

**CITY OF DERBY  
PLANNING COMMISSION MINUTES  
June 16, 2011 6:30 PM**

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**MEMBERS PRESENT:** Shawn Riley, Sue Wright, Doug Chambers, Eric Tauer, Keith Volz, Pat Baer, Jack Hezlep, Tasha Brackeen, Gunter Hansen

**MEMBERS ABSENT:** Kelly Farber

**CITY STAFF PRESENT:** Charlie Brown, Director of Community Development; Bud Newberry, City Planner; Stephanie Cox, Recording Secretary

**CONSIDERATION OF MINUTES:**

Minutes of May 19, 2011 Planning Commission Meeting.

MOTION: Jack Hezlep  
SECOND: Keith Volz  
VOTE: 8-0-; Pat Baer abstained

**PUBLIC FORUM OPENED:**

Keith Volz commented that the updated Zoning Ordinance received by the Planning Commission in May was well done.

**PUBLIC FORUM CLOSED:**

**AGENDA ITEM NO: 1**

**DESCRIPTION:** Zone Change Request from B-2 "Neighborhood Business District" to the B-3 "General Business District" (Public Hearing)

**GENERAL LOCATION:** North of the Tall Tree Road between Newberry Street and Rock Road

**APPLICANT:** William Lusk, Jr. Living Trust

**AGENT:** Baughman Company, P.A.

**REASON FOR REQUEST:** Allow for general business development

**BACKGROUND INFORMATION:**

- The application area is legally described as Lot 3, Block C, The Oaks, an Addition to Derby, Sedgwick County, Kansas.
- The Zone Change Request requires a Public Hearing. The “Notice of Public Hearing” was published in the Derby Informer on May 25, 2011. Notices were also sent to neighboring property owners as prescribed by state law. The official ownership list is on file at City Hall.
- To date, City staff has not received any verbal or written comments, positive or negative, concerning this case.
- The B-2 zoning for this property was approved on July 11, 2000.

#### Surrounding Land Uses and Zoning

- This subject has been thoroughly discussed in the Findings of Fact.

#### Comprehensive Plan

- Derby’s adopted Comprehensive Plan has this property shown as being for development as General Commercial, the zoning requested by the applicant.

#### Municipal Services

- Streets: This site is adjacent to Rock Road, Tall Tree Road and Newberry Street. Rock Road, recently upgraded to a 4 lane, curb and gutter urban section, is considered to be a major arterial roadway and is an important transportation link to Wichita and McConnell Air Force Base. Tall Tree, which borders this property on the south, is the east entrance to The Oaks, a 600 acre community development containing approximately 400 single family residential building lots, 400 apartments, golf course and 60-80 acres of property available for commercial development.
- Water: Water service is available to this site with an existing 24” water main line located along the west side of Rock Road. There is also an existing 8” main line running along the west side of Newberry Street. These lines will provide adequate water pressure and fire flow for the uses which will be allowed to locate in this development.
- Drainage: All drainage issues were addressed during the platting process utilizing the City’s Storm Water Management Criteria.
- Sanitary Sewers: Sanitary sewer main lines are also existing on the west, north and east sides of this site and are capable of providing adequate service for future development of the property.
- Zoning: Zoning of this property to B-3 “General Business” use will allow the owners additional opportunities to market this site which have not been available with its current zoning.

### **FINDINGS OF FACT**

Section 1100(I) of the Zoning Regulations provides the guidelines for the development of Findings of Fact which act to support the Planning Commission's recommendation of this rezoning case. The Planning Commission may find that not all factors will be relevant to this zone change request. Factors determined to be relevant by the Commission should be given consideration relative to both positive and negative findings. In order to properly make a recommendation to the City Council, whether to approve or deny the request, the Planning Commission must make specific and substantiated Findings of Fact supporting its recommendation. Should the Commission recommend approval, such approval should require the site to be platted within one year of the City Council's approval.

The following are the rezoning factors that the Planning Commission must consider, a brief explanation of each factor, and staff's opinion of findings (*in italics*) of each factor:

**1. THE ZONING, USES AND CHARACTER OF THE NEIGHBORHOOD:**

(Factual description of the application area and surrounding property as to existing zoning, land uses, general condition, age of structures, etc.)

*This property is 4.6 acres, more or less, and lies north of Tall Tree Road between Rock Road and Newberry Street. The subject property is currently zoned B-2 "Neighborhood Business". This tract is vacant, as are all of the adjoining lots.*

*Except for the west three-hundred feet of the south lot line, which is adjacent to a B-2 zoned lot on the south side of Tall Tree, all of the properties abutting this parcel are zoned B-3 "General Business". None of these properties have been developed yet but the parcel abutting the southeast corner of the request area is currently being considered as the site for a new Braum's restaurant. The Hampton Inn, Derby's only hotel, is located approximately 600 feet north of the subject property and is the only commercial development located nearby. The only nearby property zoned for residential use is northwest of this lot and is zoned R-3 "Multi-Family Residential". It is the site of The Greens apartment complex. Water and wastewater services are in place to serve this property.*

*The B-2 zoning district is typically used as a buffer between properties that have been zoned for higher intensity uses, such as B-3, and properties that are zoned for residential, or a less intensive commercial use, such as B-1. In this location where this property is virtually surrounded by B-3, buffering is not a factor.*

**2. THE SUITABILITY OF THE SUBJECT PROPERTY FOR THE USES TO WHICH IT HAS BEEN RESTRICTED:**

(How is the property currently zoned and what uses are allowed on the property? Are these uses suitable given surrounding zoning and site criteria? Are the current allowed uses the only ones that might be appropriate for this property?)

*This parcel of land was used for agricultural purposes prior to being purchased for commercial development by the current owner. With its present B-2 zoning, prospective developers have a fairly extensive list of permitted uses available for use on the property. If the requested change from B-2 to B-3 is approved, all of the uses permitted in the B-2 district plus an additional seventeen uses listed in B-3 will be allowed. Of those seventeen additional uses, four can be allowed in B-2 as conditional uses and the other thirteen do not seem to be objectionable uses for this particular location. Some of the more significant new uses would include churches, home improvement centers and hotel/motels. The size and shape of this particular property would not likely accommodate a home improvement center so the uses that will be allowed with the requested zoning seem appropriate for this location.*

**3. EXTENT TO WHICH REMOVAL OF THE RESTRICTIONS WILL DETRIMENTALLY AFFECT NEARBY PROPERTY:**

(Can the uses allowed in the requested district be good neighbors to existing development? This is a subjective question. The focus should be on facts, not fears, and should be based on issues that zoning can address (e.g. allowed uses, minimum lot size, height, setbacks, traffic generation, landscaping and screening, use limitations, etc.)

*The only existing commercial developments located nearby are the Derby Marketplace and Hampton Inn. Consequently, development of this lot in the near future could not have any detrimental effect on existing adjacent businesses, since there are none. It should also be noted that the properties located on the north, west and south sides of the property proposed for re-zoning are owned by the same owner as the subject lot, making it unlikely that this lot will be sold to anyone wanting to develop a use which could be detrimental to future property sales. Residential uses to the north of this property should not experience traffic difficulties given the sites immediate access to Rock Road and Tall Tree.*

**4. LENGTH OF TIME SUBJECT PROPERTY HAS REMAINED VACANT AS ZONED:**

(Factual information, but its importance may be somewhat subjective. A property may be vacant because the current zoning is unsuitable, but there may be other reasons not related to zoning. Some examples might be a glut of available property of the same zoning district, financing problems, land speculation, fragmented ownership, lack of available public services or other development problems).

*This property's principal use prior to being zoned B-2 on July 11, 2000, was agriculture. It has been vacant since being re-zoned. A lot of discussion has taken place in recent years concerning the perceived glut of property zoned B-3 "General Business". However, in the five and one-half year period since January*

1, 2006, only one of the existing 13 vacant properties zoned B-2 (1.1 Ac.) has been developed while twenty-one lots have been developed that were zoned B-3 (55.4 Ac.). In addition, there are proposals currently being considered to develop another sixteen existing parcels zoned B-3 for a total of 48.8 additional acres and a grand total of 104.2 acres. This will leave approximately 161.8 acres of undeveloped B-3 property in Derby compared with 31.66 acres of B-2.

**5. RELATIVE GAIN TO THE PUBLIC HEALTH, SAFETY AND WELFARE AS COMPARED TO THE LOSS IN VALUE OR THE HARDSHIP IMPOSED UPON THE APPLICANT:**

(The protection of public health, safety and welfare is the primary basis for zoning. The relationship between the property owner's right to use and obtain value from their property and the City's responsibility to its citizens should be weighed).

*The re-zoning of the subject property from B-2 "Neighborhood Business" to B-3 "General Business" should not have a negative impact on the community's health, safety, or welfare since all infrastructure required for the development of this lot is already in place and municipal and emergency services can be provided in the additional area with no negative impact. However, there could be some negative impact on the owner of the property if the requested zone change is not approved. Since retail and service business facilities located on B-2 zoned property are limited to a maximum of 5,000 square feet in size, the B-2 zoning district is typically assigned to much smaller lots. The lot proposed for re-zoning is approximately 200,000 square feet in size. Although lot coverage in the B-2 district is allowed up to 40%, on this lot the developer would be limited to a building of 5,000 square feet in most cases, or 2.5% lot coverage, thus reducing the value of the property significantly.*

**6. CONFORMANCE OF THE REQUESTED CHANGE TO THE ADOPTED OR RECOGNIZED COMPREHENSIVE PLAN:**

(Does the request agree with the adopted plan recommendations? If not, is the plan out-of-date or are there mitigating circumstances which speak to the nonconformity?)

*This property is shown in the Comprehensive Plan for development as "General Commercial" and the location of this particular parcel is well located for the proposed zoning. It is staff's recollection that this parcel of land was zoned B-2 in exchange for commission approval of B-3 zoning on the site across Newberry to the west, which was being contemplated as the site for a hotel at the time.*

**7. IMPACT OF THE PROPOSED DEVELOPMENT ON COMMUNITY FACILITIES:**

(Are water and sewer available for extension? How are roads impacted? Can other community facilities (e.g. police, fire, parks, libraries, and schools) handle the increased development? Should be based on factual information referencing standards used to make the determination).

*Municipal sanitary sewer, water and streets are available to this site as are drainage structures required to address runoff as the result of development through improvements installed with the development of The Oaks addition. Additional improvements such as right turn lanes, sidewalks and traffic signals have also been installed. Emergency services to this area have been provided by the city for many years and development of this site will not create any additional burden on these departments. There should not be any impact on schools or the Library with the approval of this request.*

#### **8. OPPOSITION OR SUPPORT OF NEIGHBORHOOD RESIDENTS:**

(This is just one of the factors to be considered and by itself is not sufficient reason to approve or deny a request).

*City staff has not received any inquiries or comments, either positive or negative, concerning the proposed re-zoning of this property, from the adjacent property owners.*

#### **9. RECOMMENDATION OF PROFESSIONAL STAFF:**

(Should be based on the preceding eight factors, adopted plans and policies, other technical reports (e.g. Capital Improvement Program, facility master plans, etc.) which speak to the topic and staff's best professional judgment).

*Based on the preceding factors provided, City staff supports the requested zone change from B-2 "Neighborhood Business" to B-3 "General Business".*

#### **RECOMMENDATION:**

Move to approve the requested Zone Change from B-2 "Neighborhood Business" to B-3 "General Business".

#### **DISCUSSION:**

Jack Hezlep asked why this property wasn't zoned B-3 in the first place.

Bud Newberry replied that was a good question. This property was probably not zoned properly in the first place.

Chairman Tauer asked will we be able to turn onto and off of Rock Road when the rest of the area along Rock Road is developed and there is a lot of traffic trying to turn into areas where development is along the frontage and behind it? It's important to have a mix of property types.

Bud Newberry replied access has been and will continue to be a focus of the City Engineer for any future development.

Sue Wright asked if the residents of Tall Tree were notified of this zone change.

Bud Newberry replied the notification went to homeowners within 200 feet of this property in accordance with the state regulations and we also published a zone change notice in the newspaper.

**PUBLIC HEARING OPENED:**

**PUBLIC HEARING CLOSED:**

**Findings of Fact:** Chairman Tauer led discussion and review of the findings as presented in the staff report. The consensus of the Commission was to approve the Zone Change, based on support of Findings of Fact.

MOTION: Tasha Brackeen moved to approve subject to staff comments.

SECOND: Jack Hezlep

VOTE: 8-0-1; Pat Baer abstained

Bud Newberry requested that the site plan review for Original Bread, Inc. (Panera Bread) be moved to agenda item 2.

**AGENDA ITEM NO:** 2

**DESCRIPTION:** Site Plan Review – Lot 1 and a portion of Lot 3, Block 1, Derby Marketplace Third Addition

**GENERAL LOCATION:** East side of Rock Road north of the intersection of Meadowlark and Rock Road

**APPLICANT:** Original Bread, Inc.

**AGENT:** Warren & Goodin, Inc.

**REASON FOR REQUEST:** New restaurant

**BACKGROUND INFORMATION:**

- This site is located on the northeast corner of the intersection of Rock Road and Meadowlark Boulevard.
- This site is located within the Derby Marketplace Third Addition. The plat for this addition was approved by action of the Derby City Council on May 12, 2009.
- Adjacent land uses include a 15,000 square foot commercial strip center to the north, the Kwik Shop fuel station to the east, Rib Crib barbeque restaurant across Meadowlark to the south and Intrust Bank on the west side of Rock. All of these properties are zoned B-3, as is the subject site.
- A portion of Lot 3, located to the north, is currently being purchased by this developer to provide additional parking area for this restaurant. That sale will have to be completed prior to the Certificate of Occupancy being issued by the city. The total square footage of this lot and the additional property being added totals approximately 36,000 square feet, which exceeds the minimum requirements of the B-3 district in all respects.
- This property is zoned B-3 "General Business District".
- Restaurant facilities are an outright permitted use in the B-3 District.

#### **STAFF COMMENTS:**

1. Legal Description. The legal description for this site is generally Lot 1 and a portion of Lot 3, Block 1, Derby Marketplace Third Addition, Derby, Sedgwick County, Kansas. The actual legal is quite lengthy and is found on the Title Sheet of the site plan documents.
2. Building Setbacks. The proposed building meets all setback requirements for the B-3 district.
3. Easements. The official plat of this lot shows a 20' wide landscape and sidewalk easement adjacent to the south and west property lines. There is also a small 20' by 20' utility easement located in the southeast corner of the lot. Other easements include a 100' wide right-of-way easement for the overhead power lines belonging to KG&E which covers a large portion of the east side of this site. All of these encumbrances are shown on the site plan without any illegal encroachments.
4. Access. Access to this site is gained with the placement of an entrance at the southeast corner of the site and through the existing parking area to the north. The southeast entrance is accessed by entering the drive to the Kwik Shop fuel station entrance off of Meadowlark Boulevard and is located with the authority of an existing cross lot access agreement between the developer of this project and the Kwik Shop. Access through the north parking area is allowed through the existence of a cross lot agreement that covers the entire Marketplace. Copies of these agreements need to be furnished to the city. These entrances exceed the width requirement for two way traffic. Access to the site for emergency services has been approved by the Fire Chief. Direct access from Rock Road is not provided.

5. Streets. This site is located adjacent to Rock Road, Derby's most highly traveled arterial street and Meadowlark Boulevard, one of Derby's major cross town arterials. Rock Road is already provided with existing accel/decel lanes and turn lanes for easy entrance to the Marketplace. A project to re-build a portion of Meadowlark, which will begin within the next few months, will construct a new decel/turn lane along the north side of the street all the way east of the circulation road entrance to the Marketplace that will improve access to the Kwik Shop fuel station entrance, thus improving access to this site.

6. Parking/Circulation Aisles. Based on a preliminary floor plan of the restaurant provided by the developer, staff has determined the occupancy load of the restaurant to be 144 which would require that 48 parking spaces (144 occupant load / 3 occupants per stall = 48 stalls) be provided. Forty-six properly sized parking stalls and two handicap compliant stalls are shown on the site plan for a total of 48 spaces, which meets the requirement. This number matches the number shown on the Site Dimension Plan which was calculated on the square footage of the entire building. The Derby Building Official will calculate the official occupancy load for the building when he receives the building plans and the required number of parking spaces could change at that time. All circulation aisles and driveways are shown 25' in width that exceeds the minimum of 24' for two way circulation.

Since this restaurant is equipped with a drive-through facility, 5 stacking spaces are required to be placed from the entrance into the drive-through to the order box. This area measures approximately 110' which will provide 5.5 stacking spaces, and meets the requirement.

When Lot 3 was presented for Site Plan Review on January 3, 2008, it was determined that their requirement for parking was 50 spaces. There were 141 provided which gave this site 91 extra parking stalls. Approval of this plan will reduce the parking available to Lot 3 by 27 spaces which will leave it with an excess of 73 spaces, making this arrangement acceptable to city staff.

7. ADA. Although there are no spot elevations on the Grading Plan, there are elevation contours which indicate compliance with ADA grading requirements within, and adjacent to handicap stalls. Details of the handicap accessible stalls shown on the Site Plan appear to indicate compliance with ADA requirements. Three handicap stalls are required to meet the ordinance requirement for this parking lot. Five are provided, exceeding the requirement. The building official has approved the location for the handicap parking stalls, which are shown adjacent to the buildings entrance.

8. Signage. All of the signage proposed by the applicant is in compliance with the sign regulations of the City of Derby. Permits for these signs will need to be obtained prior to installation. Although the monument sign and its location have been approved in the overall development sign plan through the Derby Board of Zoning Appeals, Panera's use of this sign will have to be approved by the Marketplace development company

prior to the city granting a permit for the installation, and a copy of the approval provided to the city.

9. Site Lighting. All of the exterior lighting shown on the Photometric Site Plan included shows the light fixtures attached directly to the building. Although some of the light levels adjacent to property lines are higher than we normally want, a plan note states that the fixtures need to be adjusted to prevent light and glare from intruding onto adjoining properties and street rights-of-way. The developer needs to take precautions to insure this is the case.

10. Landscape/Screening and Buffering.

Landscape Street Yard. Since this site has a frontage adjacent to both Rock Road and Meadowlark Boulevard, a landscape street yard 10 feet in depth is required along the west and south lines of this property. The landscape street yard for Rock Road measures 1,741 S.F. ( $10' \times 174.09' = 1,740.9 = 1,741$  S.F.). A total of 4 shade trees are therefore required ( $1,741$  S.F. /  $500$  S.F. per tree =  $3.48 = 4$ ). There is 1 shade tree, 1 ornamental and 8 shrubs of approved species shown on the Landscape Plan for this area which is the equivalent to 2 shade trees leaving a requirement for 2 additional trees or equivalent. The landscape street yard for Meadowlark measures 1,625 S.F. ( $10' \times 162.5' = 1,625$  S.F.). A total of 4 shade trees are therefore required ( $1,625$  S.F. /  $500$  S.F. per tree =  $3.25 = 4$ ). There are 2 shade trees, 1 ornamental and 14 shrubs of approved species shown on the Landscape Plan for this area which is the equivalent to 3 shade trees leaving a requirement for 1 additional tree or equivalent.

This parking lot has less than 50 parking stalls so the developer is not required to place trees in the parking lot islands.

Screening/Buffering. All of the properties located adjacent to this property are zoned B-3, the same zoning as the subject site. Therefore, no screening or buffering is required in this location.

Parking Lot Screening/Landscaping. Since none of the new parking stalls are adjacent to city streets, and the existing parking which will become a part of this site is already screened, no additional parking lot screening will be required.

Equipment Screening. This building will be equipped with roof top HVAC units which will be properly screened with a parapet wall which varies from 4'9" to 6'3" in height. Some of the wall signage will provide additional screening of the equipment. The electrical transformer is screened with the placement of landscaping.

Trash Receptacle Screening. The enclosure for the trash receptacles is shown being placed within the 25' building setback which is not normally allowed. In this case where the power line easement prevents it from being located elsewhere, staff is suggesting that the commission decide whether or not to allow the enclosure in this location. Staff is also suggesting that it would be appropriate for the commission to require adequate

screening of the enclosure with landscaping if it is allowed to remain in the location shown. More information is needed in regard to the type of material which will be used in the construction of the trash receptacle enclosure.

#### Miscellaneous Landscaping Notes.

Note 3 on the Landscape Plan indicates the landscaping will be irrigated with an automatic irrigation system, including the installation of an automatic rain sensing device which meets Derby's requirement.

The applicant should be aware that final acceptance of the landscaping is required prior to issuance of a Certificate of Occupancy, and acceptance will be based on the Landscape Plan as submitted for approval at Site Plan Review, not on the minimum requirements of the code. Changes to the plan will have to be approved by the Planning Commission.

The applicant is reminded that all landscaping is to be maintained in good condition and that maintenance includes replacing dead or diseased plants and trees.

The applicant should verify that there are no vision problems created at the entrances with the placement of trees and landscaping.

The use of BMP's is required during the construction of this building to control erosion per city ordinance.

11. Drainage. The Grading Plan does not have enough detail to determine how storm water will be managed on this site. Although there are two inlets indicated along the south side of the drive-through lane, nothing else is shown. Additional information, including elevations and contours will need to be provided prior to Site Plan Review to be reviewed by the Planning Commission and staff.

12. Utilities. Sanitary sewer service for this facility is shown on the Utility Plan connected to the existing manhole located approximately 9' east of the east property line in the Kwik Shop fuel station drive. Plans of the sanitary sewer system installed within the Marketplace indicate a stub was placed extending west of the manhole approximately 4'. This installation will require removal and replacement of some concrete pavement on the Kwik Shop site. The grease interceptor shown on the plan will have to be approved by the Derby wastewater department supervisor prior to installation.

Domestic water service and the fire protection line are both shown tapped into an existing 16" public water line that is located near the south property line. Sufficient water volume and pressure are available from this line to provide adequate water service and fire protection to the site. Applicant needs to contact El Paso Water Co. (788-1424) to coordinate water meter sizing, location and installation, and the location shown on the corrected plan.

The Fire Protection Line is also shown tapped into the existing 16" water main near the south property line. The applicant is advised to verify the location of the Fire Department Connection (FDC) with the Derby Fire Chief. The Site Utility Plan seems to indicate that the building will have an internal fire protection sprinkler system.

There is an existing fire hydrant located on the south side of this site and a second hydrant approximately 150' east of the east property line. A third hydrant is located approximately 200' north of the north property line. These hydrants will provide adequate coverage for this facility and this arrangement has been approved by the fire department.

Electric service for this site is provided underground from a pad mounted transformer located on the south side of the drive-through lane. The applicant should verify the connection point for gas service, as the connection point shown could be a Southern Star pipeline and not Kansas Gas Service, which is the line they will need to make a connection to. The connection point for telephone and cable is not shown.

13. Pedestrian Access. In accordance with requirements in the Site Plan Design Criteria, a pedestrian connection (5' sidewalk) to provide a link between the project and adjacent streets is required. A sidewalk needs to be provided connecting this site with the existing bike path along Rock Road or a new bike path being constructed with the project to re-build Meadowlark. This location needs to be marked with a crosswalk sign and pavement marking to indicate the existence and location of the crossing.

14. No Smoking. In accordance with the recently approved ordinance banning smoking in public places and places of employment, "No Smoking" signs must be posted and a 20' smoke free zone must be established at all entrances to the facility.

15. Design Standards. Elevations for all four sides of the building are shown on the Exterior Elevation sheets. The applicant is encouraged to provide colored drawings prior to, or at the Site Plan Review meeting. Colors and building materials will be discussed at the review.

16. Miscellaneous. The applicant is reminded that a Business License and all applicable liquor/cereal malt beverage licensing must be completed prior to issuance of the Certificate of Occupancy.

#### **CORRECTED PLANS:**

Following Planning Commission approval, the applicant will need to revise the Site Plan documents to incorporate all corrections or comments and submit 3 revised copies to the city.

#### **RECOMMENDATION:**

Approve the Site Plan for Lot 1, Block 1, Derby Marketplace Third Addition, subject to staff comments.

## **DISCUSSION:**

Keith Volz asked does the signage have to be approved by Target?

Bud Newberry replied yes, and we requested confirmation of that approval from the developer.

Jack Hezlep asked why does Target have to approve signage for Panera Bread?

Bud Newberry replied that it was part of Target's agreement with the developer. When a big box store like Target is recruited into a development like the Marketplace, they ask for a lot of input into the entire development.

Chairman Tauer asked if there was a formal cross parking agreement that will allow Panera's customers to utilize parking for overflow situations.

Bud Newberry replied with the additional parking spaces being acquired to the north, this shouldn't be a problem. However, all of the parking in the mall is shared parking by written agreement.

Pat Baer stated Sedgwick County has a strong advocate for ADA. I noticed that the ADA parking stalls don't have a van accessible stall. Does the city have a concern? Would you consider using two universal handicap stalls in that area?

Keith Volz stated that's right, if something isn't right he will let people know.

Walter Warren, Warren & Goodin Architects replied it's my understanding that what we have will work and it's been acceptable on past projects. That way we don't have to choose which side the van has to park on.

Pat Baer stated I'm a little concerned with some of the grading over on the east side of the building it seems flat and could pond water.

Walter Warren replied the existing parking lot to our north has a hump in the drive so very little if any of the existing parking lot will drain our direction. I would like to address the trash enclosure. Due to existing easements, this lot was difficult to work with and unless we wanted the building to face the fuel station this was the only location for the enclosure. We are planning to use matching brick and stone to go around it as well as shrubbery. We have nice metal louvered gates, we've tried to dress it up as much as possible.

Keith Volz asked are you going to build the enclosure on the existing pavement.

Walter Warren replied we are going to put in a concrete pad.

Keith Volz asked are the curbs going to be taken out.

Walter Warren replied no, we don't anticipate taking them out.

Keith Volz stated I would like to see more landscaping around the trash enclosure, maybe a larger landscaping bed by adjusting the sidewalk. It's a nicely designed enclosure. Also, I would like to see you add landscaping in the open lawn between the drive-through and the road? There is some confusion in the landscape notes on the type of grass that is called for. Is it sod or turf grass?

Walter Warren replied we plan to replant any turf grass that is torn up during construction. We will be putting our own irrigation in and using sod up close to the building.

Sue Wright asked what is the timeline for construction and will the street project planned for Meadowlark create an access problem?

Charlie Brown replied we are still acquiring easements, land and rights-of-way for this project. We are hopeful to bid this project in August or September. As far as access to the site during construction there is one large driveway that will serve the fuel station and the Panera site. It will remain open and we will build the street in phases. When complete the road will have two lanes going east, a full continuous left turn lane in the middle, two lanes going west and the right turn lane to get onto Rock Road.

Walter Warren stated we are hopeful for a November opening.

MOTION: Keith Volz moved to approve subject to staff comments and additional landscaping is provided around the trash enclosure.

SECOND: Pat Baer

VOTE: 9-0, unanimous

**AGENDA ITEM NO:** 3

**DESCRIPTION:** Site Plan Review – Lot 4, Block 1, Derby Marketplace Third Addition

**GENERAL LOCATION:** East side of Rock Road north of the intersection of Meadowlark and Rock Road

**APPLICANT:** GMRI, Inc. – Darden Restaurants

**AGENT:** GHA Architectural/Development

**REASON FOR REQUEST:** New restaurant

**BACKGROUND INFORMATION:**

- This site is located north of Capital Federal on the east side of Rock Road approximately 750 feet north of Rock's intersection with Meadowlark Boulevard.
- This lot is located within the Derby Marketplace Third Addition. The plat for this addition was approved by action of the Derby City Council on May 12, 2009.
- Adjacent land uses include a 15,000 square foot commercial strip center to the south and undeveloped property zoned B-3 to the north, east and west.
- A split of Lot 4, requested by the owner of the property, which reduces the size of the subject site by .95 acres has been approved and will be registered with Sedgwick County prior to this site plan being reviewed by the Planning Commission. The parcel which is the subject site of this review is approximately 1.97 acres, or 85,977 square feet which exceeds the minimum requirements of the B-3 district in all respects.
- This property is zoned B-3 "General Business District".
- Restaurant facilities are an outright permitted use in the B-3 District.

**STAFF COMMENTS:**

1. Legal Description. The legal description for this site is Part of Lot 4, Block 1, Derby Marketplace Third Addition, Derby, Sedgwick County, Kansas.
2. Building Setbacks. The proposed building meets all setback requirements for the B-3 district.
3. Easements. The official plat of this lot shows a 20' wide utility easement located near the east property line of this site. There is also a 20' wide landscape and sidewalk easement adjacent to the west property line. Other restrictions include a 75' wide pipeline right-of-way, the east 15' of which is adjacent to the west property line. There is a 32' wide joint access easement which is divided by the east line and another 32' wide joint access easement that is adjacent to the north side of the north property line but is entirely outside of the limits of this lot. All of these encumbrances are shown on the site plan without any illegal encroachments.
4. Access. Access to this site is gained with the placement of two entrances, one near the northwest corner of the site and one at the southeast corner. Both of these entrances are off of the private drives that circulate traffic throughout the Marketplace. Both of the entrances exceed the width requirement for two way traffic. Access to all sides of the building is available on driveways that are sized to adequately accommodate emergency equipment. Direct access from Rock Road is not provided but there is an existing turn lane which has been installed along this side of Rock, so there are no additional requirements.

5. Streets. This site is located adjacent to Rock Road, Derby's most highly traveled arterial street, which will provide excellent access to this site with an existing turn lane which has been installed along this side of Rock. There are no additional requirements for streets or turn lanes.

6. Parking/Circulation Aisles. Staff has determined the occupancy load of the restaurant to be 269 which would require that 90 parking spaces (269 occupant load / 3 occupants per stall = 90 stalls) be provided. One-hundred sixteen properly sized parking stalls and five handicap compliant stalls are shown on the site plan for a total of 121 spaces, which exceeds the requirement. All circulation aisles and access to all sides of the building is available with driveways 25' in width that exceeds the minimum of 24' for two way circulation. There were two errors noted on the parking plan. The four stalls north of the handicap parking area are labeled as 9' X 18' but are actually shown to be 19' in length and parking along the east side of the restaurant is labeled as five stalls instead of the 17 shown.

7. ADA. Although there are no spot elevations on the Grading Plan, there are elevation contours which indicate compliance with ADA grading requirements within, and adjacent to handicap stalls. However, construction plans provided to the Building Inspector do contain additional details which contain the elevation data to show ADA compliance. Details of the handicap accessible stalls shown on the Site Plan also appear to indicate compliance with ADA requirements. Three handicap stalls are required to meet the ordinance requirement for this parking lot. Five are provided, exceeding the requirement. The building official has approved the location for the handicap parking stalls, which are shown adjacent to the buildings entrance.

8. Signage. The applicant has provided a detailed signage plan with the site plan documents showing all of the signs which will be installed for this project. All of the signs, the sizes and their locations are in compliance with Derby sign regulations. The monument sign and its location were tentatively approved previously by the Planning Commission with final approval depending on the sign presented at Site Plan Review being in compliance with Derby sign regulations, which it is.

9. Site Lighting. The Photometric Site Plan included shows all light pole locations to be clear of all existing easements. The maximum light levels around the perimeter of the site average between 3.2 and 5.1, indicating only a minimal amount of light spilling over onto adjacent properties and Rock Road. The highest levels of light are located adjacent to the entrances.

10. Landscape/Screening and Buffering.

Landscape Street Yard. Since this site has a frontage adjacent to Rock Road, a landscape street yard 15 feet in depth is required along the west line of this property. The landscape street yard measures 3,034 S.F. ( $15' \times 202.26' = 3,033.9 = 3,034$  S.F.). A total of 7 shade trees are therefore required ( $3,034$  S.F. /  $500$  S.F. per tree =  $6.07 =$

7). There are 5 shade trees and 8 ornamentals of approved species shown on the Landscape Plan which satisfies the requirement. Two of the Redbud trees appear to be in the Southern Star easement and may need to be relocated.

This parking lot has in excess of fifty parking stalls so the developer is required to place trees in the parking lot islands. One tree is required for each 50 parking stalls making the requirement for this site 3 trees (121 stalls / 50 stalls = 2.42 = 3 trees). Three "island" trees have been provided meeting the requirement.

Screening. All of the properties located adjacent to this property are zoned B-3, the same zoning as the subject site. Therefore, no screening is required in this location.

Parking Lot Screening/Landscaping. Proper screening of the parking area on the west side of the lot is shown on the Landscape Plan with the placement of 41 Sea Green Junipers which will meet the requirement.

Equipment Screening. This building will be equipped with roof top HVAC units which will be properly screened with a parapet wall which varies from 4.5 to 7 feet in height.

Trash Receptacle Screening. This plan shows the trash receptacle being enclosed with an 8' high block wall with stone veneer and painted metal gates.

Miscellaneous Landscaping Notes.

Note 15 on the Landscape Plan indicates the landscaping will be irrigated with a high-efficiency automatic irrigation system installed in accordance with local regulations, which now includes the installation of an automatic rain sensing device.

There are additional trees and some screening shown along the east and north lot lines that is not required by the zoning ordinance. The applicant should be aware that final acceptance of the landscaping is required prior to issuance of a Certificate of Occupancy, and acceptance will be based on the Landscape Plan as submitted for approval at Site Plan Review, and not on the minimum requirements of the code. Changes to the plan will have to be approved by the Planning Commission.

The applicant is reminded that all landscaping is to be maintained in good condition and that maintenance includes replacing dead or diseased plants and trees.

The applicant should verify that there are no vision problems created at the entrances with the placement of trees and landscaping.

The use of BMP's is required during the construction of this building to control erosion per city ordinance.

11. Drainage. The Stormwater Management Plan shows that all runoff from this site will be taken to one of the existing drain inlets or to additional inlets being constructed

with this project. This plan is in compliance with the Marketplace Addition's approved Drainage Plan. All of the runoff will eventually be taken to an existing detention pond constructed to take runoff from the Marketplace or to the Rock Road storm sewer system which was designed to handle stormwater from this site.

12. Utilities. Sanitary sewer service for this facility is available by connecting to an existing manhole east of the restaurant. The 1500 gallon oil-water separator shown on the east side of the building meets the requirement.

Domestic water service and the fire protection line are both shown tapped into an existing 16" public water line that is located near the west property line. Sufficient water volume and pressure are available from this line to provide adequate water service and fire protection to the site. However, it appears that the water meter may be within the gas easement and will need to be moved further to the east. Applicant needs to contact El Paso Water Co. (788-1424) to coordinate water meter sizing, location and installation, and the location shown on the corrected plan.

The Fire Protection Line is also shown tapped into the existing 16" water main near the west property line. Location of the Fire Department Connection (FDC) needs to be verified with the Derby Fire Chief. The Utility Plan indicates that the building will have an internal fire protection sprinkler system.

There is an existing fire hydrant located on the west side of this site and a second hydrant near the southeast corner of the site, both within 200' of the restaurant. These hydrants will provide adequate coverage for this facility and this arrangement has been approved by the fire department.

Electric service for this site is provided underground from Rock Road to a pad mounted transformer located near the northeast corner of the building. The applicant should verify the connection point for gas service, as the connection point shown could be a Southern Star pipeline and not Kansas Gas Service, which is the line they will need to make a connection to. The connection point for telephone service is at the southeast corner of this lot.

13. Pedestrian Access. In accordance with requirements in the Site Plan Design Criteria, a pedestrian connection (5' sidewalk) to provide a link between the project and adjacent streets is required. A sidewalk is shown connected with the sidewalk at Rock Road and extends east to the restaurant, which meets the requirement.

14. No Smoking. In accordance with the recently approved ordinance banning smoking in public places and places of employment, "No Smoking" signs must be posted and a 20' smoke free zone must be established at all entrances to the facility.

15. Design Standards. Elevations for all four sides of the building are shown on the Exterior Elevation sheets with the types of material and colors noted, which meets the requirement.

16. Miscellaneous. The applicant is reminded that a Business License and all applicable liquor/cereal malt beverage licensing must be completed prior to issuance of the Certificate of Occupancy.

**CORRECTED PLANS:**

Following Planning Commission approval, the applicant will need to revise the Site Plan documents to incorporate all corrections or comments and submit 3 revised copies to the city.

**RECOMMENDATION:**

Approve the Site Plan for Part of Lot 4, Block 1, Derby Marketplace Third Addition, subject to staff comments.

**DISCUSSION:**

Jack Hezlep questioned the size of the landscape islands in the parking lot and the ability of the trees to survive.

Bud Newberry stated that one of the requirements in the regulations is that any trees or shrubs that die or get diseased must be replaced and the developer of this location is well aware of that requirement.

Keith Volz commented that three of the landscape islands have light poles in them. The elevations are a little difficult to read and my concern is that the trees will grow up into the lights. I also noticed on the south end they are calling for a temporary asphalt curb and I'm not sure that we should allow that.

Bud Newberry replied it's that way because it will be taken out when the lot to the south is developed.

Pat Baer stated the ground south of that is actually higher than the proposed curb and it should help make up for the grade elevation change and it will stop people from trying to park on the dirt. I think it would be a burden to the owner if we required them to put in a curb and gutter only to take it out when that other part develops.

Keith Volz asked if there was anything in the ordinance that regulates the curb.

Charlie Brown indicated that city staff was ok with the temporary asphalt curb.

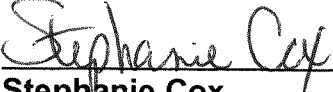
MOTION: Doug Chambers moved to approve subject to staff comments.


SECOND: Gunter Hansen

VOTE: 9-0, unanimous

MOTION TO ADJOURN: Chairman Tauer  
SECOND: Keith Volz  
VOTE: 9-0, unanimous

Meeting adjourned at 8:30 PM.

  
\_\_\_\_\_  
Stephanie Cox  
Recording Secretary

  
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Eric Tauer  
Chairman