

Minutes of the Planning and Zoning Commission/Board of Zoning Appeals's August 2, 2022 Meeting

I. Call to Order

Present: Mary Jo Meier, Brent Littleton, Anthony (Tony) Royse, Kendall Neill, Tim Haynes, Michelle Anderson

Absent: Rachel Lyon, Lisa Richard, Andy McLenon

Excused:

Guests: Ruth Bowers, Kaitlyn Casillas, Paul Redel, William Briggs, Joe Cabrera, John Cusumano, Randy Shurtz, Miranda Bruening, Tabatha Snodgrass, Lisa Wilson

II. Minutes

- a. Consider approving minutes of the July 5, 2022 meeting.

Motion:

On the motion of Tim Haynes, seconded by Brent Littleton the Commission Approved the Minutes of the July 5, 2022 Meeting.

Aye: Michelle Avery, Tim Haynes, Brent Littleton, Mary Jo Meier, Kendall Neill, Anthony (Tony) Royse

Nay: None

III. Board of Zoning Appeals (Does not include outside City appointments)

- a. Public Hearing to receive comments on a request for a variance to reduce the minimum tenant space square footage requirement for three tenants in a C-4 highway commercial district at 102-106 South Peter Pan Road.

Kendall Neill opened the public hearing and the staff report was read.

MRP Capital Group purchased the building at 102-106 S Peter Pan Rd in July after CATO's closed. When that happened, The Shoe Store had the option for a percentage rent and/or to terminate their lease and so the company began searching for new tenants to rectify the situation. John Cusumano, who represents MRP Capital Group, stated that CATO's had to close their store because it was a larger space than they needed and they could no longer afford it. He presented his request to the board to split the area into 3 parts, for a total of 5 tenants in the building.

William Briggs, of US Cellular, explained the importance of the request as it pertains to the businesses going in and the time constraints in getting the building finished. He stated that the company wants to make a significant contribution to Independence. The new store would do that and we have brought in six new employees who have already left their jobs and some

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have relocated.

Tabatha Snodgrass discussed the importance of a strong downtown and having businesses go into the downtown buildings.

John Cusumano stated that his company was willing to work with the City on a new plan to reduce to two tenant spaces rather than three tenant spaces, for a total of four tenant spaces in the building.

Joe Cabrera stated that his company wants to be here and purposely chose to go into the building at 104 S Peter Pan Rd for the opportunity to stay in Independence. The company will usually put their businesses close to Walmart stores. He does not see this as the same situation from 22 years ago because things have changed and their company has an agent office in Coffeyville and a corporate store in Independence. We have been here for 12 years and have been moving employees to Independence.

Anthony (Tony) Royse asked what the difference is between the corporate store and what we had.

Joe Cabrera said that we had an authorized agent before but with corporate you have employees hired by US Cellular that can offer different benefit packages. There is also more support and more capital spent to support the business as well as more inventory.

Kendall Neill asked if the two businesses do not move will they have to shut their doors regardless.

Joe Cabrera replied that the previous location was agent owned and corporate was forced to look for another location.

Anthony (Tony) Royse asked if any of the businesses looked downtown for a building.

John Cusumano stated that MRP always opens next to Walmart.

Ruth Bowers stated that US Cellular had looked into the downtown buildings and found they were not ADA compliant and it would put too much cost on the company to bring it up to compliance.

Kendall Neill closed the public hearing. Acceptance of a variance must be based on the following factors:

a. That the variance requested arises from such condition which is unique to the property in question and which is not ordinarily found in the same zone

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or district; and is not created by any action or actions of the property owner or the applicant;

b. That the granting of the permit for the variance will not adversely affect the rights of the adjacent property owners or residents;

c. That the strict application of the provisions of the zoning regulations of which variance is requested will constitute unnecessary hardship upon the property owner represented in the application;

d. That the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare; and

e. That granting the variance desired will not be opposed to the general spirit and intent of the zoning regulations. The chair will entertain a motion at this time.

Anthony (Tony) Royse moved to approve the variance.

Motion:

On the motion of Anthony (Tony) Royse to approve the variance as requested to convert a 6,992 sq ft premise, located at 102-106 South Peter Pan Road, to 3 separate spaces totaling 6,850 sq ft of rentable space, consisting of the following: Space #1, 1,380 sq ft Space #2, 2,024 sq ft Space #3, 3,446 sq ft. This motion is based on the following: a. The variance requested is for a condition that was created by City staff, not the property owner; b. Granting of the variance would not create an unfair advantage to adjoining property owners as the other two spaces are currently occupied; c. If the variance requested is not granted, it would create unnecessary hardship upon the property owner by causing two new tenants, US Cellular and Verizon, to vacate the market and would experience continued difficulty in marketing the property. d. Granting the variance will not affect public safety, health, morals, etc. e. Granting the variance will not be contrary to the general spirit/intent of the planning and zoning ordinance as the property owner has no desire to move away from large retail sales. Granting the variance simply reflects the current reality that small retail properties are most effectively utilized by featuring a tenant mix of large/small retail uses. The property owner has no desire to convert all the spaces into smaller spaces, but wants to utilize 5 tenant spaces as opposed to 3. In addition, in 2006, a variance was approved at this location allowing a tenant to establish a retail space less than the 7,000 sq ft minimum required in a C-4 zone at that time.

There was discussion about whether the permit should have been issued and if when the property was sold it was known that it was zoned C-4. All district regulations can be found online. The initial permit was issued to get one of the cellular companies situated in a space quickly and it was for one new wall and preliminary work. The company was to then come back with additional

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plans.

Kendall Neill stated that he would like some more time to look over the information and would entertain a motion to adjourn the public hearing.

Mary Jo Meier asked if it would appropriate to consider amending the motion as this gentleman recommended and dividing the space in half rather than having three small entities.

Tim Haynes said it is also his opinion that there is a lot of difference between making two units that are 3,000 or more versus having potentially three units and like Kendall Neill he does not want to lose any business.

Kendall Neill asked if there was a second to the motion made by Anthony (Tony) Royse.

Motion dies for lack of a second.

City Attorney Jeff Chubb said the board could adjourn the hearing but should not wait more than a week for the next meeting to decide. The board was instructed not to speak to anyone about what has been or will be discussed.

Motion:

On the motion of Tim Haynes, seconded by Anthony (Tony) Royse, to Adjourn this Hearing to August 9, 2022 and to request plans for two new spaces instead of three, to be reviewed at that hearing.

Aye:Michelle Avery, Mary Jo Meier, Kendall Neill, Tim Haynes, Anthony (Tony) Royse

Nay: None

IV. Planning Commission

- a. Public Hearing to receive comments on a request for a conditional use permit for single-family and multi-family dwellings in the C-3, Central Business District at 103 North Pennsylvania Avenue, adjourned from the June 7, 2022 meeting.

Miranda Bruening explained the new plans put into place for this project that would fit what the City requires, and to meet the concerns brought up at the April 5, 2022 meeting.

Motion:

On the motion of Tim Haynes, seconded by Anthony (Tony) Royse to approve the conditional use permit based on staff's recommendation with the

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additional conditions as recommended by City staff.

Aye: Michelle Avery, Tim Haynes, Brent Littleton, Kendall Neill, Anthony (Tony) Royse

Nay: Mary Jo Meier

- b. Public hearing to consider adopting text amendments to Appendix B-Zoning of the City Code relating to recreational vehicles.

City Attorney Jeff Chubb put together wording for the Ordinance for owner/occupied RV's, taking out the time constraints that the Planning Commission/Board of Zoning Appeals wanted removed.

Motion:

On the motion of Tim Haynes, seconded by Brent Littleton, to approve adopting text amendments to Appendix B-Zoning of the City Code relating to recreational vehicles as recommended by the City Attorney.

Aye: Michelle Avery, Tim Haynes, Brent Littleton, Mary Jo Meier, Kendall Neill, Anthony (Tony) Royse

Nay: None

V. Discussion

Kelly Passauer stated that the September 6 meeting will be on the day after a City holiday but encouraged the board to go ahead and meet as there are items on the Agenda with time constraints.

Kendall Neill asked whether money for the new Comp Plan was still in the proposed budget and Kelly Passauer stated that it is at present.

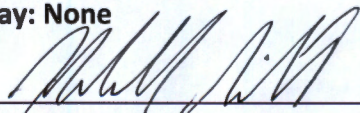
VI. Adjournment

Motion:

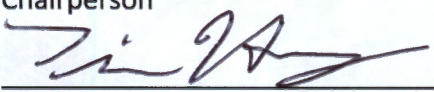
On the motion of Tim Haynes, seconded by Anthony (Tony) Royse to adjourn the meeting.

Aye: Michelle Avery, Tim Haynes, Brent Littleton, Mary Jo Meier, Kendall Neill, Anthony (Tony) Royse

Nay: None



Chairperson



Secretary