



**City of Keller**  
**Planning & Zoning Commission**  
**Meeting Minutes**

Keller Town Hall  
1100 Bear Creek Parkway  
Keller, TX 76248  
817-743-4000  
www.cityofkeller.com

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**Tuesday, January 11, 2022**

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PRE-MEETING BRIEFING 6:15P.M.

**A. CALL TO ORDER – Chairperson Gary Ponder**

Chairperson Gary Ponder called the Pre-Meeting Briefing to order at 6:00P.M.

The following Commissioners were present:

Gary Ponder, Chairperson

Ralph Osgood

Paul Alvarado

Bob Apke

Leslie Sagar

Thomas Thompson

Thomas Brymer

Ross Brensinger

Greg Will

Staff present included: Katasha Smithers, Planner II; Amber Washington, Planner I; Sean Vreeland, Director of Information Technology; Chad Bartee, City Engineer; and Amy Botcher, Planning Technician

**C. WORK SESSION**

CDD Julie Smith gave a presentation on Old Town Keller. She stated the OTK District encompassed most of the original town site of Keller. The area is a mixture of some of the oldest buildings in Keller along with newer uses and buildings. The OTK District is designed to transform the area into a historic focal point of the City with the character of a small Texas town of the early to middle 1900s. She explained the current OTK was to include front facades of buildings located close to sidewalks to encourage pedestrian involvement and to provide an area for landscaping,

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benches, tables and other types of street furniture. Parking shall be provided at the rear of developments.

She stated the proposed area north of Hwy. 377 as a Retail District provided locations for various types of general retail trade, business, and service uses. The District promoted shopping areas or uses with a gross leasable floor area which exceeds six thousand (6,000) square feet (those not permitted in the NS District). These shopping areas should utilize established landscape and buffering requirements.

She further added in the proposed Retail District north of Hwy. 377, focus is not on pedestrians; recognizes car-centric nature of this part of the business corridor; assumes onsite parking; permits monument signs; permits businesses not allowed in OTK, i.e. auto service station (SUP), minor medical emergency clinic (SUP), restaurant with drive-thru (SUP) and meets the FLUP.

Commissioner Sagar recalled a presentation previously for an overlay district. She said the standards mimicked the Marshall Ridge entrance. It was her thought that having additional standards, not simply Retail, would be a better fit.

Commissioner Thompson stated bringing in the right standards could make the area desirable. He added he would like to see a "hybrid" between traffic and pedestrians with a redevelopment.

Commissioner Brymer agreed with Commissioner Thompson and added the importance to define the City's goals for the area and then move forward.

Commissioner Alvarado stated the need to look at the area as a corridor, and how to improve the attractiveness for potential businesses.

Chairperson Ponder said he was glad to see some attention being given to this area, providing some great possibilities for the future.

Commissioner Thompson asked if bringing forward as Retail, without understanding the full plan, could be a risk.

CDD Smith responded there was currently nothing on the horizon through Economic Development.

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Chairperson Ponder asked if there was an urgency on making this decision.

CDD Smith said that Duff's Jewelry requested a monument sign, and this was in an effort to answer that request.

Commissioner Osgood stated he would like to see the traffic slowdown in that area.

The Commissioners had some discussion desiring more time before voting at the next P&Z meeting. They agree to have a work session with P&Z Commissioners at the next meeting, followed by a joint work session with City Council.

## **B. DISCUSS AND REVIEW AGENDA ITEMS**

C1. Public Hearing extending a SUP at 750 S. Main Street.

No questions or comments.

C2. Public Hearing for a SUP at 608 Norma Lane.

Commissioner Osgood asked Staff if this item was approved, would the City have any legal culpability due to the deed restrictions.

CDD Smith responded Staff discussed with the City Attorney and no they would not.

No additional questions or comments.

C3. Variance request for 17 lots in Highland Terrace Mobile Home Park.

No questions or comments.

## **D. ADJOURN**

Chairperson Osgood adjourned the Pre-Meeting at 7:00P.M.

**REGULAR MEETING 7:00 P.M.**

**A. CALL TO ORDER –Chairperson Gary Ponder**

Chairperson Gary Ponder called the meeting to order at 7:12 P.M.

**B. PLEDGE OF ALLEGIANCE**

1. Commissioner Osgood led the Pledge to the United States Flag.
2. Commissioner Osgood led the Pledge to the Texas Flag.

**C. PERSONS TO BE HEARD**

Mike Garabedian, 1717 Buckingham Drive, stated his support of Item C3.

**D. NEW BUSINESS**

1. [C \(1\) PUBLIC HEARING: Consider extending a Specific Use Permit \(SUP\) to operate a retail store with used goods and merchandise sales for Kid to Kid in an existing 4,416 square-foot lease space, within a 33,955 square-foot multi-tenant building, situated on a 4.0-acre lot on the west side of South Main Street, approximately 1,000 feet southwest from the intersection of Bear Creek Parkway and South Main Street, at 750 South Main Street, Suite 135, being Lot 5, Block A, Bear Creek Plaza Addition, and zoned Commercial \(C\). BC III Shopping Center, LLC, Owner. Darren Aper, Applicant. \(SUP-21-0042\)](#)

Planner Smithers stated the property located at 750 South Main Street, Suite 135 has been occupied by Kid to Kid for the past six and half years. The Applicant received an SUP approval by City Council on February 3, 2015 until February 3, 2022. The Applicant requested the SUP to run with the business for as long as the business continues to operate at this location. She said the Applicant also proposed to utilize 112.5 square-feet of external space to display merchandise such as strollers, ride-on toys, and bicycles. The Applicant proposed to place the merchandise outdoors only while the store is open. No merchandise would be stored outside overnight.

Chairperson Osgood asked if the Applicant had anything to add.

The Applicant did not.

Chairperson Osgood opened Public Hearing.

There were no persons to speak.

**Commissioner Sagar made a motion to close the Public Hearing for Item C (1), seconded by Commissioner Thompson. The motion carried unanimously.**

Commissioner Thompson asked Staff to clarify if the business changes, a new SUP would be required. He also stated there was ample room on the sidewalk, however had concern on the handicapped ramp on the north side and being able to navigate around the items he has outside.

Planner Smithers responded a new SUP would be required if the business changed. The Applicant stated he had not measured, but felt certain the access it would not be an issue.

Commissioner Alvarado asked if the City regulated the hours a business could have their items outside. He asked to clarify a SUP would be required and the hours were allowed to be added as a condition.

Planner Smithers responded it could be made a part of the SUP.

Commissioner Sagar asked the term lengths on SUPs for other used good stores. She added the seven years previously given for Kid to Kid seemed longer than normal.

Planner Smithers stated it ran with the term of the lease.

The Applicant added his lease expired in 2022 and he would be looking at moving down a couple of suites. He said he would likely be coming back on an address change.

Commissioner Sagar shared her concern on the aesthetics of outside storage.

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Commissioner Brymer also shared some concern with outside storage. He asked Staff to clarify the term “used goods” for this building.

Planner Smithers responded the SUP was specific for Kid to Kid and for children’s items.

Commissioner Apke asked if there had been any incidences with this business over the years.

Planner Smithers said she was not aware of any from Code Compliance.

Commissioner Brensinger asked if there were any fire code issues with having impediments on the sidewalk. He asked the applicant about the door in which there were items placed in front of.

Planner Smithers explained there would not be any products placed in front of doors impeding the egress. The Applicant added that the door Commissioner Brensinger was referring to, was not a working door nor part of the egress/ingress.

Commissioner Osgood stated he also had concerns with the outside storage.

**Commissioner Alvarado made a motion to approve Item C (1) with the condition if the business changes ownership, changes names or business model expands beyond what it is currently, a new SUP will be required, seconded by Commissioner Thompson. The motion carried 5-2. Yay: Commissioner Thompson, Commissioner Ponder, Commissioner Alvarado, Commissioner Apke, and Commissioner Brymer. Nay: Chairperson Osgood and Commissioner Sagar.**

2. D (2) PUBLIC HEARING: Consider a request for a Specific Use Permit (SUP) for a commercial horse stable on 2.96-acre tract on a property located on the east side of Norma Lane, approximately 215 feet northeast from the intersection of Norma Lane and Johnson Road, at 608 Norma Lane, legally described as Lot 2A and 3D, Block 2 of Harvels Addition and zoned Single-Family 36,000 square-foot lot size or greater (SF-36). Brian Morovitz, Owner/Applicant. (SUP-21-0041)

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Planner Smithers stated the property located at 608 Norma Lane was platted in 1959. The plat contained deed/covenant restrictions that limited homes and outbuildings to private use only. It was somewhat unusual to find these restrictions called out on a plat. The restrictions likely prohibit the use requested by the Applicant.

However, since the City does not enforce deed restrictions, the City Council may consider the SUP request independent of the restrictions. In other words, the City's authority goes to the zoning (in this case the SUP required for this zoning district), but not to deed restrictions. Even if the City grants the SUP, the Applicant would likely be prohibited from using the building as a commercial boarding operation by the deed restrictions. The deed restrictions were in addition to the City's zoning authority. The Applicant requested a Specific Use Permit (SUP) specifically to commercially board two horses.

Planner Smithers stated the horses would be on site, but for the owners potentially trailering them for various reasons to other sites, seven days a week. Horse owners, veterinarians, farriers, trainers, etc. may be on site seven days a week from 6 am to 10 pm and out of hours for emergency purposes.

Chairperson Osgood asked if the Applicant had anything to add.

The Applicant was not available.

Commissioner Thompson stated due to the Applicant not being available to answer questions he had, he would like to entertain tabling the item.

**Commissioner Thompson made a motion to table Item C (2) until January 25, 2022, seconded by Commissioner Apke. The motion carried unanimously.**

3. [C \(3\) Consider one variance request to 17 lots in the Highland Terrace Mobile Home Park to decrease the minimum front yard setback to 25 feet in lieu of the required 35 feet, located at 1700 Highland Drive West, 1704 Highland Drive West, 1736 Highland Drive West, 1744 Highland Drive West, 1748 Highland Drive West, 1752 Highland Drive West, 1832 Highland](#)

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[Drive East, 1847 Highland Drive East, 1843 Highland Drive East, 1839 Highland Drive East, 1733 Hilltop Lane, 1729 Hilltop Lane, 1725 Hilltop Lane, 1733 Highland Drive West \(legally two lots\), 1717 Highland Drive West, 1713 Highland Drive West, legally described as Lot 1, 2, 10, 12, 13, 14, 36, 37, 38, 38, 39, 42, 43, 44, 60, 61, 64, 65, Highland Terrace Mobile Home Park and zoned Single-Family 36,000 square-foot lots or greater \(SF-36\). Double B Texas Ventures, LLC and Olympic Dream Living Trust, Owners. Jeff Avery, Applicant. \(UDC-21-0010\)](#)

Planner Smithers stated Highland Terrace Mobile Home Park was originally platted in 1970 and annexed into Keller in the late 1980s. The City zoned the subdivision at the time of annexation as Single-Family 36,000 square-foot lots (SF-36).

She stated on June 1, 2021, the City Council approved three variances for 21 lots within Highland Terrace Mobile Home Park as follows:

1. Decrease the minimum dwelling size from 2,400 square-feet to 2,000 square-feet.
2. Increase the main building lot coverage from 30% to 35%.
3. Increase the maximum lot coverage from 50% to 55%.

Planner Smithers said on December 7, 2021, in addition to approving the three variances above, the City Council also granted a different Developer an additional fourth variance to decrease the minimum setback from 35 feet to 25 feet. The Applicant, granted the three original variances for 21 lots, is now requesting the same fourth variance to the front setback for his remaining 17 lots. (Four of his 21 lots have been sold to other parties since the original three variances were granted.)

Chairperson Osgood asked if the Applicant had anything to add.

Jeff Avery, applicant, stated on December 7, 2021, City Council approved this exact request for Mike Garabedian on Lot 27.

Commissioner Sagar stated she did not support the request for the same reasons she had given in the past. She added the variance request did not have a legal basis and did not meet the requirements for the Commission to follow. She said previously, Mr. Avery obtained a building permit to build a house without having any variances. She



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stated the City Council was benevolently generous to Mr. Avery and Mr. Garabedian. She is obligated to follow the guidelines set forth by the City Attorney.

Commissioner Brymer stated he had governance and legal concerns on considering dimensional variance requests. He said the Planning and Zoning Commission were legally authorized to handle zoning change requests, specific use permits, land use planning and development review. He said Planning and Zoning was not, in his opinion, authorized to consider and grant dimensional variances. He added dimensional variances could only be granted by the Zoning Board of Adjustments.

Commissioner Brymer said if the applicant in this case did not wish to take his dimensional variance to the ZBA, the only legally available option to the applicant and the City was to consider a zoning change request for the entire subdivision. He added his concerns regarding liability with continuing with dimensional variance requests instead of a zoning change.

He said the item under consideration was not a best practice from a governance standpoint. He added the P&Z handling dimensional variances was eviscerating the City's zoning ordinance. He stated while he was sympathetic to the need to re-examine the setback requirements as they apply to this subdivision, he did not support the request.

Commissioner Apke stated he was in support previously on three of the four variances requested. He added he was not in support of this variance before and still did not support.

Commissioner Thompson stated he agreed with Commissioner Brymer. He added he was consistent on the set backs due to the small size of the lots. He said the back yard would not necessarily become larger in giving a larger front setback. Commissioner Thompson stated they had not denied the applicant a reasonable use of there land, as proven by the previously approved building permit.

Commissioner Alvarado stated the zoning was an afterthought when this property was annexed. He acknowledged the owner of the properties was doing what he felt was

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right for these lots. He said the special circumstance was the small nature of the lots. Commissioner Alvarado added that supported this item.

Commissioner Brensinger said it was a reasonable request. He stated he also agreed coming to P&Z for this request was the wrong avenue. He added he supported the item.

Commissioner Will stated that was unfortunate that City Council did not rezone when they had the chance previously. He said now that City Council approved three of the lots, a unified build line would be best and most attractive for the neighborhood.

Commissioner Osgood said the Applicant previously stated that giving a smaller front setback, it would allow for more room in the backyard. He acknowledged there was not a guarantee of that being the case. He supported Commissioner Sagar and Commissioner Brymers statements.

Commissioner Ponder stated he did not support the item.

Jeff Avery, Applicant, stated he was given a building permit previously. He explained his desire to ask for variances was after noting the challenges the first building permit posed.

**Commissioner Sagar made a motion to deny Item C (3), seconded by Commissioner Thompson. The motion carried 5 - 2. Yay: Chairperson Ponder, Commissioner Thompson, Commissioner Brymer, Commissioner Apke, and Commissioner Sagar. Nay: Chairperson Osgood and Commissioner Alvarado.**

**E. ADJOURN**

Chairperson Osgood adjourned the meeting at 8:27P.M.

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Chairperson

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Amy Botcher, Planning Technician