

7. REZONING 2008-10 – Vicinity of the southwest corner of 135<sup>th</sup> Street and Nall Avenue

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1. APPLICANT: Merrill Companies, LLC is the applicant for this request.
2. REQUESTED ACTION: The applicant is requesting a rezoning from R-1, Single-Family Residential District, RP-4, Planned Cluster Housing District, and MXD, Planned Mixed Use District, to MXD, to allow a mixed use development.
3. LOCATION: The 70-acre tract is located in the vicinity of the southwest corner of 135<sup>th</sup> Street and Nall Avenue.
4. CHARACTER OF THE NEIGHBORHOOD: The character of the neighborhood is a mixed development corridor, 135<sup>th</sup> Street, with commercial office and residential developments.
5. LAND USE AND ZONING PATTERNS: The subject property is currently an undeveloped parcel of land located on 135<sup>th</sup> Street between Nall Avenue and Lamar Avenue. Nicklaus Golf at Lionsgate and the Links at Lionsgate single-family subdivision are directly to the south, these developments are zoned R-1. Corbin Park lifestyle center is to the west and is zoned CP-2, Planned General Business District. To the north, across 135<sup>th</sup> Street is the Overland Trail middle and elementary schools, zoned R-1. Also to the north is a three-building office park zoned CP-O, Planned Office Building District. To the east, across Nall Avenue, is a commercial development under construction in the City of Leawood. That property is zoned SD-RC, Planned General Retail District.
6. ANALYSIS OF APPLICATION:
  - a. DEVELOPMENT PLAN: The purpose for this rezoning request is to include a sliver of vacated right-of-way into the Prairiefire mixed use development. The majority of the project is currently zoned MXD and has been zoned for approximately one and a half years (Rezoning No. 2006-18). The applicant has intended to work with the owner of the golf course to the south and modify the alignment of boundary between the two projects so that villa-style homes could be developed with a golf course view. The right-of-way has now been vacated and the new property line has been established.

The applicant and the planning staff have determined that the most efficient way to include the vacated right-of-way into the Prairiefire development is to rezone the entire property as one complete

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project. The details about the project regarding total square footage of commercial and office uses, building heights, location of buildings on the site, and amount of parking is identical to the currently approved zoning plan.

The changes to the plan are on the southerly end of the project, where the right-of-way has been vacated and the location of 137<sup>th</sup> Street has been modified. The approved zoning plan shows that 26 residential units back up to the golf course in clusters of four and five units per building. The proposed plan shows 23 detached units in this location. The units will be connected in pairs with a court that will contain the air conditioner condenser and it will be a place to keep the trash container. The units have a different design than the currently approved plan, they are all prairie style buildings with long horizontal line, low pitched roofs. Each residential building will incorporate prairie style window and trim details. The building materials are stone, stucco, and wood trim.

The balance of the project, all north of 137<sup>th</sup> Street, will remain exactly the same as it is currently approved. This plan identifies a total of 639,375 square feet of non-residential uses, a 150-room hotel, and 307 residential units. The total number of residential units, including the 23 on the south side of 137<sup>th</sup> Street, is 330.

The project was approved with deviations to accommodate some of the unique conditions of the site and development plan. Those same conditions apply to this proposal because the majority of the plan will remain the same. The deviations are to allow a greater setback than the MXD zoning district allows and to allow less building wall frontage at that maximum setback. The greater setback is due to a gas line easement that runs along the 135<sup>th</sup> Street edge of the property.

The Lamar Avenue and 137<sup>th</sup> Street frontages are curved and irregular making it difficult to use a grid pattern of buildings and maintain the setback requirements. The deviation regarding the building frontage is to establish an urban character along the street edges. Staff is of the opinion that the project meets the intent of the ordinance.

Other deviations are for the potential of an auto dealership to be located at the northeastern corner of the development. The Unified

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Development Ordinance (UDO) requires a 75-foot setback between other uses in the development. This requirement is contradictory to the intent of the MXD zoning district. Staff had discussed the issue at length with the applicant to come up with an acceptable design to allow the auto dealership and outdoor display of vehicles and maintain the character of the development.

The buildings will use a mixture of stone, brick, glass, wood, metal, tiles and pre-cast materials. Buildings will have metal and fabric awnings over windows, metal screens will be incorporated throughout the project. A conceptual detail scheme was submitted with the currently approved zoning plan and there is a requirement for a more comprehensive design detail manual to be submitted prior to the approval of the first final development plan for the project.

- b. TRAFFIC IMPACTS: Since the revisions to this development plan have no impact on either the number of residential units or the layout or intensity of the non-residential land to the north of 137<sup>th</sup> Street, the transportation staff supports this request.
- c. ENVIRONMENTAL IMPACTS: All of the issues relating this rezoning request were reviewed with Rezoning No. 2006-18. The Engineering Services Division has no additional comments to add to the rezoning request. All applicable stipulations and requirements from Rezoning No. 2006-18 shall apply.

7. CONFORMANCE WITH THE MASTER PLAN:

- a. FUTURE DEVELOPMENT PLAN MAP: The majority of the site is zoned MXD and therefore is in compliance with the Future Development Plan map. The portion of the site that is the purpose for the rezoning is identified for low-density residential development. This property is 40 feet wide and is where the Prairiefire development abuts the Nicklaus Golf Course. This rezoning was anticipated when the initial rezoning of the development occurred.
- b. GOALS AND POLICIES: Goals and policies for mixed use development have been adopted since the time of the initial rezoning for the development; staff is of the opinion that the goals and policies have been met.

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8. STAFF RECOMMENDATION: The staff recommends approval of Rezoning No. 2008-10, subject to the following stipulations:
- a. The development shall be in accordance with Exhibit “A” (Site Plan), and Exhibit “B” (Building Elevations), which are filed in the office of the Planning Commission Secretary at City Hall and which are incorporated by reference as if set out in full herein. In addition, the development shall follow and comply with all regulations and standards of the City of Overland Park, unless specifically exempted by the Governing Body.
  - b. Development on the site shall be limited to 639,375 square feet of commercial and office uses; 330 residential units; and 150 hotel rooms.
  - c. Prior to the issuance of a Building Permit, the property shall be preliminary and final platted.
  - d. Prior to, or concurrent with, the submittal of final development plans of a commercial building in the development, the owner/developer shall submit a design criteria for review and approval by the Planning Commission. The criteria shall include, but is not limited to, parking lot screening techniques, landscape elements, signage, pavement details, pedestrian areas, building details, and architectural details.
  - e. Deviations are granted as noted in stipulations “e” and “f” of Rezoning No. 2006-18 allowing a greater setback of buildings along 135<sup>th</sup> Street, Nall Avenue, and Lamar Avenue, and to allow an auto dealership to be closer than the required maximum setback from other properties, and allow outdoor display of new vehicles.
  - f. Stipulations h through q of Rezoning No. 2006-18 shall apply to this development.
  - g. The number, location and geometrics of all driveways and parking areas are subject to review and approval by the Planning and Development Services Department. The layout of the internal drive and walkway system is subject to additional refinement prior to final development plan approval, when specific users and building designs will be established.

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- h. Concurrent with construction of any improvements on this site and prior to the issuance of any form of Certificate of Occupancy, the following improvements shall be constructed, subject to review and approval by the Planning and Development Services Department.
  - 1. Eastbound right-turn lanes on 135<sup>th</sup> Street at the site driveways.
  - 2. Southbound right-turn lanes on Nall Avenue at the site driveway and at 137<sup>th</sup> Street.
  - 3. A northbound right-turn lane on Lamar at 135<sup>th</sup> Street, including any traffic signal modifications required because of the construction of the turn lane.
  - 4. 137<sup>th</sup> Street as a 40-foot wide street, (including sidewalks and/or bike/hike trails on both sides, streetlights, curbs and gutters, and public storm sewers) with a widening at Nall Avenue to provide one westbound through lane, two eastbound left-turn lanes, a single through lane, and a right-turn lane, as detailed on the preliminary development plan.
  
- i. Prior to publication of the rezoning ordinance, the owner and/or developer shall submit either \$743,204 cash or an Irrevocable Letter of Credit meeting the requirements of city policy in effect at the time of payment, for a term of one year. Irrevocable Letters of Credit are not renewable and may be redeemed at any time prior to the end of the one-year term. Said cash or Irrevocable Letter of Credit shall be deposited with the Director of Finance, Budget and Administration for the City of Overland Park. The funds collected shall be placed in an escrow account set aside for future unspecified transportation planning, design, construction or implementation, and operations in the corridor defined as containing 135<sup>th</sup> Street and extending north to 127<sup>th</sup> Street, east to Nall Avenue, south to 143<sup>rd</sup> Street, and west to U.S. 69 Highway. Said work shall be above and beyond that listed in other stipulations to this rezoning.

In lieu of submission of the total amount of payment for unspecified transportation improvements, the owner or developer may submit partial payments, in cash, prior to the issuance of building permits

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for each phase of the non-residential portion of the development according to the following schedule:

<u>Year of Application for Building Permit</u>	<u>Contribution/ Square-Foot of Gross Floor Area</u>
2008	1.009
2009	1.110
2010	1.221
2011	1.343
2012	1.477
2013	1.625
2014	1.788
2015	1.966
2016	2.163
2017	2.379

NOTE: Any construction commencing after 2017 will be subject to the same 10 percent per year increase.

- j. Prior to the approval of any final development plan, the owner and/or developer shall submit either \$29,000 cash or an Irrevocable Letter of Credit meeting the requirements of city policy in effect at the time of payment, for a term of one year. Irrevocable Letters of Credit are not renewable and may be redeemed by the city at any time prior to the end of the one-year term. Said cash or Irrevocable Letter of Credit shall be deposited with the Director of Finance for the City of Overland Park. The funds collected shall be placed in separate escrow accounts set aside for the design and construction of traffic signals and any required interconnections at the following intersections:

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|----|-------------------------------|----------|
| 1. | 137th Street & Nall Avenue    | \$22,500 |
| 2. | 138th Street & Metcalf Avenue | \$6,500  |

The signalization will be considered by the city when and if a warrant is met in accordance with the "Manual on Uniform Traffic Control Devices." In the event the actual total signalization costs, including design, construction and easement acquisition costs, are less than the funds available from the escrow account at the time of

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contract closing out, the difference shall be refunded to the owner or developer or the successors in interest.

- k. In accordance with city policy, the owner and/or developer shall be responsible for 50 percent of the costs for the design and construction of a traffic signal and any required interconnections at the site driveway and Lamar Avenue intersection. The signalization will be considered by the city when and if a warrant is met in accordance with the "Manual on Uniform Traffic Control Devices." When requested by the city, the owner and/or developer shall make a cash payment to the city for the cost of the traffic signal.
- l. The owner and/or developer shall be responsible for 39.8 percent of the costs for designing and constructing a future traffic signal and any required interconnections at the 137<sup>th</sup>/138<sup>th</sup> Street and Lamar intersection. The signalization will be considered by the city when and if a warrant is met in accordance with the "Manual on Uniform Traffic Control Devices." When requested by the city, the owner and/or developer shall make a cash payment to the city for the cost of the traffic signal.
- m. The owner and/or developer shall be responsible for a total payment of \$310,533 for the construction of a northbound on-ramp in the northeast quadrant of the 135<sup>th</sup> Street and U.S. 69 Highway interchange. Prior to the issuance of a Building Permit for any portion of the project, the owner and/or developer shall submit a \$310,533 payment for the ramp construction. Said cash shall be deposited with the Director of Finance for the City of Overland Park.
- n. The owner and/or developer shall be responsible for a total payment of \$511,803 into an escrow account for the future construction of a southbound off-ramp in the southwest quadrant of the 135<sup>th</sup> Street and U.S. 69 Highway interchange. Prior to the issuance of a Building Permit for any portion of the project, the owner and/or developer shall submit a \$511,803 escrow payment for the future ramp construction. Said cash shall be deposited with the Director of Finance for the City of Overland Park.

The \$511,803 payment referenced above represents 9.42 percent of the estimated total cost of the ultimate southbound off-ramp in the southwest quadrant of 135<sup>th</sup> Street and U.S. 69 Highway interchange. After the project is completed and all costs are

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known, the city will determine if 9.42 percent of the total costs of the interchange improvement, including right-of-way acquisition costs, total less than \$511,803. If that is the case, the owner or developer shall be refunded the difference between \$511,803 and the calculated 9.42 percent contribution (including any accrued interest).