the County in writing within 10 days of any and all City Council action that changes the ETJ during the term of this Agreement thereby affecting subdivision platting for real property within the boundaries of the County.

Article II. TERM OF AGREEMENT

- 2.01** This Agreement shall be effective on January 1, 2014 and shall have an initial termination date of December 31, 2014. Thereafter, the Parties shall renew the Agreement on an annual basis. The annual renewal shall be automatic upon the expiration of the preceding one (1) year term unless one of the Parties gives the other Party written notice of its desire not to renew

the Agreement at least ninety (90) days prior to the expiration of the then current term.

- 2.02** Any notice of intent to terminate must be delivered by deposit in the United States mail, certified, return mail receipt requested, to the other Party at the addresses set out herein. Upon termination of this Agreement, neither party will have any obligations to the other party under this Agreement, except with respect to payment for services already rendered under this Agreement, but not yet paid.

Article.III. COUNTY RESPONSIBILITIES

- 3.01** The County assigns and delegates to the City the County's authority to approve subdivision plats and to issue related permits under Tex. Loc. Gov't Code Chapters 212 and 232 within the ETJ of the City, pursuant to Tex. Loc. Gov't Code Section 242.001(d), so that, except as otherwise provided in this Agreement, the City has exclusive jurisdiction to regulate subdivision plats and approve related permits in the City's ETJ utilizing the City's subdivision procedures.
- 3.02** The County will continue to administer and enforce County on-site sewage facility regulations in proposed and platted subdivisions in the City's ETJ; provided, however, that the County will reject as incomplete any application for an on-site sewage facility which is not accompanied by a plat application accepted by the City or a statement that the application is not associated with any development activity requiring approval of a subdivision or development plat.
- 3.03** This Agreement does not affect flood plain enforcement outside of the City Limits. The County will continue to be responsible for floodplain enforcement within the ETJ according to the County's Subdivision Rules and Regulations.
- 3.04** The County will continue to be responsible for accepting all public improvements that are located in the ETJ and are to be maintained by the County. The dedication and acceptance of the public improvements by the County must adhere to the County's Road Acceptance Procedures set forth in the County's Subdivision Rules and Regulations and the Unified Regulations attached hereto as Exhibit "A" and incorporated by reference herein.
- 3.05** The County agrees that it will not accept for filing any applications for plat approval for land within the City's ETJ following the effective date of this Agreement.

Article IV. CITY RESPONSIBILITIES

- 4.01.** The City will enforce its subdivision regulations and Unified Regulations, including design and construction standards, within its ETJ.
- 4.02.** The City and the County agree that the Unified Regulations shall be applied exclusively in the review of proposed plats in the City's ETJ. If either party wishes to propose revisions in the future to the Unified Regulations, the proposing party will notify the other party of the proposed change(s). The parties will cooperate in determining the need for the changes, and will adopt any change agreed to by amendment of the Agreement, as amended, by their respective governing bodies.
- 4.03.** The City agrees to require developers to dedicate public right-of-way pursuant to the Rockwall County Transportation Plan ("County Plan"), as currently adopted or as may be amended in the future, subject to applicable constitutional and statutory limitations for subdivisions. When it appears to the City that a requirement for dedication of right-of-way pursuant to the County Plan may exceed an applicable constitutional or statutory limitation, or if there is a conflict between the County Plan and the City of McLendon-Chisholm Thoroughfare Plan, the City will notify the County, and the parties will cooperate to determine the extent of right-of-way dedication to be requested, or an alternative method of securing the needed right-of-way.
- 4.04.** Where a dedication or construction requirement is to be imposed, the City, in consultation with the County, will make an initial determination of proportionality. If the applicant appeals the proportionality determination in accordance with procedures set out in the City's subdivision regulations, the City will make the final determination, again, in consultation with the County.
- 4.05.** The City will notify the County upon the filing of all applications for approval of final plats. A copy of the final plat and any engineering plans will be sent to the County within ten (10) days of filing with the City for the County's review and comment. The City will make every reasonable effort to notify the County of the final action taken by the City on the application, whether approved or denied, within three (3) working days, but no later than fifteen (15) days of the City's action.
- 4.06.** If an applicant requests an exception from any standard in the City's subdivision regulations, the City will bring the request before the County for review. Any variance from the City's subdivision regulations to be enforced in the ETJ must receive approval by the Commissioners Court prior to the City taking action on the plat application. Plat approval also shall be conditioned on: 1) formation of property owners associations for maintenance of any facilities not normally maintained by the County; and 2) upon provision of security instruments assigned to the County in the event

that the applicant seeks final plat approval before construction and acceptance of capital improvements.

- 4.07. The City will deliver two copies of all recorded plats for subdivisions within the City's ETJ to the County within ten (10) working days of the recording of the subdivision plat. For all subdivisions containing more than five (5) lots, the City will also provide to the County a digital file of the subdivision plat including at least two (2) ground control GPS points in a format approved by the County.
- 4.08. The City will confer with the Rockwall County 911 addressing Division in determining street names prior to final plat approval.
- 4.09. The City and County inspectors will have access to construction sites of subdivisions within the ETJ and the City will timely submit copies of all road design materials and road construction test results to the County during road construction. City inspectors will have inspection and approval authority over the road construction, storm water drainage construction, and on non on-site wastewater facility construction within the right-of-way and easements. The County may request that the City issue a stop-work notice if the applicable construction standards are not being met. The City will take all reasonable actions, including a stop-work order, to ensure that applicable construction standards are met, as deemed necessary by the City. The City will notify the County when construction of public improvements is completed for final acceptance by the County.
- 4.10. The City will collect all fees and charges involved with the approval of subdivision plats, including but not limited to engineering reviews, inspections of public improvements, but not including costs associated with applications for variances or exceptions to on-site sewer facilities to be reviewed and permitted by the County, under this Agreement.
- 4.11. As an attachment to this Agreement, the City will provide a current map defining the legal boundaries of its corporate limits and areas of ETJ. The City will notify the County of any changes to the City's ETJ within ten (10) days of the effective date of the change, and the area covered by this Agreement will be amended accordingly. A change in the area covered by the Agreement will not, however, affect any rights accrued under Tex. Loc. Gov't Code Chapter 245 prior to the effective date of the change.
- 4.12. The plats which will be subject to this Agreement are those that will be filed after the effective date of this Agreement. If the ETJ is expanded or reduced, plats must be filed with the party who has jurisdiction as defined by this Agreement.

Article V. GENERAL PROVISIONS

- 5.01. General Administration:** The County and the City will designate their respective representatives for the general administration of this Agreement.
- 5.02. Alteration, Amendment or Modification:** This Agreement may not be altered, amended, or modified, except in writing and signed by all parties to this Agreement.
- 5.03. Notice:** All notices sent pursuant to this Agreement will be in writing and must be sent by registered or certified mail, postage prepaid, return-receipt requested.

Notices sent pursuant to this Agreement will be sent to the Rockwall County Judge's Office at the following address:

*County Judge
Rockwall County Judge's Office
101 Rusk Street, Room 202
Rockwall, Texas 75087*

Notices sent pursuant to this Agreement may be delivered or sent to the City at the following address:

*Mayor
City of McLendon-Chisholm
1248 S. Hwy 205
McLendon-Chisholm, Texas 75032*

When notices sent pursuant to this Agreement are mailed by registered or certified mail, notices will be deemed effective three (3) days after deposit in a U.S. mail box or at a U.S. post office.

- 5.04. Severability:** If any provision of this Agreement is found to be invalid, illegal, or unenforceable, such invalidity, illegality, or unenforceability will not affect the remaining provisions of this Agreement.
- 5.05. Breach:** The failure of either party to comply with the terms and conditions of this Agreement will constitute a breach of this Agreement. Either party will be entitled to any and all rights and remedies allowed under Texas law for any breach of this Agreement by the other party.
- 5.06. Non-Waiver:** The waiver by either party of a breach of this Agreement will not constitute a continuing waiver of such breach or of a subsequent breach of the same or a different provision. Nothing in this Agreement is intended

by either party to constitute a waiver of any immunity from suit or liability to which it is entitled under applicable law.

- 5.07. Entire Agreement:** This Interlocal Cooperative Agreement constitutes the entire Agreement between the County and the City. No other agreement, statement, or promise relating to the subject matter of this Agreement and which is not contained in this Agreement or incorporated by reference in this Agreement will be valid or binding.
- 5.08. Terms used in Document:** As used in this Agreement, the terms "Interlocal Cooperation Agreement", "Interlocal Agreement", "Agreement", and "Contract" are synonymous.
- 5.09. Non-Defined Terms:** If not specifically defined in this Agreement, words and phrases used in this Agreement will have their ordinary meaning as defined by common usage.

EXECUTED THIS 12 day of November 2013.

Rockwall County

By: 
Honorable Jerry Hogan
Rockwall County Judge

Attest:


Felicia Morris, Court Administrator

Date: 11-2-13

EXECUTED THIS 10 day of December 2013.

City of McLendon-Chisholm

By: 
Gary L. Moody, Mayor

Attest:


Deborah Sorensen, City Secretary

Date: 12/10/13

EXHIBIT A

UNIFIED REGULATIONS FOR REVIEW OF PLATS IN ETJ OF CITY OF MCLENDON-CHISHOLM

1. The standards and procedures contained in the City of McLendon-Chisholm Subdivision Regulations duly enacted by the City, as amended before or upon the Effective Date of the Agreement, and which hereby are incorporated by reference for all purposes, shall apply exclusively to the review of all plat applications in the City's extraterritorial jurisdiction, with the exceptions contained in paragraph 2 of these Unified Regulations.
2. The following additional provisions, which are derived from the Rockwall County Subdivision Rules and Regulations, enacted by Order of May 29, 2007, as amended before or upon the Effective Date of the Agreement, and which hereby are incorporated by reference for all purposes, shall apply:
 - a. **Road specifications for residential streets by lot size.**
 - (1) Residential streets, where all lots are 1.5 acres or greater in size, shall have a minimum right-of-way of sixty (60) feet, unless additional right-of-way is needed for maintenance or drainage purposes; and a minimum pavement width of twenty-six (26) feet.
 - (2) Residential streets, where any lot is less than 1.5 acres but greater than .75 acres in size, shall have a minimum right-of-way of seventy (70) feet, unless additional right-of-way is needed for maintenance or drainage purposes; and a minimum pavement width of thirty-six (36) feet.
 - (3) Residential streets, where any lot is .75 acres in size or less, shall have a minimum right-of-way of seventy-five (75) feet, unless additional right-of-way is needed for maintenance or drainage purposes; and a minimum pavement width of forty-four (44) feet.
 - b. **Minimum lot size.** For development relying upon on-site sewage facilities for wastewater disposal, the minimum lot size shall be 1.5 acres. This minimum lot size shall not include any right-of-way, drainage easement, utility easement, or floodplain area. The minimum lot frontage shall not be less than one hundred fifty (150) feet at the building line.
 - c. **Building set-back.** Building and setback lines shall be fifty (50) feet from the edge of the right-of-way on all streets and roads. No buildings shall be constructed closer than fifteen (15) feet from side

or rear property lines. Building and setback lines shall be shown on both the preliminary and final plats.

3. The design and construction standards and guidelines contained in the City of McLendon-Chisholm Standards of Design and Construction, duly enacted and as heretofore or hereafter amended, which hereby are incorporated by reference for all purposes, shall apply exclusively to the review of all plat applications and construction plans in the City's ETJ, with addition of the following sections to the Standards derived from Rockwall County specifications:
 - a. **Residential Streets in the ETJ.** The following standards apply to residential streets in the City's ETJ:
 - (1) Where all lots are 1.5 acres or greater in size, the minimum right-of-way shall be sixty (60) feet, unless additional right-of-way is needed for maintenance or drainage purposes; and minimum pavement width shall be twenty-six (26) feet, with six (6) inches of 3600 psi reinforced concrete, as per City standards. Subgrade shall be stabilized with seven percent (7%) lime to a depth of six (6) inches, thirty (30) feet in width.
 - (2) Where any lot is less than 1.5 acres but greater than .75 acres in size, the minimum right-of-way shall be seventy (70) feet, unless additional right-of-way is needed for maintenance or drainage purposes; and minimum pavement width shall be thirty-six (36) feet, with eight (8) inches of 3600 psi reinforced concrete, as per City standards. Subgrade shall be stabilized with seven percent (7%) lime to a depth of six (6) inches, forty (40) feet in width.
 - (3) Where any lot is .75 acres in size or less, the minimum right-of-way shall be seventy-five (75) feet, unless additional right-of-way is needed for maintenance or drainage purposes; and minimum pavement width shall be forty-four (44) feet, with eight (8) inches of 3600 psi reinforced concrete, as per City standards. Subgrade shall be stabilized with seven percent (7%) lime to a depth of six (6) inches, forty-eight (48) feet in width.
 - b. **Road Acceptance in ETJ.** All conditions of the Final Plat must be met. Acceptance of streets and alley improvements shall be evidenced by approval of the City of McLendon-Chisholm Engineering Department and by an instrument approved by the Rockwall County Commissioners Court in accordance with the Rockwall County Subdivision Rules and Regulations.

No acceptance will be considered by the County until the County's Designated Agent receives a certificate from the City of McLendon-Chisholm Engineering Department, certifying that all improvements have been completed in accordance with the approved construction plans. All costs associated with furnishing the necessary certificate shall be borne by the Subdivider.

c. Storm Drainage in the ETJ.

(1) Roads with Side Ditches.

- a. Side road ditches shall be designed to carry the 100-year developed flow and shall have a maximum side slope of 5:1.
- b. Cross road culverts shall be designed to carry the 100-year developed flow.
- c. Drainage channels shall be designed to carry the 100-year developed flow.
- d. The entire subdivision shall be designed so that no flooding of buildings or parking lots shall occur with the 100-year developed flow. The finished floor of buildings are to be a minimum of two (2) feet above the 100-year ultimate (developed) floodplain elevation. Parking lots shall be a minimum of one (1) foot above the 100-year ultimate (developed) floodplain elevation.

(2) Drainage Easements.

- a. The area identified as a drainage easement shall be subtracted from the raw lot size in determination of acceptable lot size for construction.
- b. Drainage easements shall generally be located along the existing drainage way.
- c. Open channels with top widths from zero (0) to fifty (50) feet require top width plus twenty-five (25) feet.
- d. Open channels with top widths greater than fifty (50) feet require top width plus twenty-five (25) feet per side.
- e. Enclosed pipes require twenty (20) feet minimum width.
- f. All easements shall be so designed to allow maintenance equipment to enter the easement for performance of necessary work.

(3) Lots in floodplains. For subdivisions that are located in a flood zone, as shown on the current Flood Insurance Rate Map (FIRM) for Rockwall County, the applicable minimum lot size shall be calculated by subtracting from the proposed lot size any land in the floodplain. Neither the City nor the County shall have

responsibility to provide and maintain drainage for the purpose of flood damage reduction on individual private lots located in the floodplain.

d. Private Utilities in ETJ.

- (1) Size and Location: Utility easements shall be a minimum of fifteen (15) feet in width, and normally located along a property or lot line. It shall be the duty of the Subdivider to insure that all easements are of the proper width and location to serve the using utility companies. Utility lines crossing a road shall be installed a minimum of thirty-six (36) inches below the ditch line. All lines must be encased in steel pipe or concrete a minimum of two (2) feet beyond ditch line.
 - (2) Private Mailboxes.

 - a. Community Mailboxes. For purposes of public safety, use of clustered or community mail facilities should be used whenever possible to reduce collision hazards.
 - b. Mailbox Placement. Mailboxes shall be set a minimum of three (3) feet from the edge of the pavement. When placement of a mailbox outside the three-foot minimum is not possible, a mailbox of "break-away design" shall be used.
 - c. Mailbox Requirements. All mailboxes within the road right-of-way shall meet the current Texas Department of Transportation (TXDOT) standards on streets with speed limits in excess of forty (40) miles per hour. All mailboxes must satisfy Post Office requirements and shall be erected in a place and manner that does not impede visibility. In the TXDOT and Post Office standards for mailboxes conflict, the more stringent standard shall apply.
4. The standards and procedures contained in Rockwall County Subdivision Standards, Article Ten, On-site Wastewater Rules, enacted by Order of May 29, 2007, as amended before or upon the Effective Date of the Agreement, and which hereby are incorporated by reference for all purposes, shall apply exclusively to the review of all applications for on-site sewage disposal within the City's ETJ. Where proposed developments require or seek centralized wastewater services, the City of McLendon-Chisholm Subdivision Regulations and related main extension policies, standards and procedures shall exclusively apply.



PLANNING AND ZONING COMMISSION - CITY OF MCLENDON-CHISHOLM, TEXAS

DATE: February 27, 2020

APPLICANT: MFS Group, LLC - Muhammed Polani
2357 Jupiter Road
Plano TX 75074

LOCATION: 5763 South State Highway 205

ZONING: GB General Business

REQUEST:

The applicant requests approval of a Planned Development District for GB General Business uses and a Conceptual Plan

PROPERTY OWNER: MFS Group, LLC
3645 Capstone Lane
Plano TX 75074

REPRESENTATIVE: Muhammed Polani

STAFF RECOMMENDATION: APPROVAL, subject to the attached PD Conditions and revised Conceptual Plan.

BACKGROUND INFORMATION:

The request site is located at the corner of State Highway 205 and FM 550. It is located at the southeast corner of the intersection. The site is approximately 1.5 acres with approximately 230 feet of frontage on SH 205 and approximately 250 feet of frontage on FM 550.

The site and surrounding area are zoned GB General Business. The purpose of the GB District is to provide for a wide range of retail and service establishments for the community. The existing GB District allows a maximum height of 35 feet and a maximum lot coverage of 35%. These two development standards are limiting factors, along with provisions of the Zoning Ordinance under the Commercial development standards which limits the overall size of any development. Under

the existing GB District the maximum footprint of all buildings would be approximately 22,800 square feet. Current GB zoning would limit any one building to a maximum floor area for a single floor to 6,000 square feet however with a maximum height 35 feet, a two-story building could be erected bringing the likely maximum floor area of a single building (under the existing GB zoning) to 12,000 square feet. As mentioned earlier the maximum lot coverage (building footprint) for the site is approximately 22,800 square feet, thus with a two-story building the maximum floor area allowed on the site would be approximately 45,600 square feet. It is highly unlikely the site could be developed with anywhere near that much floor area because parking would have to accommodate that much building area.

Recent State Law changes, effective September 1, 2019, have precluded the City from enforcing certain provisions the Zoning Ordinance has it pertains to required exterior building materials. The City cannot dictate materials over and above the minimum standards required by the International Building Code (IBC). This basically means requiring masonry or other similar building materials if the IBC allows other materials which would meet minimum building code standards. How that is to be handled will be discussed later in this material. Other provisions of the Zoning Ordinance contained in the Commercial development standards can still be required. These include building articulation, building form, roof type (not material), architectural features and floor area and building size.

The request site is an important development site within the City and careful consideration should be given to any development on the site. The proposed PD for limited GB District uses along with the staff proposed conditions will help to protect the importance of this site and allow the development of a new and needed retail site. The requested PD will be conceptual in nature at this time and will require the developer to return to both the P&Z and City Council for approval of a Development Plan and Elevations prior to the issuance of a building permit. Part of the development process for the site includes the developer bringing sanitary sewer to the site. The developer is currently working with the City on a Development Agreement for both the required infrastructure improvements and development standards which will satisfy the architectural standards which the State no longer allows the City to enforce. Although this Development Agreement is not part of the zoning request, and should not be considered in making a decision on the request, it will play an important part of developing the site.

The staff proposed PD conditions (attached) would prohibit certain existing GB District uses which might not be appropriate for this intersection or this small of a site. With the developer proposing a small retail/office center with a possible restaurant use many uses are not appropriate. The PD would also modify the restaurant uses in order to limit size and require some outdoor seating area. This provision was inserted in order to discourage a large fast food drive-thru restaurant and to encourage the likelihood of a smaller sit-down restaurant with some outside seating. This is further encouraged by limiting the amount of parking required for outdoor covered seating for the first 200 square feet of area.

The existing Commercial development standards are also proposed to be modified in order to develop a small retail/office center. The maximum floor area for a single building has been increased to 12,000 square feet but no single tenant maybe over 5,000 square feet; this would preclude a large single tenant building, by reference a stand-alone drug store is in the 6,000 square

foot range. The maximum length of any wall would be increased to 200 feet. As mentioned earlier the exterior façade material portion of the standards has for the most part been eliminated (as required by State law). The off-street parking requirements have been modified in order to limit the rows of parking between the building and the street, this will eliminate the possibility of a 'sea' of parking.

Finally, since the applicant has submitted the request as a Conceptual PD, staff is in agreement with this portion of the request, a Development Plan and Elevations, as required by the Zoning Ordinance, will have to be approved at a later date. The PD modifies those requirements to include the P&Z in that process by reviewing and making a recommendation to the City Council.

UPDATED INFORMATION: The City Council on January 28 heard this request and after receiving new and additional information from the applicant voted to remand the request back to the Planning and Zoning Commission in order for that body to review the information and make a recommendation based on the additional information.

The applicant (after the previous P&Z hearing), submitted an updated Concept Plan which better defines the location of the proposed structures on the site and reduced the maximum allowed for a single floor for any structure on the site from 12,000 square feet to 11,000 square feet. The applicant has also provided a set of illustrative drawings of how the site would look developed. Note these drawings are for illustration purposes only and are not a portion of the material that would be approved at this time.

If the zoning is approved by the City Council in accordance with the staff recommendation, the applicant would be required to bring back to the P&Z and City Council detailed Development Plans and Elevations that would have to meet both the PD requirements and the other requirements contained in the zoning ordinance. That process would require one hearing each at the P&Z and City Council but would not require notice in the local newspaper or written notice to area property owners. Both hearings would be posted and allow citizen input.

COMPREHENSIVE PLAN: The Future Land Use Map of the Comprehensive Plan (see attached) recommends Commercial uses for this Site. The requested Plans comply with the Comprehensive Plan.

STAFF RECOMMENDATION: APPROVAL, subject to the attached PD Conditions and revised Conceptual Plan.

The proposed new PD for modified GB District uses and development standards and Conceptual Plan will allow the development of the site and provide protections to help ensure a quality development on this important site.

PROPOSED PD CONDITIONS Zoning Case Z2019-03

PD FOR GB GENERAL BUSINESS USES at State Highway 205 and FM 550

USES: Those uses allowed in a GB General Business District with the following uses prohibited or restricted:

Amusement center, indoor (S)
Veterinarian office, large animal practice (S)
Auto repair garage
Auto sales, new and used
Auto service station
Farm machinery and implement sales and service
Motorcycle sales
Ambulance service
Auction house, indoor
Building material sales/lumber yard
Contractor, no outside storage permitted
Contractor outside storage, permitted
Contractor storage or equipment yard
Cosmetic tattoo establishment
Extended-stay hotel/motel
Exterminating service
Factory outlet, retail or wholesale store
Hotel or motel
Kennel
Landscape Service
Laundry, self service
Pawn shop
Mini-warehouse
Cargo container

The following uses are modified:

Restaurant, drive-in/drive-thru (allowed by right); limited to one with a maximum floor area of 3,000 square feet and include a minimum of 200 square feet of outdoor seating area,
Restaurant, with or without alcohol sales (allowed by right), must include a minimum of 200 square feet of outdoor seating area.

Density, area, yard, height and lot coverage requirements: Per GB District

Off-street parking and loading requirements: Off-street parking and loading requirements shall conform to the provisions of Section 6-7. Off-street parking and loading requirements, with the following exception. Covered seating in association with an allowed restaurant use does not require parking for the first 200 square feet of area; any additional covered seating must be parked per the requirements for a restaurant use.

Landscaping. Per GB District requirements.

Screening and buffering requirements. Per GB District requirements.

Masonry requirement. This provision does not apply in this PD.

Commercial Development Standards.

Any development on the Property must comply with Section 4-13 Commercial development standards of the Zoning ordinance with the following exceptions:

E. Building form. 1. The minimum area of a single floor shall be 2,500 sf. The maximum area allowed for a single floor shall be 12,000 sf, no single tenant may exceed 5,000 sf. The maximum length for any building wall shall be 200 ft. No single tenant may exceed 5,000 square feet in either a larger building or a stand-alone building.

G. External façade materials. Does not apply except as noted below:

1. Windows and glazing shall be a maximum of 30% of each building elevation.

K. Off-street parking and loading requirements.

2. No more than three (3) rows of angled or parallel parking shall be allowed between the primary building and the street right-of-way.

Development plan and elevations. A development plan that complies with Section 5.1D.2. must be submitted to and recommended by the Planning and Zoning Commission and approved by the City Council prior to the issuance of a building permit. Elevations illustrating compliance with Section 4-13, as modified in this Ordinance, must also be submitted to and recommended by the Planning and Zoning Commission and approved by the City Council prior to the issuance of a building permit.



City of McLendon-Chisholm
1371 West FM 550 - McLendon-Chisholm, Texas 75032
TEL: (972)524-2077 FAX: (972)524-9128

ZONING CHANGE APPLICATION

Date of Application: 12/30/19

Receipt # _____

Fee: \$600 per lot + \$10 per acre (acreage rounded to the next whole acre) + ALL consultant Costs. Consultant costs includes City Planner, City Engineer, Legal Fees and any other outside consultant costs incurred by the City.

Address and/or Location of Request:

Hwy 205 / FM 550

Property Legal Description: BLOCK 1 LOT 1 at Hwy 205/550 FM

County Parcel ID: _____

Existing Zoning: NEIGHBORHOOD BUSINESSES Requested Zoning: RETAIL/RESTURANT

Applicant's Name: MFS GROUP LLC MUHAMMED POLANI

Phone No. 214 334-8165 Email: POLANIMI@MSN.COM

Status of Applicant: Owner ☒ or Authorized Agent _____

Applicant's Address:

2357 JUPITER RD PLANO TX 75074

Owner's Address: 3645 CAPSTONE LANE PLANO TX 75074

I certify that I am the owner of the property described in this petition/application and _____ is the authorized agent to file this application on my behalf.

Signature of Owner:

[Signature]

Date 12/30/19

Signature of Applicant:

Date _____

Page 1 of 2

10/09/2017 Zoning Change Application and Checklist

Development Fees

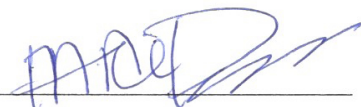
The City recognizes that professional guidance is necessary when undertaking any land use project including platting, zoning or Board of Adjustment applications. Therefore, the City will provide a one-hour or 2 one-half hour complimentary professional consultation with the City Planner and/or City Engineer. These complimentary consultation(s) will be arranged by City Staff. Limit of one complimentary consultation per property.

The applicant must pay the actual fee (very small & simple projects) or deposit the estimated fee with the City prior to the consultants beginning work on their application. Should the actual consultant cost exceed the estimate, the applicant will be required to deposit additional monies with the City before work on their application continues. Unused deposit monies will be refunded to applicant within 60 days of project conclusion.

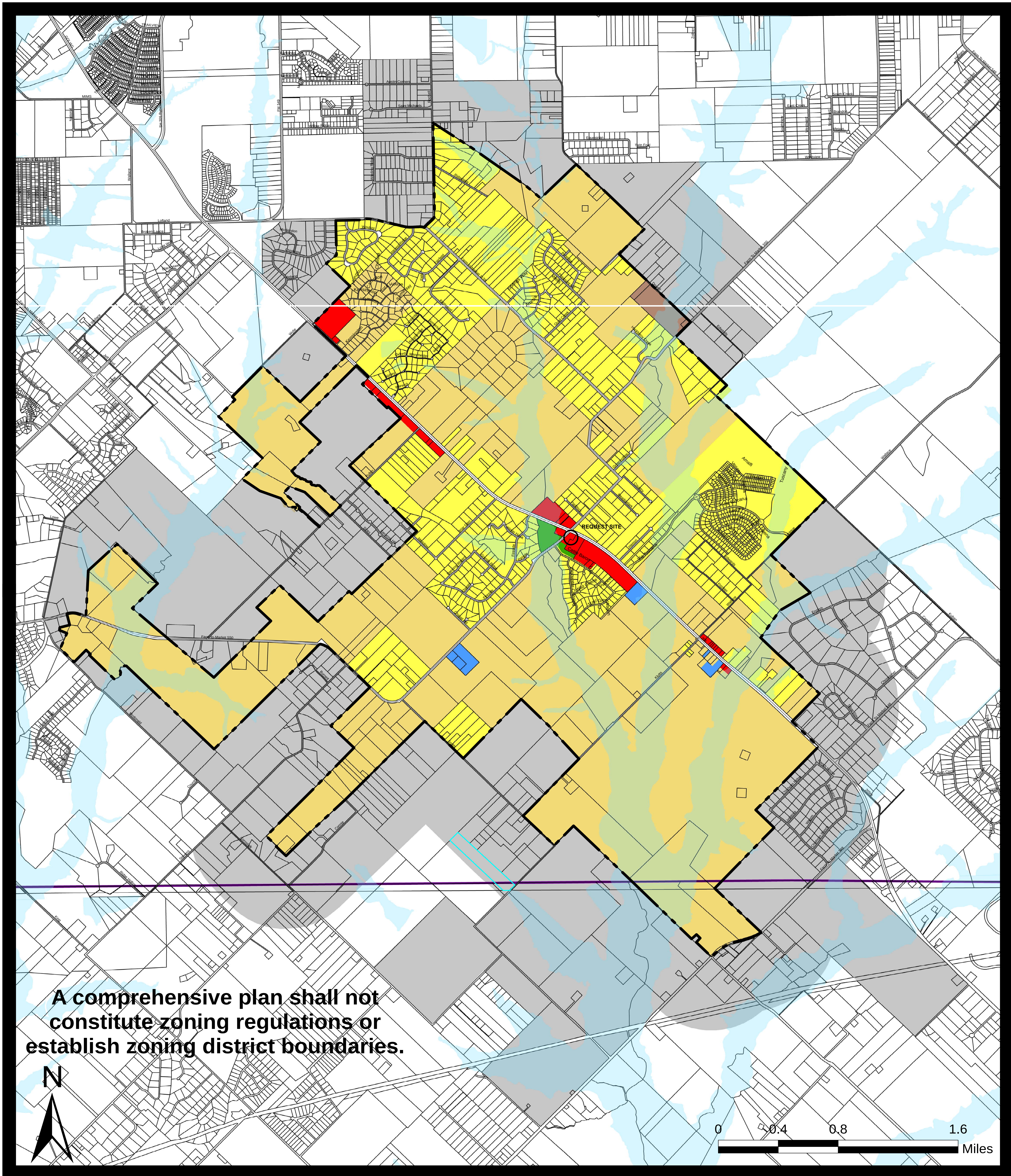
ALL Consulting Costs - Includes City Planning, City Engineer, Legal Fees and any other outside Consultant costs incurred by the City. All outstanding fees must be paid by the applicant prior to their application being placed on the agenda of the Planning & Zoning Commission, City Council or BOA, nor will building permits be issued with fees outstanding.

I hereby certify that I am the owner, or duly authorized agent of the owner, for the purpose of this application. All information submitted herein is true and correct and the application fee of \$ 600.00 to cover the cost of this application, has been paid to the City of McLendon-Chisholm on this _____ day of _____, 201__.

Further, I hereby certify that I understand and agree to the development and consulting fees and costs as stated above and agree to pay all outstanding fees and costs to the City prior to the application being placed on the agenda for consideration by the Planning & Zoning Commission and/or City Council.

Signature of Applicant (Owner/Authorized Agent): 
City Secretary: _____

(Seal)



Legend

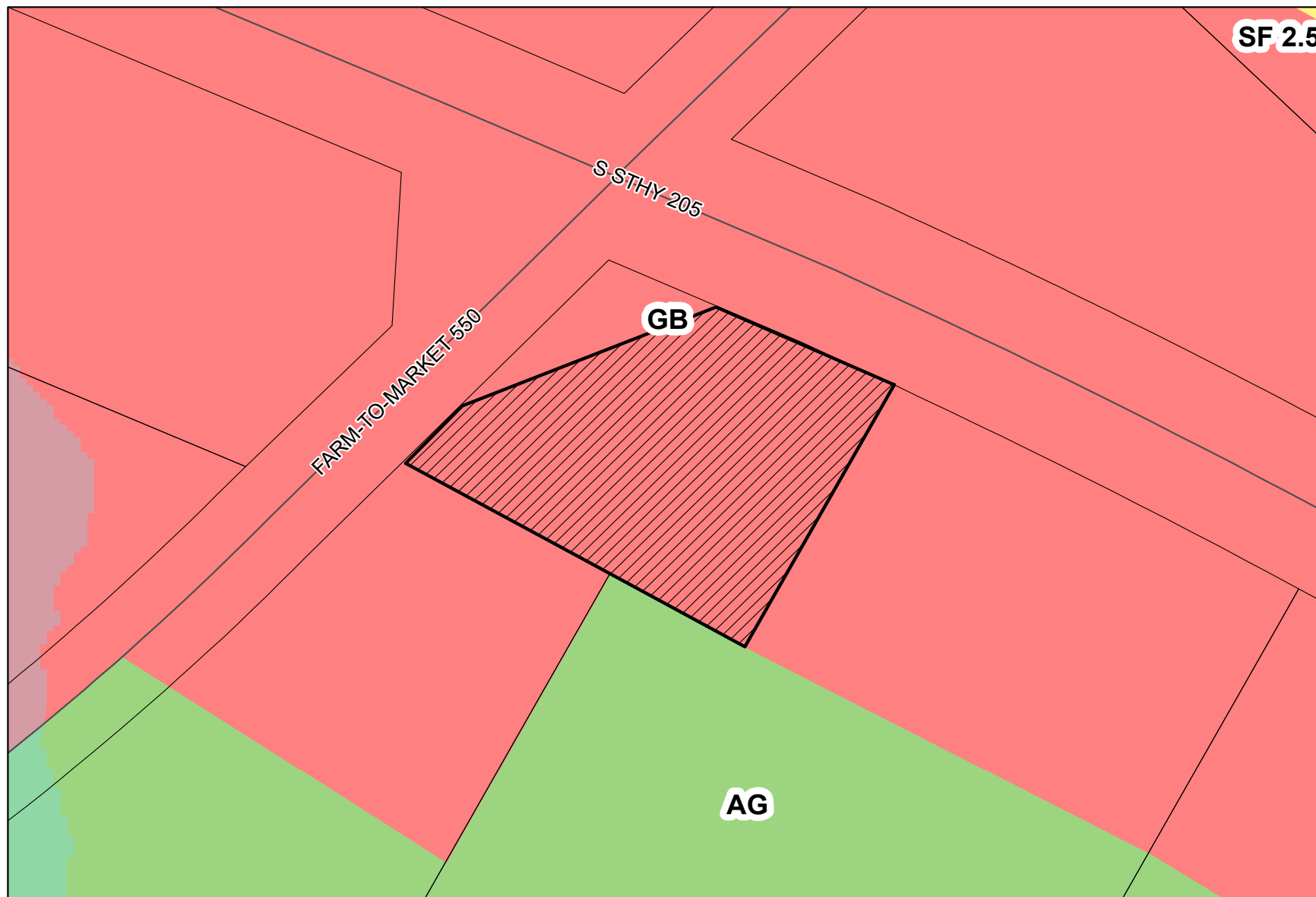
McLendon-Chisholm City Limits	Agriculture	Institutional
McLendon-Chisholm ETJ	Low Density Residential	Commercial
County Line	Rural Residential	
Floodplain	Multifamily	

City of McLendon-Chisholm Rockwall & Kaufman County Future Land Use Map December 2017



This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the ground survey and represents only the approximate relative location of property boundaries. (Texas Government Code § 2051.102)

This map was created using Rockwall and Kaufman County GIS data and FEMA GIS data.



This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the ground survey and represents only the approximate relative location of property boundaries. (Texas Government Code § 2051.102)

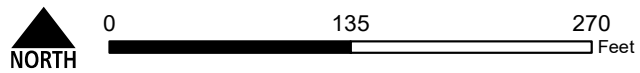


Zoning Map
Z 2019-03

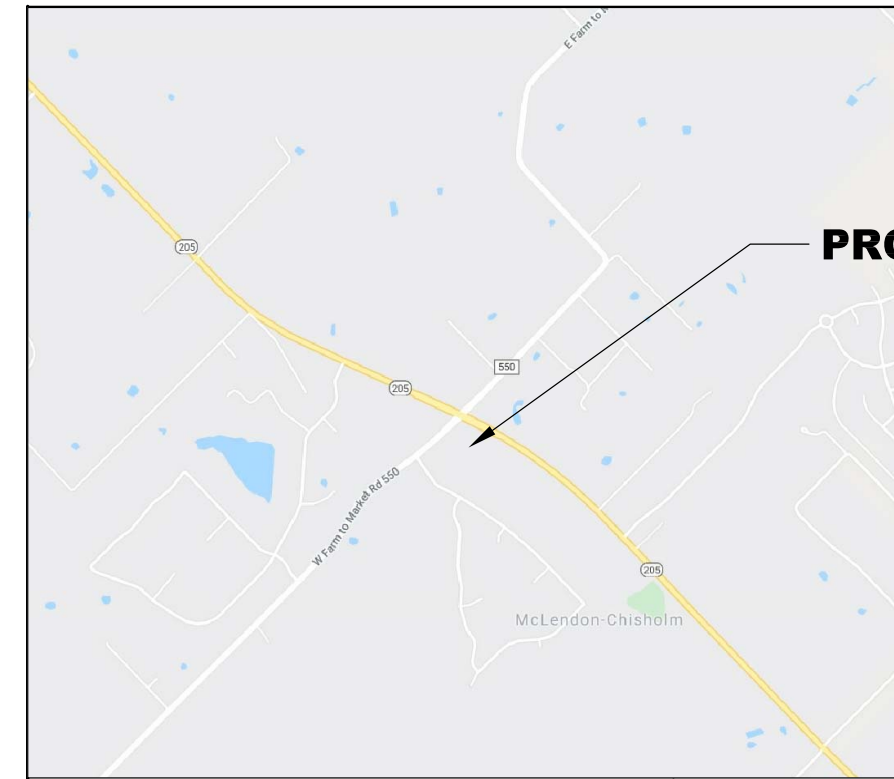


Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community

This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries. (Texas Government Code § 2051.102)



Aerial
Z 2019-03



VICINITY MAP

PROJECT LOCATION

F.M. NO. 550
(CALLED 80' R.O.W.)

S.H. NO. 205
(CALLED 120' R.O.W.)

LOT 1, BLOCK 1
65,571 SF
1.505 AC
SH 205/550 ADDITION
INSTRUMENT NUMBER
20190000009311
O.P.R.R.C.T.

LOT 2, BLOCK 1
SH 205/550 ADDITION
INSTRUMENT NUMBER
20190000009311
O.P.R.R.C.T.

TO BROOKSHIRE
GROCERY COMPANY
ACCESS EASEMENT
VOLUME 5270, PAGE 63
D.R.R.C.T.

BROOKSHIRE GROCERY COMPANY
VOLUME 5270, PAGE 57
D.R.R.C.T.

PREVIOUS

DATA

ZONING:	PD for General Business Uses
Land Area:	1.505 acres
Allowed uses:	See PD Ordinance
Maximum height:	Per GB District
Maximum Lot Coverage:	Per GB District
Maximum Floor Area:	See PD Ordinance
Setbacks:	Per Conceptual Plan
Parking:	Per Zoning Ordinance

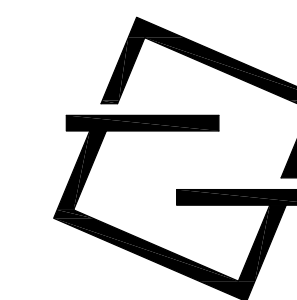
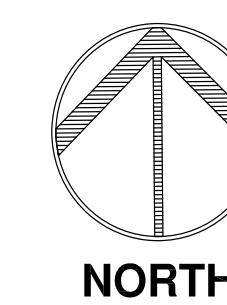
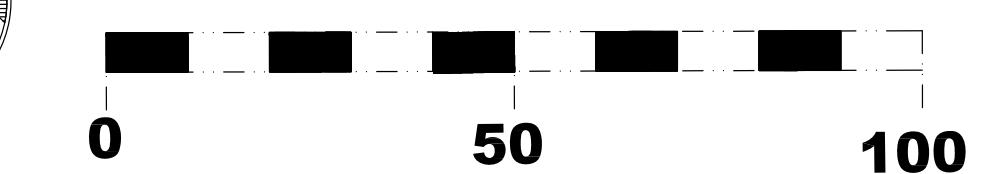
SIGN

10' LANDSCAPE
BUFFER

*** APPROXIMATE LOCATION
OF FUTURE ACCESS**

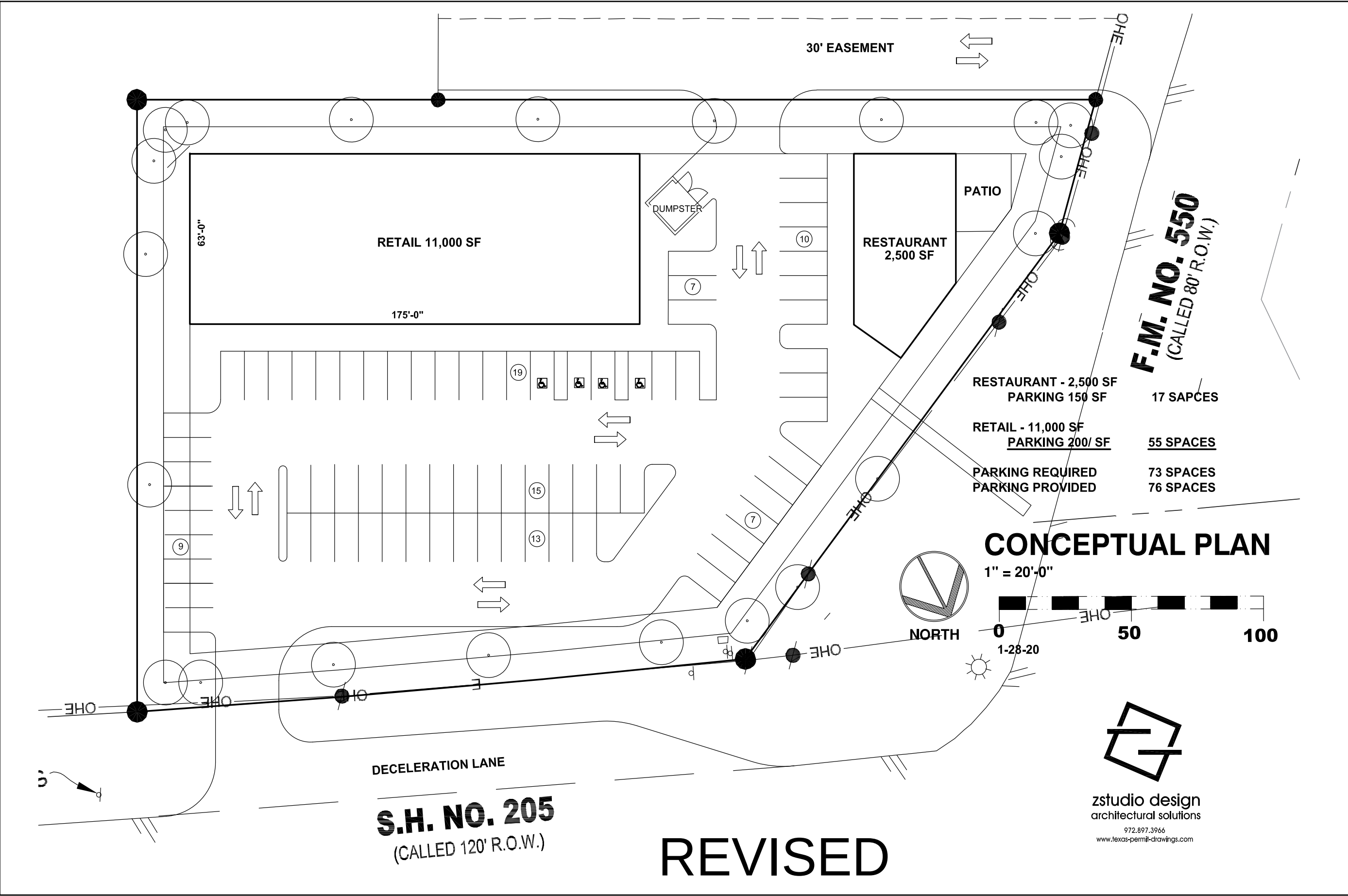
CONCEPTUAL PLAN

1" = 20'-0"



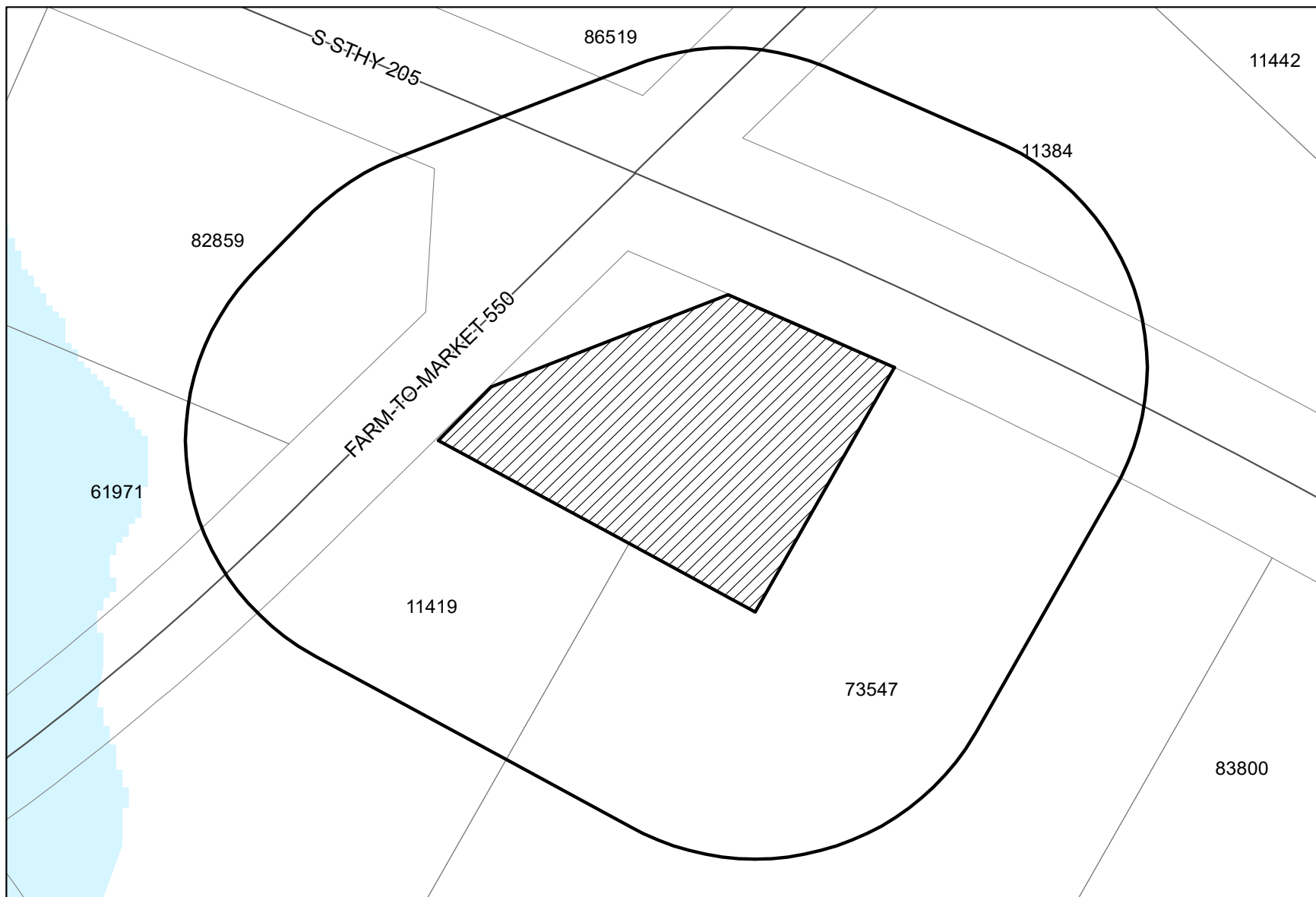
zstudio design
architectural solutions
972.897.3966
www.texas-permit-drawings.com

1-6-20





South view from W Farm to Market Rd 550 and State Hwy 205 corner (VACANT)

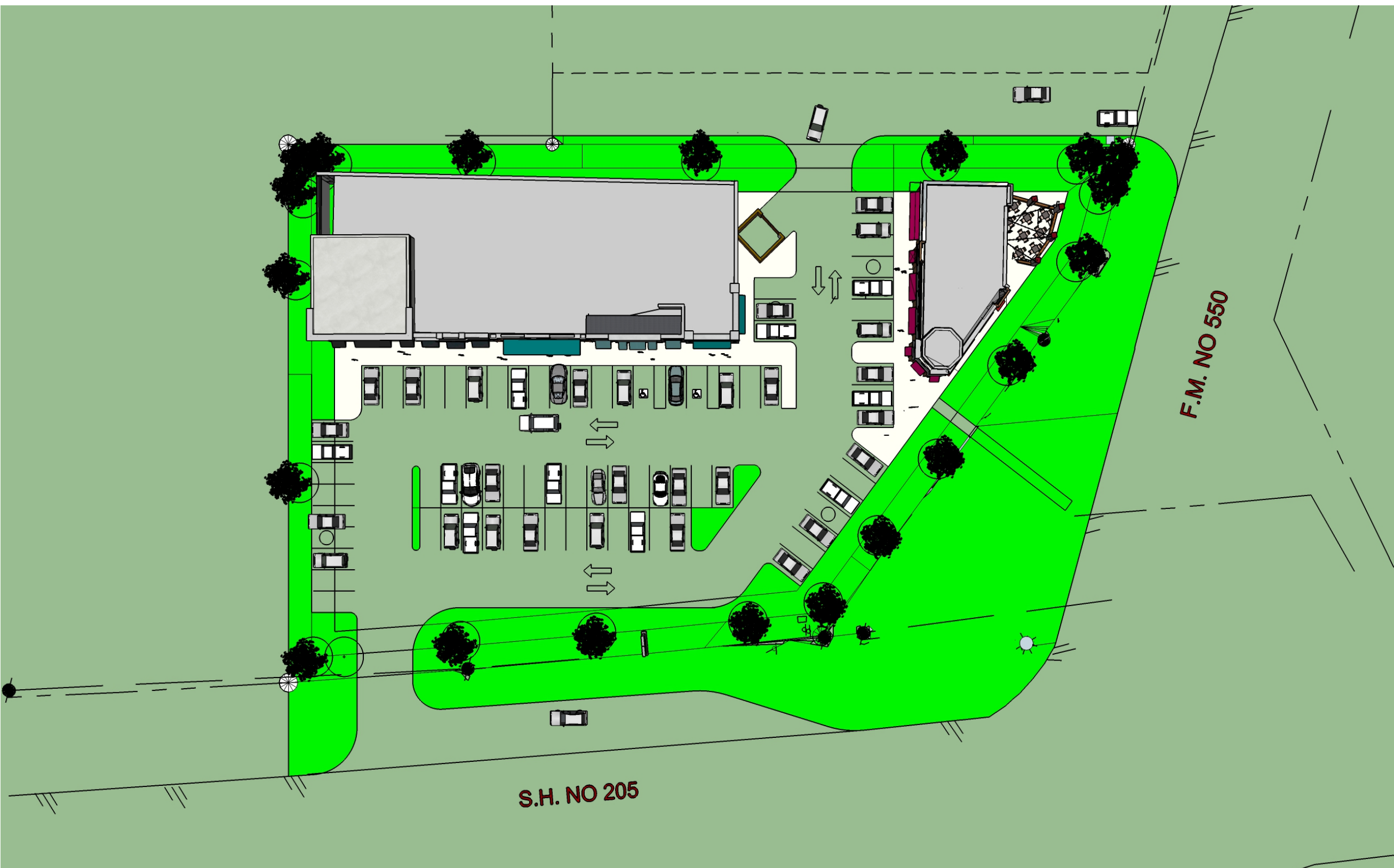


This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the ground survey and represents only the approximate relative location of property boundaries. (Texas Government Code § 2051.102)



200 Foot Norification
Z 2019-03

Parcel ID	Owner Name	Address
11419	MIL/WAY INVESTORS LLC	PO BOX 717 ROCKWALL, TX 75087-0717
11384	HOLT V R & BETTY REV LIVING TRUST	V R & BETTY HOLT TRUSTEES 141 S STATE HIGHWAY 205 ROCKWALL, TX 75032-6947 PO BOX 369
61971	MARIAH BAY DEVELOPMENT INC	ROCKWALL, TX 75087-0369
73547	BROOKSHIRE GROCERY CO	ATTN: REAL ESTATE DEPT 1600 W SOUTHWEST LOOP 323 TYLER, TX 75701-8532
82859	GROUP PACIFIC HOLDINGS LLC	6711 STARBUCK DR DALLAS, TX 75252-5945
86519	TEAM VAPP LLC	709 CORNELL DRIVE ROCKWALL, TX 75087























64-
14

2810002871/mm

RESTRICTIVE COVENANT AGREEMENT

Date: November 1, 2007

Seller: MARIAH BAY DEVELOPMENT, INC., a Texas corporation

Seller's Mailing Address: P.O Box 369, Rockwall, Rockwall County, Texas 75087

Buyer: BROOKSHIRE GROCERY COMPANY, a Texas corporation

Buyer's Mailing Address: Attn: Real Estate Department; 1600 WSW Loop 323, Tyler, Smith County, Texas 75701

Conveyed Property: All that certain tract or parcel of land located in the King Latham Survey, Abstract 133, City of McLendon – Chisholm, Rockwall County, Texas, being part of a called 215.607 acre tract, described in a Deed from Albert L. Meyers, et ux to Mariah Bay Development, Inc., dated August 22, 2001 and recorded in Volume 2245 on Page 278 in the Deed Records of Rockwall County, Texas, containing 6.063 acres (264,124 sq. ft.) of land and being more particularly described on Exhibit A attached to this agreement.

Retained Property: BEING a 43.140 acre tract of land situated in the Leonard Easterwood Survey, Abstract Number 79 and the King Latham Survey, Abstract Number 13, in the City of McLendon Chisholm, Rockwall County, Texas and being a portion of a 215.607 acre tract of land described in Tract IV according to the deed recorded in Volume 2245, Page 278 of the Deed Records of Rockwall County, Texas (DRRCT) save and except the Conveyed Property, containing a net of 37.077 acres, more or less, and being more particularly described on Exhibit B attached to this agreement.

Consideration: Good and valuable consideration. the receipt and sufficiency of which are hereby acknowledged by Seller.

Seller is selling the Conveyed Property to Buyer. Seller also owns the Retained Property, which is located adjacent to the Conveyed Property, and Seller and Buyer desire to establish certain agreements concerning the use of the Conveyed Property and the Retained Property that are set out in this agreement. For the Consideration, Seller and Buyer agree as follows:

Agreements

1. **Prohibited Uses.** The Conveyed Property and the Retained Property will not be used for any of the following prohibited uses, except the normal and customary uses associated with the permitted uses of this Agreement, for a period beginning on the date of this agreement and ending fifty (50) years after that date:

- a. Any public or private nuisance;
- b. Any noise or sound that is objectionable (to a reasonable person) due to

intermittence, beat, frequency, shrillness, or loudness; except normal motor room noise associated with a grocery business, the normal and customary noise associated with the permitted uses of this Agreement and the usual noise generated during any construction planned in the Conveyed Property and the Retained Property;

- c. Any obnoxious (to a reasonable person) odor;
- d. Any noxious, toxic, caustic, or corrosive fuel or gas, except in conjunction with the operation of the fuel center on the Brookshire parcel as shown on Exhibit "A";
- e. Any dust, dirt, or fly ash in excessive quantities;
- f. Any unusual fire, explosion, or other damaging or dangerous hazard, including the storage, display or sale of explosives or fireworks;
- g. Any assembly, manufacture, distillation, refining, smelting, or mining operations;
- h. Any "second hand" store, Army, Navy, or government "surplus" store;
- i. Any mobile home or trailer court (except mobile homes or trailers used during the construction period as offices for the various contracting units), labor camp, junk yard, stock yard, or animal raising other than a pet shop, provided that such pet shop shall be conducted so that there shall be no violation of the other prohibitions hereof by reason of the operation of such pet shop;
- j. Any disposal (except normal storing and disposal of trash in adequate containers maintained in a neat and clean condition), incineration, reduction of garbage or refuse;
- k. Any fire or bankruptcy sale or auction house operation, other than a liquidation sale not in the ordinary course of a company's business;
- l. Any central laundry or dry cleaning plant, or laundromat, provided however, this prohibition shall not be applicable to on-site service oriented to pick up and delivery by the ultimate consumer, including nominal supporting facilities, as the same may be found in retail shopping centers in Rockwall County, Texas;
- m. Any automobile sales, leasing or display facility, including a body repair facility, that is located within six hundred feet (600') from the property line of the Conveyed Property;
- n. Any bowling alley or skating rink that is located within three hundred feet (300') from the property line of the Conveyed Property;
- o. Living quarters, sleeping apartments or lodging rooms, except provisions for a

security office may include a sleeping area but excluding a "hotel or motel" such as but not limited to La Quinta, Holiday Inn Express, or similar establishment that is located no nearer than six hundred feet (600') from the property line of the Conveyed Property;

- 4
- p. Any veterinary hospital other than a small animal clinic or grooming facility offering overnight boarding services for small animals only in connection with diagnostic or surgical procedures performed on-site;
 - q. Any mortuary that is located within six hundred feet (600') from the property line of the Conveyed Property;
 - r. Any adult bookstore selling pornographic material;
 - s. Any bar, tavern, restaurant or other establishment whose annual gross revenue from the sale of alcoholic beverages, for on-premises consumption, exceeds sixty percent (60%) of gross revenues arising out of, or resulting from such business;
 - t. Any theater that is located within three hundred feet (300') from the property line of the Conveyed Property;
 - u. Any trailer rental; and
 - v. Any use other than for commercial and/or retail sales and service and appurtenant uses. Service uses may include, but not be limited to financial institutions, brokerage offices, travel and other agencies and similar service establishments, and nothing in this Article shall be deemed to forbid the use of the Conveyed Property as a gasoline filling station site.

2. *Restrictions on Use of Retained Property and "No-build" Area.* No portion of the Retained Property may be used for any of the following prohibited uses for a period beginning on the date of this agreement and ending on the earlier of the expiration of fifty (50) years after that date (so long as Buyer or any successor owner or assignee of Buyer operates a supermarket on the Conveyed Property selling food products to the public for off-premises consumption):

- a. a grocery store or supermarket whose primary business is that of a conventional grocery store;
- b. a convenience food store;
- c. a "limited assortment store" whose primary business is selling discount dry grocery goods;
- d. a grocery warehouse store;
- e. a store or other business for the sale of food or food products for off-premises

consumption, including a meat market or butcher shop, produce market, dairy store, delicatessen, bakery or any similar food store, but excluding a "fast food" restaurant such as but not limited to McDonald's, Burger King, Sonic, or Wendy's and excluding any restaurant whose primary business is the sale of ice cream, yogurt or related products such as but not limited to Braum's, TCBY, Marble Slab Creamery, or Baskin Robbins;

- f. a fuel center or other business which sells gasoline,
- g. a pharmacy or other business for the sale of any item requiring the presence of a licensed or registered pharmacist or other business which dispenses prescription drugs, or
- h. a "dollar store" such as Dollar General, Family Dollar, or Dollar Tree.

No building, structure, or other permanent improvement (other than paving or landscaping) shall be erected, constructed, placed or maintained upon any portion of that part of the Retained Property that is described on Exhibit C attached to this agreement.

3. *Outparcel Development.* For a period beginning on the date of this agreement and ending on the earlier of the expiration of fifty (50) years after that date, Any outparcels developed on the Retained Property will be developed only under the following guidelines:

- a. any building(s) constructed on the outparcels within three hundred feet (300') from the property line of the Conveyed Property shall not exceed twenty-four (24) feet in height above finished floor elevation (except specialty or decorative roof treatments;
- b. rooftop equipment on any building constructed on any outparcel shall be screened in a manner reasonably satisfactory to all parties;
- c. no rooftop signs shall be erected on any building to be constructed on any outparcel;
- d. the outparcels shall be kept reasonably neat and orderly until improved and developed;
- e. sufficient parking shall be provided and maintained on any outparcels, so as to provide at all times a minimum parking ratio of five (5) parking spaces per 1,000 square feet of building area, or the minimum number of parking spaces necessary to satisfy the applicable city code or ordinance requirement, whichever is greater; and
- f. the owner of any outparcel will provide an enclosure (which will be no less than six (6) feet above grade in height and constructed in accordance with the shopping

center standards) for its trash containment device located on the outparcel that is sized and shaped to conceal the visibility of the trash containment device from the Conveyed Property.

4. *Amendment and Termination.* This agreement may be amended or terminated in whole or in part, from time to time, and at any time, by written instrument signed by the owners of 75 percent or more in surface area of the Conveyed Property and the Retained Property; provided, however, that to be effective any such instrument must be signed by Seller if Seller owns any portion of the Retained Property and must be signed by Buyer if Buyer owns any portion of the Conveyed Property.

5. *Covenants Running with the Land.* Without limiting the provisions of paragraph 4. above, the parties agree that the provisions of this agreement will be deemed to be covenants running with the land that are for the benefit of, and create burdens on, the respective portions of the Conveyed Property and the Retained Property.

6. *Binding Effect.* This agreement binds, benefits, and may be enforced by the successors in interest to the parties.

7. *Choice of Law.* This agreement will be construed under the laws of the state of Texas, without regard to choice-of-law rules in any jurisdiction. Venue is in Rockwall County, Texas.

8. *Attorney's Fees.* If either party retains an attorney to enforce this agreement, the party prevailing in litigation will be entitled to recover reasonable attorney's fees and court and other costs.

9. *Severability.* If any provision in this agreement is for any reason unenforceable, to the extent the unenforceability does not destroy the basis of the bargain among the parties, the unenforceability will not affect any other provision of this agreement, and this agreement will be construed as if the unenforceable provision had never been a part of the agreement.

10. *Remedies Cumulative.* Except as otherwise provided herein, all rights, privileges, and remedies afforded the parties by this agreement will be deemed cumulative and not exclusive and the exercise of any remedy will not be deemed to be a waiver of any other right, remedy, or privilege provided for herein or available at law or in equity. It is expressly understood that a recovery in damages may not be an adequate remedy for a violation of the provisions of this agreement and that the granting of equitable remedies may, and probably will, be necessary.

11. *Number and Gender.* The use of the singular will be deemed to mean the plural, the masculine to mean the feminine or neuter, and the neuter to mean the masculine or feminine when context requires.

12. *Captions.* Captions used in this agreement are for convenience only and will not be considered as a limitation on or an expansion of the terms of the agreement.

