

ACTION FORM BRYAN CITY COUNCIL

DATE OF COUNCIL MEETING: October 14, 2014		DATE SUBMITTED: September 23, 2014	
DEPARTMENT OF ORIGIN: Development Services		SUBMITTED BY: Randy Haynes	
MEETING TYPE:	CLASSIFICATION:	ORDINANCE:	STRATEGIC INITIATIVE:
<input type="checkbox"/> BCD	<input type="checkbox"/> PUBLIC HEARING	<input type="checkbox"/> 1ST READING	<input type="checkbox"/> PUBLIC SAFETY
<input type="checkbox"/> SPECIAL	<input type="checkbox"/> CONSENT	<input type="checkbox"/> 2ND READING	<input type="checkbox"/> SERVICE
<input checked="" type="checkbox"/> REGULAR	<input type="checkbox"/> STATUTORY		<input checked="" type="checkbox"/> ECONOMIC DEVELOP.
<input type="checkbox"/> WORKSHOP	<input checked="" type="checkbox"/> REGULAR		<input type="checkbox"/> INFRASTRUCTURE
			<input checked="" type="checkbox"/> QUALITY OF LIFE
AGENDA ITEM DESCRIPTION: Appeal of the Planning and Zoning Commission's decision to approve a Conditional Use Permit request (Case Number CU14-05) to allow a neighborhood grocery store on property in a Residential District – 5000 (RD-5) zoning district, on 0.346 acres of land adjoining the northeast side of Palasota Drive between McArthur Avenue and Bridge Meadow Lane, in Bryan, Brazos County, Texas.			
SUMMARY STATEMENT: During its regular meeting on August 21, 2014, the Planning and Zoning Commission, by unanimous vote, approved a Conditional Use Permit request (Case Number CU14-05) by Asif Umatiya to allow a neighborhood grocery store on property in a Residential District – 5000 (RD-5) zoning district. The subject property is situated on 0.346 acres of land adjoining the northeast side of Palasota Drive between McArthur Avenue and Bridge Meadow Lane. During discussion of the item, Commissioners observed that these stores are good for neighborhoods and would reduce the need for children to cross the street to get to the other stores in the vicinity. Commissioners also discussed the fact that the site is on a collector street and that no liquor or fuel would be sold at this location. Conditions on hours were considered, but it was determined that restrictions may prevent shift workers access to the goods and services offered here.			
<p>As required by the Zoning Ordinance, staff mailed written notifications to 26 owners of property located within 200 feet of the request at least 10 days prior to the Planning and Zoning Commission's August 21 public hearing. Bryan's Zoning Ordinance Section 130-33(f) allows owners of property located within 200 feet of a property subject of a Conditional Use Permit application, to appeal the action of the Planning and Zoning Commission to the City Council. The ordinance specifies that written notice of any such appeal must be delivered to Planning Services within 10 calendar days of the Commission's decision.</p> <p>On August 29, 2014, City staff received a letter from Mr. Reyes-Gonzalez who owns property located within 200 feet from the subject property of this Conditional Use Permit request, at 1816 Palasota Drive, appealing the Commission's decision to approve the request. The appellant's reasons for appeal are described in his letter, which is attached to this Council Action Form below.</p> <p>Mr. Reyes-Gonzalez did not address the Commission during its public hearing on the matter. However, four (4) citizens who own property outside of the statutory 200-foot notification area spoke in opposition to the request during the August 21 meeting. Prior to that meeting, a number of written communications were directed to the Planning and Zoning Commission expressing opposition to the request. By August 21, four (4) letters and three (3) petitions had been submitted. The petitions contained signatures and addresses of approximately 107 individuals, two (2) of whom own property within 200 feet of the tract where the grocery store is proposed to be located. Copies of all written comments received regarding this request were shared with the Planning and Zoning Commission prior to the August 21 meeting, and are appended to this Council Action Form. All written documents received after August 21 also are attached to this Council Action Form.</p>			

STAFF ANALYSIS AND RECOMMENDATION: Staff recommends upholding the Planning and Zoning Commission's approval of this Conditional Use Permit.

- Although the immediate area is zoned for residential use, Palasota Drive is not a residential street, and the pattern of development in the area has created conditions that make the more intense use more suitable in the proposed location than would normally be accepted in a residential zoning district.
- Palasota Drive is identified on the City's Thoroughfare Plan as a minor arterial roadway and already carries traffic loads far in excess of those expected on a residential street.
- The addition of the proposed neighborhood grocery will not significantly increase the volume of traffic using the roadway.
- The plan exceeds the required 50-foot throat depth along the access driveway, providing 65 feet of driveway space to enhance safety for motorists entering or leaving Palasota Drive.
- Large un-broken areas of residential zoning, such as is the case in the immediate vicinity of the subject property, bisected by collector and arterial roadways has the resulting effect of reinforcing the auto-oriented nature of the community. This is a negative consequence that could be in part mitigated by the presence of small retail service establishments located along heavily traveled routes within the neighborhood. The Comprehensive Plan and the Zoning Ordinance have both provided for the possibility of such development.
- In this particular location, along a minor arterial street and adjacent to a neighborhood hub such as Anson Jones School, the proposed neighborhood grocery use appears to conform to the objectives of both the Comprehensive Plan and the Zoning Ordinance.

OPTIONS (In Suggested Order of Staff Preference):

1. uphold the Commission's decision to approve the request;
2. uphold the Commission's decision to approve the request with the addition of conditions for approval the City Council deems necessary to assure the use meets the criteria set forth in Subsection 130-33(a) of the Zoning Ordinance (may require consideration at a future City Council meeting); or
3. reverse the Planning and Zoning Commission's decision and deny the request.

ATTACHMENTS:

1. location map;
2. appeal letter from Mr. Reyes;
3. site plan and elevation drawings;
4. excerpt from August 21, 2014 Planning and Zoning Commission meeting minutes;
5. staff report to the Planning & Zoning Commission; and,
6. written comments received regarding this request (separate PDF document).

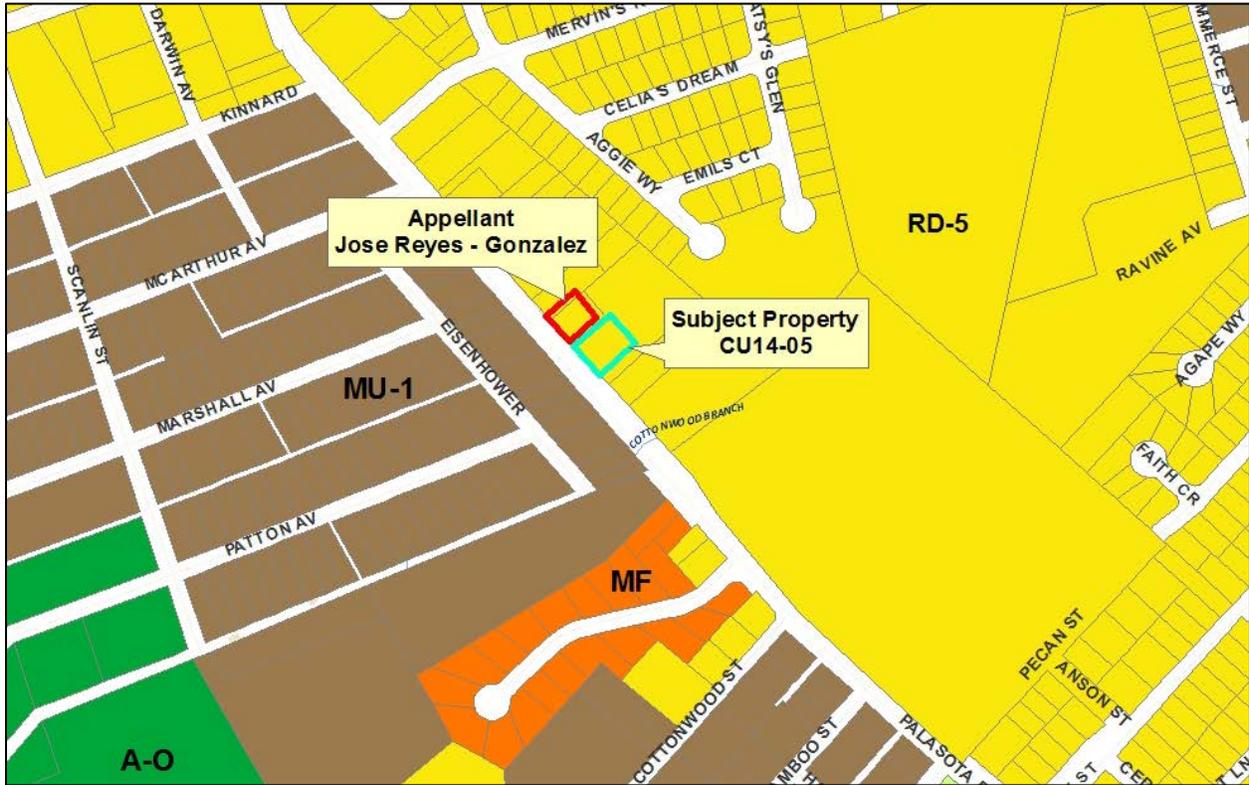
FUNDING SOURCE: N/A

APPROVALS: Kevin Russell, 9-25-14; Joey Dunn, 9-30-14; Hugh R. Walker, 10/01/2014

APPROVED FOR SUBMITTAL: CITY MANAGER

APPROVED FOR SUBMITTAL: CITY ATTORNEY Janis K. Hampton, 09-30-2014

LOCATION MAP:



APPELLANT'S LETTER:

August 28, 2014

1816 Palasota DR

Development
Services

AUG 29 2014

RECEIVED

City Council
City of Bryan
300 S. Texas Avenue
Bryan, Texas 77803

Re: CU14-05: U&C Family Investments

Dear Councilpersons:

I am appealing the decision made by Bryan Planning & Zoning Commission on the above referenced Conditional use Permit. Before the meeting I and many in the neighborhood had written to the P&Z voicing our concern and objection to the proposed project next door to me.

P&Z went against the City policy of not going against Bryan Residents and approved the project which I oppose and find highly objectionable. We desire the opportunity of discussing the case in front of the Bryan City council.

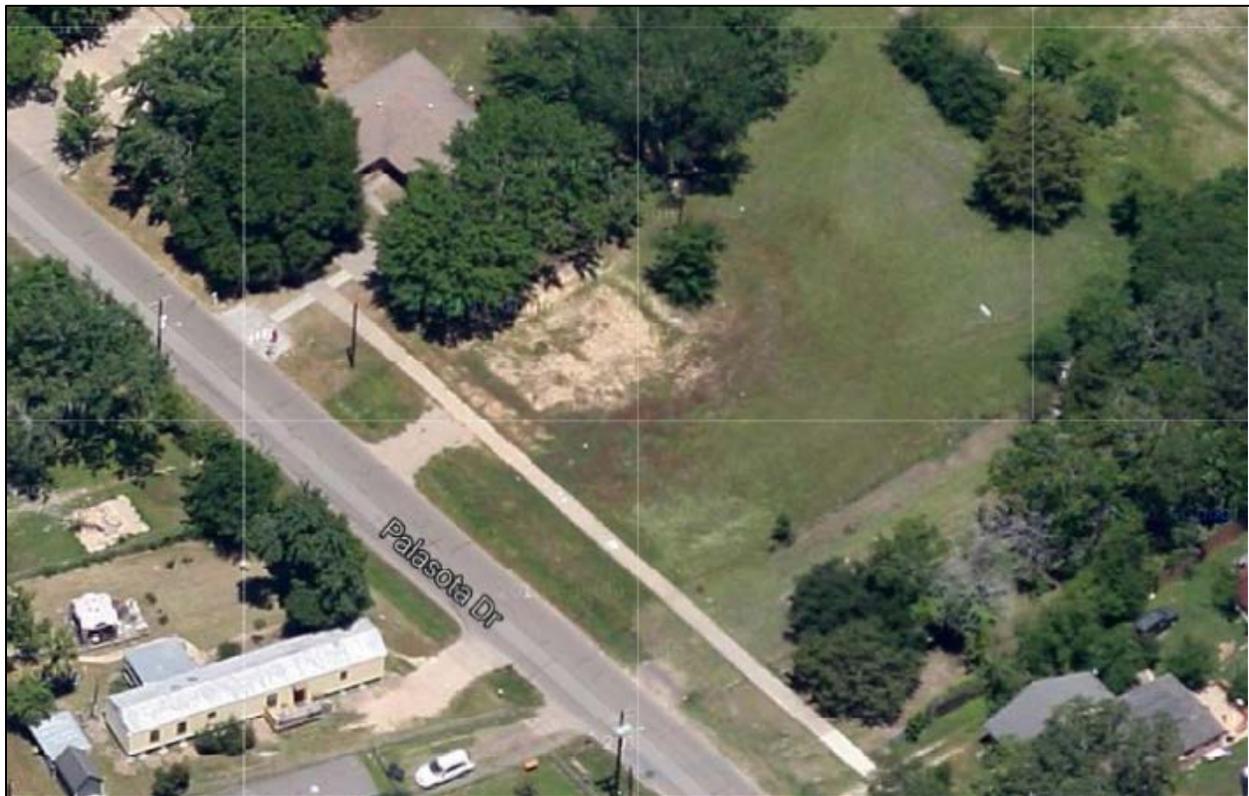
Sincerely,

Cynthia Estimosa
Jose Reyes-Gonzalez

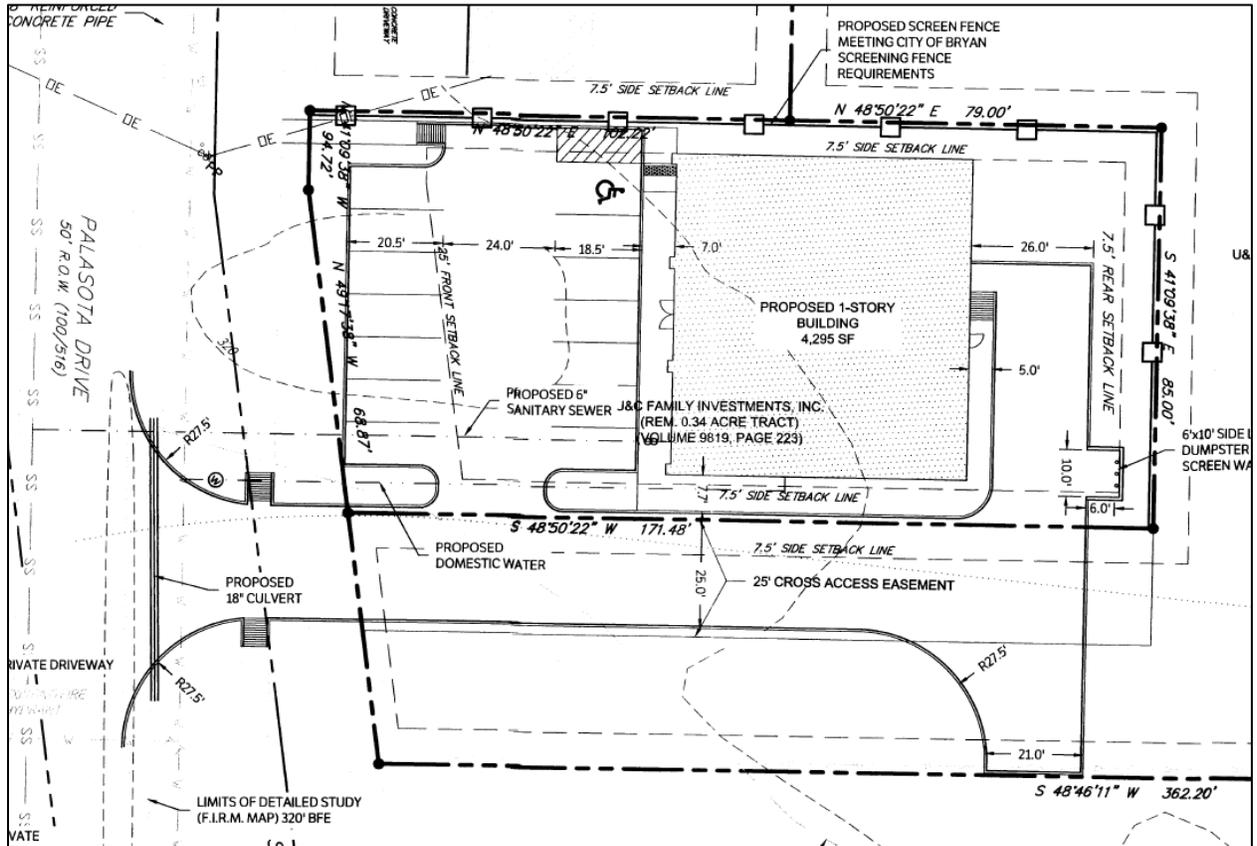
1816 PALASOTA

JOSE REYES-GONZALEZ - OWNER

2013 AERIALS:



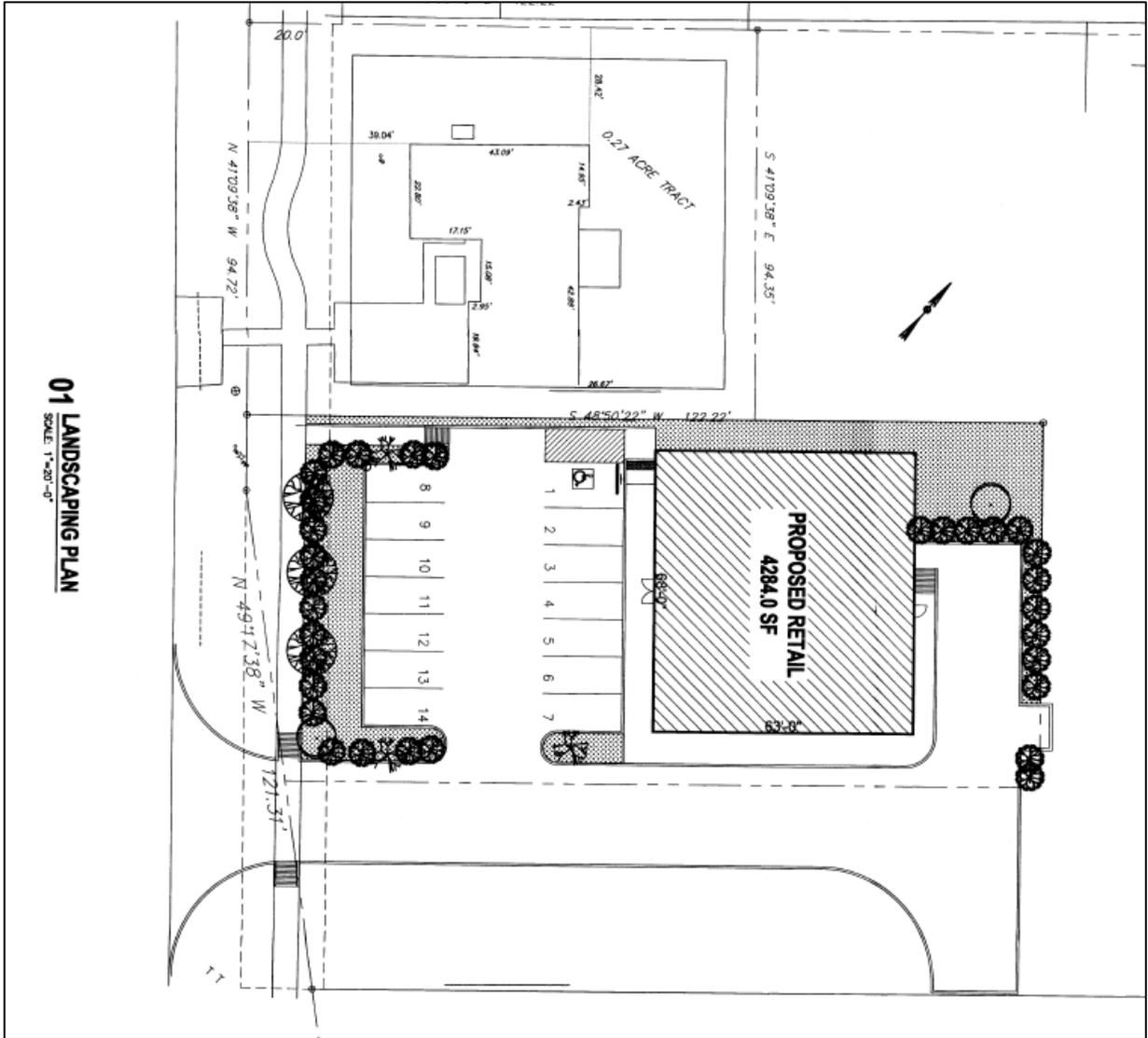
SITE PLAN DRAWING DETAIL:



STORE FRONT ELEVATION:



LANDSCAPE PLAN DETAIL:



**EXCERPT FROM PLANNING AND ZONING COMMISSION REGULAR MEETING
MINUTES OF AUGUST 21, 2014:**

**8. REQUESTS FOR APPROVAL OF CONDITIONAL USE PERMITS – A PUBLIC HEARING
WILL BE HELD FOR EACH ITEM (Commission has final approval; appeals may be directed
to City Council).**

a. Conditional Use Permit CU14-05: U&C Family Investments

A request for approval of a Conditional Use Permit to allow a neighborhood grocery store on property in a Residential District – 5000 (RD-5) zoning district, specifically 0.346 acres of land adjoining the northeast side of Palasota Drive between McArthur Avenue and Bridge Meadow Lane, being Lot 6R-2 in W.J. Coulter Subdivision of the Morille Tract in Bryan, Brazos County, Texas. (R. Haynes)

Mr. Haynes presented the staff report (on file in the Development Services Department). Staff recommends approval of the request. The Commission asked staff why this type of use is not in areas like Copperfield or Traditions. Mr. Haynes stated that there have been no requests for neighborhood stores in those subdivisions and pointed out that a convenience store is located at the entrance of the Copperfield Subdivision. He also reminded Commissioners that the proposed neighborhood store would not be allowed to sell fuel or liquor. In response to questions, Mr. Haynes stated that the nearest neighborhood grocery store is located about ¼ of a mile from this location and that three citizens that signed protest petitions (on file in the Development Services Department) owned property located within 200 feet from the subject property. The public hearing was opened.

Mr. Parviz Vessali, 110 Pershing Avenue, College Station, TX, representing the applicant, discussed the neighborhood market proposal and answered questions from the Commission. The following citizens came forward to speak in opposition to the request: Roy Veracruz, 1905 Palasota Dr.; K. Rahman, 2617 Texas Ave.; Evangeline Guerrero, 1502 Bamboo St.; Ana Fonseca, 920 Clearleaf Drive.

Concerns expressed by citizens were:

- increased traffic
- pedestrian safety, specifically regarding children
- out of character with the surrounding area, business does not belong in a neighborhood
- enough neighborhood stores in the area

In response to questions from the Commission, Mr. Haynes stated that he did not know what the hours of operation would be and reminded the Commissioners that they could restrict the hours of operation if deemed necessary. The public hearing was closed.

Commissioner Bienski moved to approve CU14-05 and to adopt the written staff report and analysis, as the report, findings and evaluation of this Commission. Commissioner Gutierrez seconded the motion.

Commissioners discussed that these stores are good for neighborhoods and would reduce the need for children to cross the street to get to the other stores in the vicinity. Commissioners also discussed that the site is on a collector street and that no liquor or fuel would be sold at this location. Conditions on hours were discussed but it was determined that this could prevent shift workers access to the goods and services offered here.

The motion passed unanimously.

PLANNING AND ZONING COMMISSION
STAFF REPORT

August 21, 2014



Conditional Use Permit case no. CU 14-05: U&C Family Investments

CASE DESCRIPTION: request for approval of a Conditional Use Permit to allow a neighborhood grocery store on property in a Residential District – 5000 (RD-5) zoning district.

LOCATION: 0.346 acres of land adjoining the northeast side of Palasota Drive between McArthur Avenue and Bridge Meadow Lane

LEGAL DESCRIPTION: Lot 6R-2 in W.J. Coulter Subdivision of the Morille Tract

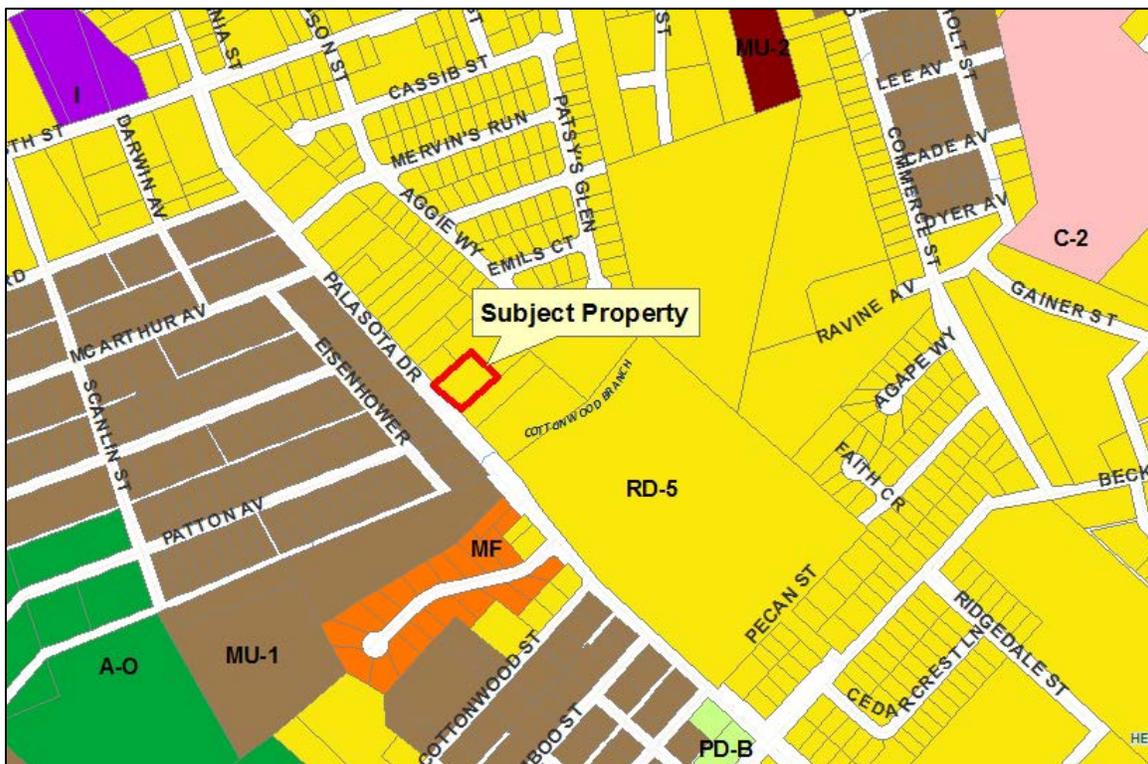
EXISTING LAND USE: formerly commercial, now vacant

ZONING: Residential District – 5000 (RD-5)

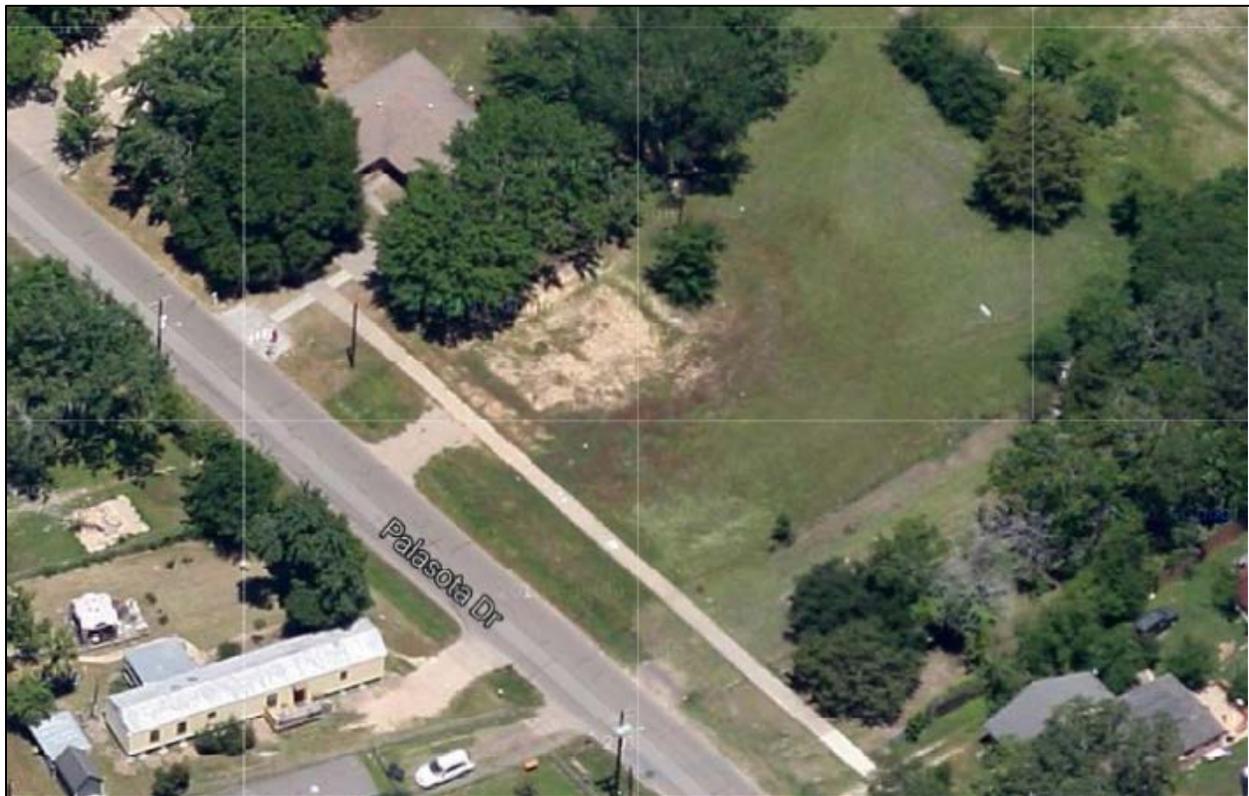
APPLICANT(S): Asif Umatiya

STAFF CONTACT: Randy Haynes, Senior Planner

SUMMARY RECOMMENDATION: Staff recommends **approving** this request,



2013 AERIALS:



BACKGROUND:

The applicant, Mr. Asif Umatiya, is requesting approval of a conditional use permit to allow the operation of a neighborhood service business (grocery) on the subject property.

The subject tract is 0.346 acres of land adjoining the northeast side of the Palasota Drive, between McArthur Avenue and Bridge Meadow Lane. Residential land use surrounds the property for a distance of at least ¼ mile. The zoning of the surrounding properties is a mixture of Residential District – 5000, Mixed Use Residential District, (MU-1) and Multiple Family Residential District (MF). The homes in the neighborhood directly across Palasota Drive are on lots with frontage on both Palasota Drive and Eisenhower Street, their primary access being Eisenhower Street. The property immediately southeast of the subject tract lies within the floodplain and floodway of Cottonwood Branch; making future development unlikely. Beyond Cottonwood Branch is the 20-acre Anson Jones Elementary School campus.

When the applicant purchased the property in 2010, the parent tract was 1.918 acres in size and contained one residence and one 1500 square foot commercial building. The property was then subdivided, leaving the residence on its own lot and two other lots for future development. The commercial structure, being in poor condition, was removed. Mr. Umatiya has submitted a site plan and several attachments with his request to illustrate his plan to construct a neighborhood grocery on the smaller of the two remaining lots.

Residential Districts are intended to be composed of dwelling units designed primarily for residential use and do not easily lend themselves to other types of nonresidential uses. However, the Zoning Ordinance allows some flexibility in that through the conditional use permit process, a limited number of other uses may be permitted which are compatible to residential uses and occupy structures designed for their intended use and do not infringe upon the residential uses.

The purpose of the conditional use permit process is to identify those uses which might be appropriate within a zoning district but, due to either their location, function, or operation, could have a potentially harmful impact on adjacent properties or the surrounding area; and to provide for a procedure whereby such uses might be permitted by further restricting or conditioning them so as to mitigate or eliminate such adverse impacts. One of the uses potentially allowed within the RD-5 zoning district with prior approval of a conditional use permit is a group of uses called “neighborhood services”. Under the definition, neighborhood services are limited to the following five specific uses:

- Grocery store;
- Laundry shop; or
- Dry-cleaning drop-off
- Beauty shop or barbershop; or
- Automated teller machine.

In addition, a neighborhood services establishment must comply with the following additional standards:

- Be limited in gross floor area to 5,000 square feet (business only);
- Not include fuel sales or other fuel dispensing or storage operations;
- Have no liquor sales; and
- Be permitted beer and wine sales for off-premises consumption only.

The applicant's proposal complies with all of the additional standards set out by the ordinance for a Neighborhood services establishment in a residential district.

RELATION TO BRYAN'S COMPREHENSIVE PLAN:

The City of Bryan adopted a new Comprehensive Plan in January 2007. The plan includes policy recommendations related to the various physical development aspects of the community. The Comprehensive Plan states that it is a goal of the City to achieve a balance of land uses within the City by achieving a sustainable mix of land use types in suitable locations, densities and patterns.

5.5 Land Use Policies

Owing to the fact that Bryan developed without zoning for most of its history, clear development patterns are not always distinguishable. Older neighborhoods are sprinkled with small commercial areas containing scalable storefronts, offices and service uses such as barber shops. This pattern, although prohibited by most modern Euclidian zoning codes is not viewed as altogether undesirable by Bryan's residents. Many feel that the character of older subdivisions and historic areas, such as the Downtown, are formed, in part, by this mix of uses.

Use-Specific Land Use Policies

The land uses listed below should meet all of the specific policies below in addition to the Citywide Policies listed above.

Low Density Residential land serves to provide housing and living units for a variety of people with a range of incomes and needs. It predominantly consists of detached single family dwellings but may consist of other housing types as long as densities remain low; up to 8 dwelling units per acre. These uses should be located in areas that are:

Protected from but accessible to the major roadway network, commercial establishments, work places and entertainment areas;

- Accessible to collector and arterial streets, but directly access only local streets; and

Office / Light Commercial land provides locations for lower intensity commercial activities that serve local needs. It also serves as a location for professional offices and low-impact service uses. These uses should be located in areas that are:

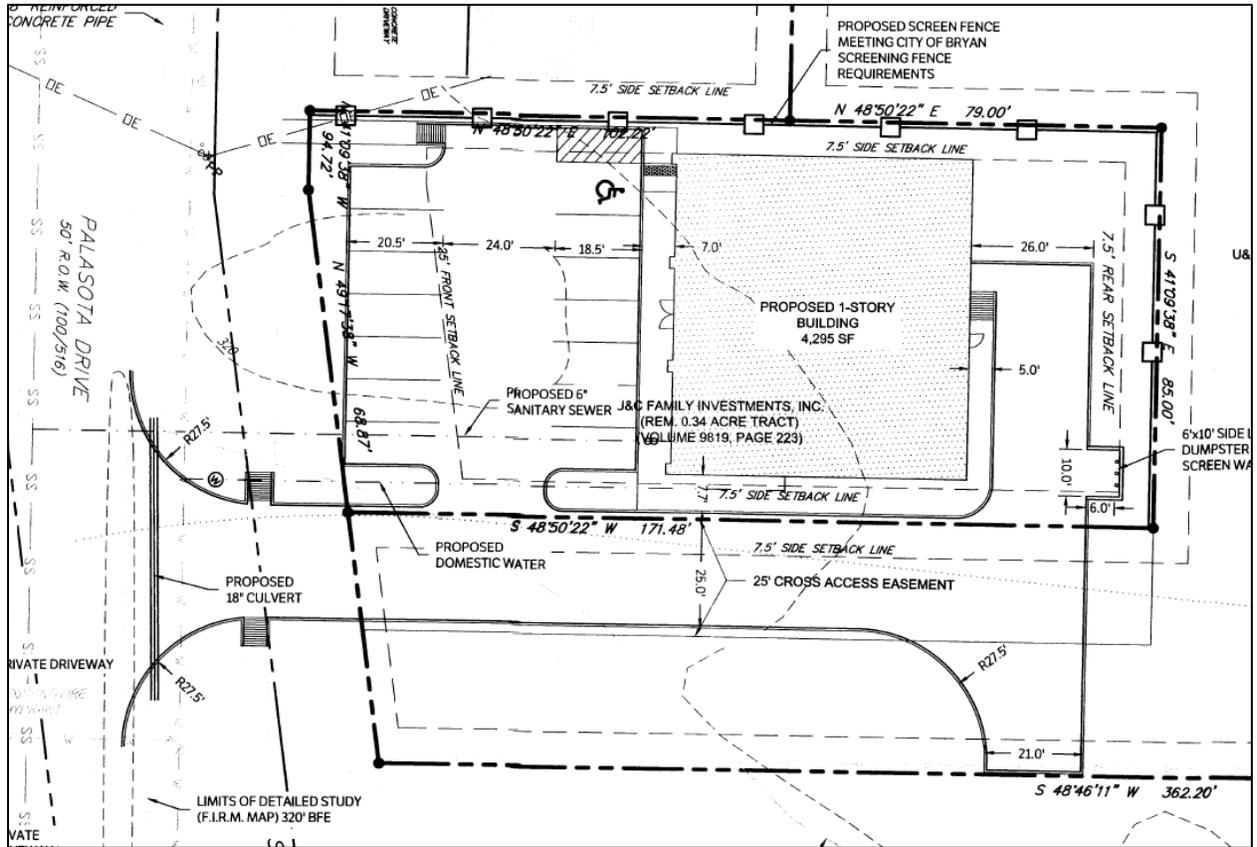
- At points of high visibility along non-residential arterials and major collectors and at intersections of minor arterials and major or minor arterials, major collectors and major or minor arterials, and minor collectors and major arterials;
- Convenient and accessible to residential areas;

Included in the policy statements adopted within the Comprehensive Plan were several that directly addressed the subject of infill and redevelopment. These statements are located in section 5.5.

- The City of Bryan will encourage and promote compatible infill and redevelopment in areas where these activities will benefit the city as a whole and the area specifically.
- The City will encourage flexibility when drafting regulations geared toward infill and redevelopment.

- Residential redevelopment and infill shall be sensitive to the context within which it occurs. Contextual standards shall be included to ensure compatibility with surrounding residential areas, to include lot size, setbacks, density, building height and mass and architectural design

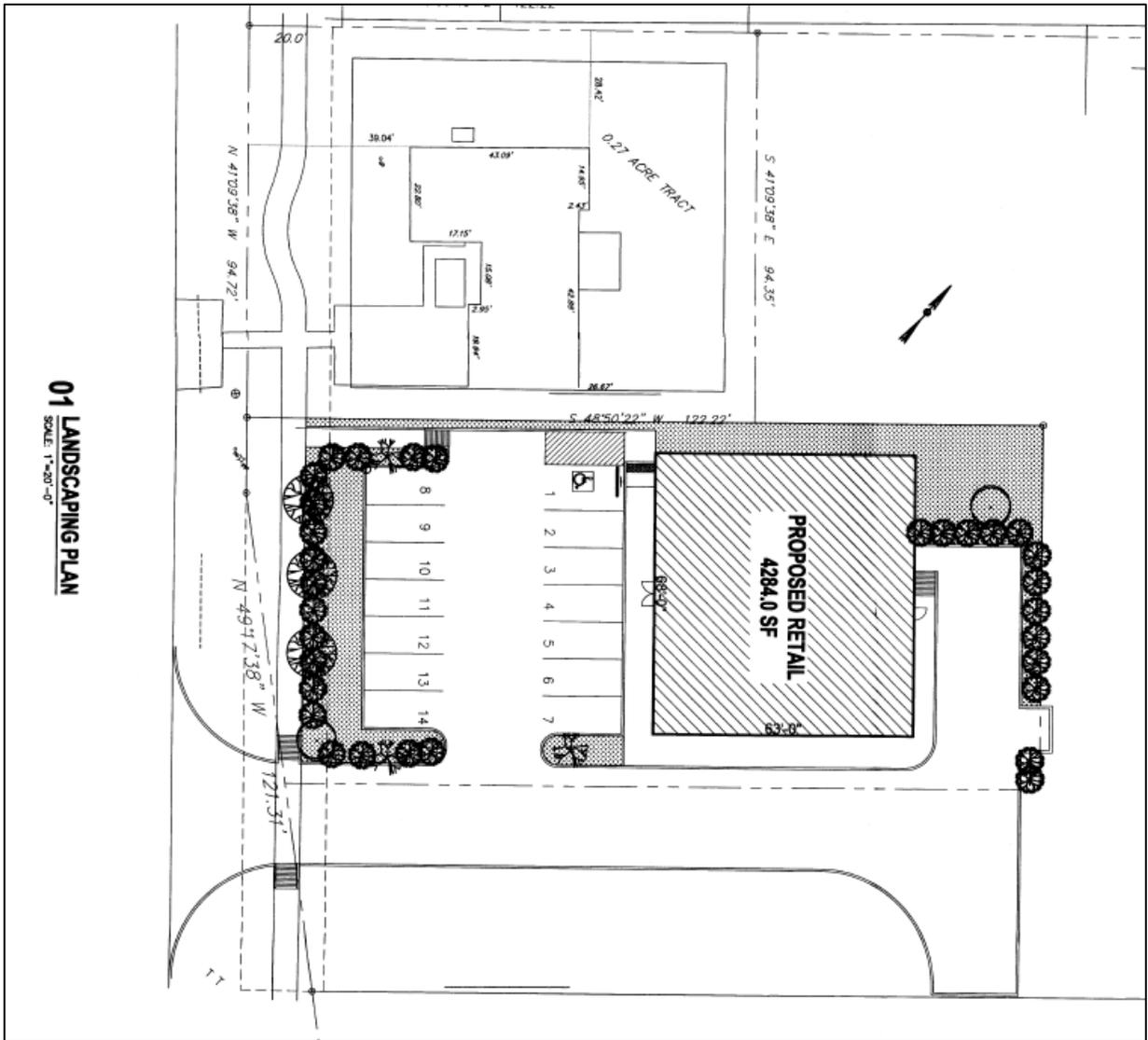
SITE PLAN DRAWING DETAIL:



STORE FRONT ELEVATION:



LANDSCAPE PLAN DETAIL:



ATTACHED CITIZEN COMMUNICATION:

The City Secretary and the Development Services Department offices have each received written communications of disapproval and concern from both other area businesses and individual citizens concerning the possibility of another retail business being allowed to open in their vicinity. Copies of those documents are attached to this staff report.

The Zoning Ordinance provides no formal procedure to protest the issuance of a conditional use permit prior to its approval by the Planning and Zoning Commission. The process specified by the ordinance involves an appeal to the City Council, which must be made in writing within ten days of the commission's decision.

Due to the fact that the ordinance specifies no formal process at this stage, the contents and signatures of attached petition documents have not been tabulated or addresses verified. Staff recommends that the commission accept them and assign the weight of general public opinion to their sentiment.

ANALYSIS:

Approval of a Conditional Use Permit by the Planning and Zoning Commission shall be based upon the following criteria.

1. Whether the proposed conditional use conforms to applicable regulations and standards established by the Zoning Ordinance.

If approved as proposed, the proposed neighborhood grocery at this location will conform to all applicable regulations and standards established by the Zoning Ordinance.

2. Whether the proposed conditional use is compatible with existing or permitted uses on abutting sites, in terms of use, building height, bulk and scale, setbacks and open spaces, landscaping, drainage, or access and circulation features.

As per the attached site plan, the applicants propose a small scale commercial building set back 115 feet from Palasota Drive. Staff contends that the generous additional building setback together with the installation of required landscaping will serve to relieve obvious differences in building mass and type.

3. Whether and the extent to which the proposed conditional use potentially creates greater unfavorable effect or impacts on other existing or permitted uses on abutting sites than those which reasonably may result from the use of the site by a permitted use.

Staff finds that a neighborhood grocery store such as the one proposed for the subject property is a higher intensity land use than would be normally expected in a residential zoning district. Staff contends however that although the immediate area is zoned for residential use, Palasota Drive is not a residential street, and the pattern of development in the area has created conditions that make the more intense use more suitable in the proposed location than would normally be accepted in a residential zoning district.

4. Whether and the extent to which the proposed conditional use affects the safety and convenience of vehicular and pedestrian circulation in the vicinity, including traffic reasonably expected to be generated by the proposed use and other uses reasonably anticipated in the area considering existing zoning and land uses in the area.

Palasota Drive is identified on the thoroughfare plan as a minor arterial roadway and already carries traffic loads far in excess of those expected on a residential street. Staff contends that the addition of the proposed neighborhood grocery will not significantly increase the volume of traffic using the roadway. The plan exceeds the required 50-foot throat depth along the access driveway, providing 65 feet of driveway space to enhance safety for motorists entering or leaving Palasota drive.

5. Whether and the extent to which the proposed conditional use would reasonably protect persons and property from erosion, flood or water damage, fire, noise, glare, and similar hazards or impacts.

No additional impact concerning erosion, flood or water damage, fire and other hazards are expected with the proposed use of this subject property as a neighborhood grocery. Staff contends that the extent to which adjacent properties would be impacted by added noise or light will be mitigated by proposed screening and landscaping.

6. Whether and the extent to which the proposed conditional use adversely affects traffic control or adjacent properties by inappropriate location, lighting, or types of signs.

The proposed site plan that will govern the requested conditional use permit depicts no curbside or monument signage. A fascia sign will be mounted on the front of the building. Any such additions to the site will conform to existing standards for lighting and signage outlined in the City of Bryan Code of Ordinances.

7. Whether and the extent to which the proposed conditional use provides adequate and convenient off-street parking and loading facilities.

One beneficial feature of the small scale facility as proposed is the reduced impact of large paved open spaces that provide parking in excess of the minimum required. Staff believes that the off-street parking and loading facilities that are illustrated on the site plan are adequate for the proposed use.

8. Whether the proposed conditional use conforms to the objectives and the purpose of the zoning district in which the development is proposed.

Large un-broken areas of residential zoning, such as is the case in the immediate vicinity of the subject property, bisected by collector and arterial roadways; has the resulting effect of reinforcing the auto-oriented nature of the community. Staff contends that this is a negative consequence that could be in part mitigated by the presence of small retail service establishments located along heavily traveled routes within the neighborhood. The comprehensive plan and the zoning ordinance have both provided for the possibility of such development. Staff believes that in this particular location, along a minor arterial and adjacent to a neighborhood hub such as Anson Jones School, the proposed use of a neighborhood grocery conforms to the objectives of both the Comprehensive Plan and the Zoning Ordinance.

9. Whether the proposed conditional use will be detrimental to the public health, safety, or welfare, or materially injurious to properties or improvements in the vicinity.

The proposed business will be properly screened from the surrounding residential uses, thus mitigating harmful impact.

10. Whether the premises or structures are suitable for the proposed conditional use.

The proposed facility will be a ground-up development designed specifically for the intended use.

RECOMMENDATION:

Staff recommends **approving as requested** a Conditional Use Permit to allow a neighborhood grocery at this location.