

## FROM THE PLANNING COMMISSION MINUTES OF JANUARY 13, 2011

### 9. APPEAL

Request submitted by SYERS PROPERTIES III, LLC appealing the Development Services Director's Determination of Consistency/Determination of Similar Use (Pre-application PA09-0011) of a retail drug store; including drive-up window, off-sale beer and wine sales, retail health center, and 24-hour operation; within the Town Center West Development Plan area (Planned Development PD95-0002) on September 28, 2009, on property identified by Assessor's Parcel Number 117-180-12, consisting of 2.04 acres, located at the southwest corner of the intersection of Latrobe Road and White Rock Road, in the El Dorado Hills area, Supervisorial District II.  
*[Project Planner: Gina Paolini]*

County Counsel Paula Frantz stated that this item had been taken into consideration by the Board of Supervisors in Closed Session due to significant exposure to litigation. She recommended that the Commission adjourn to Closed Session due to significant exposure to litigation. Chair Rain adjourned the meeting into Closed Session.

County Counsel Frantz indicated that there was nothing to report out of Closed Session. She stated for the record and for members of the public that at the Board's Closed Session it was reported out that with a 3-2 vote, the Board had concluded that due to a lack of notice given and significant exposure to litigation, they waived the official 10-day appeal period and allowed the appeal to be heard on its merits today.

Gina Paolini presented the item to the Commission with a recommendation of denial of the appeal.

Todd Williams/appellant's agent made the following comments:

- Appeal is not a threat of litigation against the County;
- Town Centers West and East Planned Developments are distinct, but complimentary and Town Center East should have been considered during the review;
- Summarized each Center's allowed uses;
- Argued that the proposed use of a drug store is not an ancillary retail store, therefore, it is not one of the allowed uses and public hearing channels should have been used in this case;
- Proposed use would provide a conflict between the two Town Centers and bleed sales away from Town Center East;
- Approval of the proposed use sets a bad precedent and makes the allowed uses list invalid; and
- Recognized that Town Center West has lagged in development compared to Town Center East, but that doesn't justify the rules being bent.

Dr. Charles Syers stated he was there to represent his tenants, primarily the small business owners who rely heavily on foot traffic. In reference to the letter submitted by Doug Wiele, Dr. Syers responded that there is no landlord/tenant dispute and has in fact attempted to highlight

CVS' presence in the Town Center. He stated that CVS holds an exclusive contract for Town Center East, thereby having the ability to control that space for long-term. Dr. Syers further said that CVS' options would be: (1) Have two stores within 35 seconds of each other; (2) Go dark in current location; or (3) Sublet the space to another store, possibly hurting the surrounding small businesses.

The applicant's agent, Bill McDermott/Armstrong Development, addressed the basis of the appeal and concurred with the Department's decision in December 2009 that the proposed use was consistent with Town Center West. He stated that CVS is a "stop-by" use and would be considered ancillary to the surrounding area. Mr. McDermott read the Planned Development into the record and felt that since the guidelines have been met, the appeal should be denied. He also stated that in regards to the existing lease, Syers Properties does have the ability to either release CVS from the lease or require them to continue to pay the lease while working with Syers Properties to fill the space.

Michelle Moore/applicant's agent stated that Town Center East is a thriving shopping center and the space would easily be re-rented and felt that the surrounding businesses would not be negatively affected. She also said that a determination of similar use does not require a review of the other Town Center's allowed uses.

Craig Sandberg, representing the Mansour Company, provided a background history on the creation of the Planned Development and the reasoning for identifying similar uses up front in order to avoid multiple hearings to determine consistency. He believed that the decision by the Development Services Director was appropriate as CVS is designed for convenience and this type of drug store being in existence was never anticipated in 1995 when the allowable uses were identified.

Robin Mizell, owner of Bark Avenue, stated that her store is directly across from CVS and was representing 10 business owners, 9 of which were small independent businesses, and wanted to provide the Commission with a merchant's perspective of the situation. Ms. Mizell stated that she chose this location for her store specifically on the strength of the anchors, CVS and Nugget Market.

Doug Wiele/Foothill Partners said that he had been interested in building a downtown and after meeting Tony Mansour was able to begin creating their grand vision. He stated that they have never distinguished between the two Town Centers except when dealing with government processes. He felt that this is a semantics issue and not a land use issue. Mr. Wiele stated that when the Planned Development was originally written, drug stores were very different from what they are now. The required store space needed for a drug store has decreased; they are now more of a convenience store than a regular store and are no longer considered a major tenant but instead as a pad tenant. He felt that CVS is no longer the appropriate business for the size of their current building and requested that the appeal be denied.

Commissioner Pratt made the following comments:

- Planned Development has been in place for over 15 years and understands that drug stores have changed into convenience stores;

- Availability of current CVS location will create another set of opportunities for shops;  
and
- Finds the proposed use is consistent.

Commissioner Heflin stated that rules allow for consistent use and finds that this proposed use is consistent with the intent and purpose of the Planned Development. He also felt that it would provide new economic opportunities.

Commissioner Tolhurst indicated that if the store went dark, it would be re-rented fairly quickly. He felt that in today's terms and reviewing the list of allowable uses, the proposed use is appropriate and concurs with the Development Services Department Director's decision.

Chair Rain stated that the Commission's first obligation is land use and they follow land use law. He made the following comments:

- This will help the community;
- Need to ensure there is no blight;
- Consistent with Planned Development; and
- Proper channels were used by the Development Services Department Director.

No further discussion was presented.

**Motion: Commissioner Heflin moved, seconded by Commissioner Pratt, and carried (4-0), to take the following action: 1. Deny the appeal thereby upholding the Development Services Director's Determination of Consistency with the Town Center West Development Plan (PD95-0002) and allow Building Permit No. 197682 and Grading Permit No. 197684 to be issued by Building Services.**

**AYES: Tolhurst, Pratt, Heflin, Rain**  
**NOES: None**  
**ABSENT: Mathews**

This action can be appealed to the Board of Supervisors within 10 working days.