



## **AGENDA MEMO**

**CITY COUNCIL MEETING OF: DECEMBER 2, 2009**

**DEPARTMENT: PLANNING AND DEVELOPMENT**

**ITEM DESCRIPTION: VAR-36338 - APPLICANT/OWNER: CAROLINE'S COURT, LLC.**

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### **\*\* CONDITIONS \*\***

Staff recommends DENIAL. The Planning Commission (7-0 vote) recommends APPROVAL, subject to conditions.

#### **Planning and Development**

1. Conformance to the conditions for Special Use Permit (SUP-36111) and Site Development Plan Review (SDR-36112) if approved, and for Rezoning (Z-0076-98), except as amended herein.
2. This approval shall be void two years from the date of final approval, unless a certificate of occupancy has been issued or upon approval of a final inspection. An Extension of Time may be filed for consideration by the City of Las Vegas.

**\*\* STAFF REPORT \*\***

**PROJECT DESCRIPTION**

The applicant is requesting a Variance to allow no loading spaces where one loading space is required for a Restaurant with Drive Through located on a portion of 25.03 acres at the northwest corner of El Capitan Way and Durango Drive. The pad site where the loading space is required is located in the northeast corner of an approved shopping center. The proposed design of the pad will not allow a loading space to be incorporated into the site without compromising public safety. As this is due to site design and not the physical characteristics of the land, the hardship is self-imposed and denial is recommended. If denied, the site must be redesigned to accommodate a loading space.

Issues:

- Approval of this Variance is required for approval of the related Site Development Plan Review (SDR-36112).
- The Variance, if approved, would allow no loading space on Pad 'G' of the approved shopping center where one loading space is required to allow for deliveries to the proposed Restaurant with Drive Through.

**BACKGROUND INFORMATION**

| <b><i>Related Relevant City Actions by P&amp;D, Fire, Bldg., etc.</i></b> |                                                                                                                                                                                                                                                                                             |
|---------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 05/12/64                                                                  | The Board of City Commissioners approved an Annexation (A-0003-64) of approximately 5,000 acres generally located north of Lone Mountain Road and west of Decatur Boulevard.                                                                                                                |
| 12/07/98                                                                  | The City Council approved a request for a Rezoning (Z-0076-98) to T-C (Town Center) on 1,468 acres located within the Northwest General Plan Amendment to the City of Las Vegas General Plan, including the subject site. The Planning Commission and staff recommended approval.           |
| 04/26/07                                                                  | The Planning Commission accepted the applicant's request to withdraw without prejudice a request for a Special Use Permit (SUP-20500) for a Restaurant with Drive-Through use on the subject site. Staff had recommended approval.                                                          |
| 07/11/07                                                                  | The City Council approved a request for Special Use Permits for Building and Landscape Material/Lumber Yard (SUP-20497), Outdoor Storage, Accessory (SUP-20498), and Restaurant with Drive-Through (SUP-20499) on the subject site. The Planning Commission and staff recommended approval. |

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| 07/11/07 | The City Council approved a request for a Site Development Plan Review (SDR-20496) for a proposed 269,860 square foot commercial center and waivers of the Town Center Development Standards for landscape buffer requirements and fast food restaurant uses on the subject site. The Planning Commission and staff recommended approval.                                                                                                                                                                                                                                                                                     |
| 11/30/07 | Planning and Development Department staff approved a Minor Site Development Plan Review of the overall shopping center site for reduction of floor area of the Fast Food 'A' building from 2,650 square feet to 2,407 square feet.                                                                                                                                                                                                                                                                                                                                                                                            |
| 07/22/08 | Code Enforcement responded to a complaint regarding graffiti on the subject site. Code Enforcement resolved the case 07/25/08.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| 07/31/08 | Planning and Development Department staff approved a Minor Site Development Plan Review of the overall shopping center site for revisions in the elevations for the Major 'A' building and Buildings A through G. There were no major changes in height or materials.                                                                                                                                                                                                                                                                                                                                                         |
| 09/17/08 | The City Council approved a request for a Major Modification (MOD-28538) of the Town Center Land Use Plan to amend the land use designation from SC-TC (Service Commercial - Town Center) to GC-TC (General Commercial - Town Center) on 7.97 acres at the southwest corner of Durango Drive and Farm Road. The Planning Commission recommended approval; staff recommended denial.                                                                                                                                                                                                                                           |
| 04/23/09 | The Planning Commission approved a Waiver (WVR-33758) of the Town Center Development Standards to allow no amenity zone along Durango Drive where a 2.5-foot amenity zone was required. Staff recommended denial.                                                                                                                                                                                                                                                                                                                                                                                                             |
| 06/19/09 | A Final Map (FMP-27577) for a one-lot commercial subdivision (Caroline's Court) was recorded.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| 06/25/09 | The Planning Commission approved a request for a Master Sign Plan (MSP-34174) for a proposed commercial development on the subject site, with waivers of the Town Center Sign Standards to allow 2,609 square feet of freestanding signage where 1,506 square feet is allowed, a 100-foot pylon sign where 24 feet is allowed, three monument signs along the El Capitan Way street frontage where two are allowed, and to allow wall signs to face an existing residential development that is located outside of the city limits of the Centennial Hills Town Center where such is not permitted. Staff recommended denial. |
| 07/15/09 | The City Council approved Extensions of Time for previously approved requests for Special Use Permits for Building and Landscape Material/Lumber Yard (EOT-34757), Outdoor Storage, Accessory (EOT-34759), and Restaurant with Drive-Through (EOT-34761) uses on the subject site. The approvals will expire 07/11/10 unless another Extension of Time is approved by the City Council. Staff recommended approval.                                                                                                                                                                                                           |

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| 07/15/09                                                 | The City Council approved an Extension of Time (EOT-34762) for a previously approved request for a Site Development Plan Review (SDR-20496) for a proposed 296,860 square foot commercial center and waivers of the Town Center Development Standards for landscape buffer requirements on the subject site. Staff recommended approval. |
| 09/10/09                                                 | Code Enforcement responded to a complaint (#81718) regarding construction noise on the site beginning at 4:30 a.m. and parking lot lighting potentially shining into residences. Code Enforcement resolved the case on 10/01/09                                                                                                          |
| 09/21/09                                                 | Planning and Development Department staff approved a Minor Site Development Plan Review on the overall shopping center site for reduction in overall floor area from 269,734 square feet to 269,212 square feet and to revise the landscape plan to incorporate a drainage channel.                                                      |
| 10/07/09                                                 | Planning and Development Department staff approved a Minor Site Development Plan Review on the overall shopping center site for reduction in overall floor area from 269,212 square feet to 264,189 square feet and to remove the drainage channel along the east perimeter of the site.                                                 |
| 11/05/09                                                 | The Planning Commission recommended approval of companion item SUP-36111 and denial of SDR-36112 concurrently with this application.<br><br>The Planning Commission voted 7-0 to recommend APPROVAL (PC Agenda Item #39/ss).                                                                                                             |
| 12/02/09                                                 | The City Council will hear a related request (ROC-36456) to review Condition Number 21 of a Site Development Plan Review (SDR-20496) to amend restrictions on hours of operation on the site.                                                                                                                                            |
| <b><i>Related Building Permits/Business Licenses</i></b> |                                                                                                                                                                                                                                                                                                                                          |
| 12/27/07                                                 | An application for a building permit (B-COMM-26225) for a certificate of occupancy for a retail building at 7751 North El Capitan Way was submitted. The permit has not yet been issued.                                                                                                                                                 |
| 04/25/08                                                 | An application for a building permit (B-COMM-27890) for a certificate of occupancy for a restaurant at 7741 North El Capitan Way was submitted. The permit has not yet been issued.                                                                                                                                                      |
| 09/16/08                                                 | A building permit (B-COMM-25179) was issued for the overall shopping center site buildings and clock tower at 7737 North El Capitan Way. A final inspection has not been completed.                                                                                                                                                      |
| 10/02/08                                                 | Civil improvement Mylar plans (L-CIVIL-28917) were approved for Fast Food 'A' pad at 7737 North El Capitan Way.                                                                                                                                                                                                                          |
| 10/23/08                                                 | Building permits (B-SHL-100093, 100094, 100096, 100097, 100098, 100100, 100103 and 100104) were issued for shells of Buildings A, B, C, D, E, F, G, and Major 'A' at 7703 North El Capitan Way. No final inspections have been completed to date.                                                                                        |
| 10/23/08                                                 | A building permit (B-COMM-100105) was issued for a 39-foot tall clock tower at 7741 North El Capitan Way. A final inspection has not been completed.                                                                                                                                                                                     |

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| 10/23/08                              | A building permit (B-GRAD-124282) was issued for grading of the overall shopping center site at 7741 North El Capitan Way. A final inspection has not been completed.                                                                                                                                                                                                                 |
| 09/18/09                              | A Wall/Fence permit (#147013) was issued for perimeter and retaining walls at 7741 North El Capitan Way. A final inspection has not been completed.                                                                                                                                                                                                                                   |
| <b><i>Pre-Application Meeting</i></b> |                                                                                                                                                                                                                                                                                                                                                                                       |
| 09/01/09                              | The applicant was advised that in addition to the Special Use Permit, a Site Development Plan Review would also be required, as the use on the approved pad site would be changing. The applicant requested that revised plans for the development's clock tower be added to the site review submittal.                                                                               |
| <b><i>Neighborhood Meeting</i></b>    |                                                                                                                                                                                                                                                                                                                                                                                       |
| 10/06/09                              | A neighborhood meeting for this item and the accompanying Site Development Plan Review was held at the Centennial Hills Community Center located at 6601 N Buffalo Drive, 6:00 p.m. Six members of the public, two members representing the applicant, one City Council staff member and one member of Planning & Development staff attended. No concerns were raised at the meeting. |
| <b><i>Field Check</i></b>             |                                                                                                                                                                                                                                                                                                                                                                                       |
| 10/01/09                              | The site is undeveloped with no structures. However, grading of the site is underway. The trail path along the north property line has been constructed.                                                                                                                                                                                                                              |

|                                              |       |
|----------------------------------------------|-------|
| <b><i>Details of Application Request</i></b> |       |
| <b><i>Site Area</i></b>                      |       |
| Net Acres                                    | 25.03 |

| <b>Surrounding Property</b> | <b>Existing Land Use</b> | <b>Planned Land Use</b>                  | <b>Existing Zoning</b>           |
|-----------------------------|--------------------------|------------------------------------------|----------------------------------|
| Subject Property            | Undeveloped              | SC-TC (Service Commercial – Town Center) | T-C (Town Center)                |
| North                       | Single Family, Detached  | ML (Medium-Low Density Residential)      | R-CL (Single Family Compact-Lot) |
| South                       | Undeveloped              | SC-TC (Service Commercial – Town Center) | T-C (Town Center)                |
| East                        | General Retail           | SC-TC (Service Commercial – Town Center) | T-C (Town Center)                |
|                             | Undeveloped              | GC-TC (General Commercial – Town Center) | T-C (Town Center)                |
| West                        | ROW (U.S. 95)            | ROW (Right-of-Way)                       | ROW (Right-of-Way)               |

| <i>Special Districts/Zones</i>                    | <i>Yes</i> | <i>No</i> | <i>Compliance</i> |
|---------------------------------------------------|------------|-----------|-------------------|
| <b>Special Area Plan</b>                          |            |           |                   |
| T-C Town Center District                          | X          |           | N                 |
| <i>Special Districts/Zones</i>                    | <i>Yes</i> | <i>No</i> | <i>Compliance</i> |
| <b>Special Purpose and Overlay Districts</b>      |            |           |                   |
| T-C Town Center District                          | X          |           | N                 |
| <b>Trails</b>                                     | X          |           | Y                 |
| <b>Rural Preservation Overlay District</b>        |            | X         | N/A               |
| <b>Development Impact Notification Assessment</b> |            | X         | N/A               |
| <b>Project of Regional Significance</b>           |            | X         | N/A               |

## DEVELOPMENT STANDARDS

*Pursuant to Title 19.10, the following parking standards apply:*

| Parking Requirement |                                     |                                                                                   |          |              |          |              |            |
|---------------------|-------------------------------------|-----------------------------------------------------------------------------------|----------|--------------|----------|--------------|------------|
| Use                 | Gross Floor Area or Number of Units | Required                                                                          |          |              | Provided |              | Compliance |
|                     |                                     | Parking Ratio                                                                     | Parking  |              | Parking  |              |            |
|                     |                                     |                                                                                   | Regular  | Handi-capped | Regular  | Handi-capped |            |
| Loading Spaces      | 264,189 SF                          | 3 spaces for first 50,000 SF, then one add'l space per 100,000 SF GFA over 50,000 | 6 spaces |              | 7 spaces |              | Y          |

## ANALYSIS

Per Title 19.10.020(D), loading spaces, which are 15 feet wide by 25 feet long at a minimum, shall be located and designed adjacent to, or as close as possible to the main structure. Because of the need for deliveries to the restaurant, one loading space is required on the Pad 'G' site but cannot be provided given the proposed site design. The approved site plan for the overall shopping center shows more loading spaces than are required by Title 19 based on total floor area; however, some of the loading spaces are not in the locations where they are required (i.e., adjacent to the main structure). As the proposed restaurant with drive through is part of the Shopping Center use and the overall parking requirement is met, not all of the parking spaces provided for the pad site are needed, leaving more space for an alternative site design that would accommodate a loading space.

## **FINDINGS**

In accordance with the provisions of Title 19.18.070(B), Planning Commission and City Council, in considering the merits of a Variance request, shall not grant a Variance in order to:

1. Permit a use in a zoning district in which the use is not allowed;
2. Vary any minimum spacing requirement between uses;
3. Relieve a hardship which is solely personal, self-created or financial in nature.”

Additionally, Title 19.18.070(L) states:

“Where by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of enactment of the regulation, or by reason of exceptional topographic conditions or other extraordinary and exceptional situation or condition of the piece of property, the strict application of any zoning regulation would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardships upon, the owner of the property, a variance from that strict application may be granted so as to relieve the difficulties or hardship, if the relief may be granted without substantial detriment to the public good, without substantial impairment of affected natural resources and without substantially impairing the intent and purpose of any ordinance or resolution.”

No evidence of a unique or extraordinary circumstance has been presented, in that the applicant has created a self-imposed hardship by designing the pad site such that a loading space cannot be safely accommodated. Alternative design of the site would allow conformance to the Title 19 requirements. In view of the absence of any hardships imposed by the site’s physical characteristics, it is concluded that the applicant’s hardship is preferential in nature, and it is thereby outside the realm of NRS Chapter 278 for granting of Variances.

## **PLANNING COMMISSION ACTION**

There was one speaker opposed to this project at the Planning Commission Meeting.

## **NEIGHBORHOOD ASSOCIATIONS NOTIFIED**

36

## **NOTICES MAILED**

536 by City Clerk

## **APPROVALS**

2

## **PROTESTS**

1