

Minutes of the Planning and Zoning Commission/Board of Zoning Appeals's August 9, 2022 Meeting

I. Call To Order

Present: Michelle Avery, Mary Jo Meier, Kendall Neill, Anthony (Tony) Royse, Lisa Richard, Rachel Lyon, Tim Haynes, Brent Littleton

Absent: Andy McLenon

Guests: Ruth Bowers, John Cusumano, Travis Toliver, William Briggs

II. 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 adjourned from August 2, 2022.

Kelly Passauer stated that the meeting was adjourned so that the company could bring an alternative drawing of two spaces. They still do not meet the code requirements for the C-4 district of 5,000 sq ft, by 21 percent and the City must still recommend to deny the request.

City Attorney Jeff Chubb suggested the chairperson ask the members if they had been approached by third parties, or received any information that would influence their decision at any time between the two meetings, and if so to share it with the board.

Kendall Neill, Chairperson, asked if anyone from the board had any outside contact regarding this case or if any board member had any conflict with the case.

All stated no.

John Cusumano reiterated what he addressed last week and brought a list of cellphone companies and their average sq ft is 1,949. He stated that both Verizon and US Cellular are willing to pay for the extra space to stay in Independence.

Will Briggs, US Cellular, stated that Independence, Kansas, is an important market for them and agreed to pay for the larger space so they can stay in Independence.

Tony Royse asked John Cusumano about how this affects the Shoe Store.

John Cusumano stated that the Shoe Show has a provision in their lease that allows them to leave at any time the adjoining stores are empty and stated

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they would like to prevent this from happening by having the cellphone companies in the neighboring space so that they do not leave.

Mary Jo Meier asked how the proposed square footage compares to where they were situated on West Main.

Will Briggs stated that it would double the size. The former location was not an option for the corporation due to the small size and the rent, which is almost twice the amount to the new location.

John Cusumano stated that it is a customer convenience to be close to a Walmart store to keep to the corporations' standards.

Travis Toliver from US Cellular stated that the difference between corporate and agent locations is that corporate locations are a big deal and this would be the 34th location if it is approved. There is more invested in the store and a corporate store can offer more than an agent store.

Lisa Richard asked when the company became aware of being in the C-4 zone and if the company assumed any size of occupancy would be permitted and what was used to determine that. When the title search had been done, did that not indicate it was in a C-4 zone and the company had the opportunity to check what that entailed. The company should be held accountable as well as the City to check the zoning code to find out what is allowed as the planned use. Since the requested variance does not fit City code, maybe rezoning the property or initiating a text amendment to include telecommunications companies as catering to the motoring public should be considered.

John Cusumano said that, as stated in the previous meeting, the company could have caught it sooner. A temporary occupancy was granted and in the final walk-through we were told of the restrictions of being in a C-4 zone versus a C-2 zone. The company looks at the Walmart restrictions and the restrictions of the other tenants. The company then looks at any other encumbrances. There was no malintent intended, the building is 20 years old and the map with the title was not clear. The company has never come across this type of issue where square footage is restricted, which comes up more in a ground-up situation. At the time the purchase of the building was made, the spaces were filled and it was not an issue.

Kendall Neill, Chairperson, closed the Public Hearing.

The Staff report remained the same, with the addition of the new structuring

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of the two spaces, versus the three spaces.

Tim Haynes asked David Cowan if it was in good faith that it was a temporary arrangement and would they then move into a larger space.

David Cowan said he granted the building permit based on a remodel and did not catch that it was in a C-4, 5,000 sq ft requirement. The plans were temporary as they planned what they were going to do. The temporary permit was issued because US Cellular needed a space right away. When Kelly Passauer, Zoning Administrator, realized what was going on, we immediately contacted the City Attorney and the company doing the work.

Motion:

On the motion of Mary Jo Meier, seconded by Rachel Lyon the Commission moved to approve the variance with the revisions submitted by John Cusumano in the letter that states 1. The second paragraph of Section 6 of our application should be deleted and replaced with the following: "Property Owner has determined that the best, most marketable use of this space is to convert the 6,992-square foot premises into 2 separate premises totaling 6,850 square feet of rentable space, consisting of two 3,425-square foot premises." and 2. The final sentence of Section 11 of our application should be deleted and replaced with the following: Property Owner has no need or desire to convert all or even the majority of the large retail spaces at the Property into smaller spaces; instead, we just want the flexibility, in recognition of the unique features of the Property and the general retail environment, to utilize 4 tenant spaces at the Property as opposed to 3." I am basing my motion to approve on these revisions suggested by John but basically because I feel it was an honest oversight by both parties that were working together to keep US Cellular from not staying in Independence. I think that that is a very important issue. I do not want to redo the C-4, I agree with the C-4 planning but I just think this is an exception and that we should consider approving based on that.

Kendall Neill asked City Attorney Jeff Chubb if this is a unanimous vote or a simple majority vote.

Jeff Chubb replied that it is a simple majority vote.

Aye: Michelle Avery, Rachel Lyon, Mary Jo Meier, Kendall Neill, Anthony (Tony) Royse

Nay: Tim Haynes, Lisa Richard

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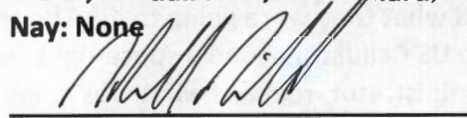
III. Adjournment

Motion:

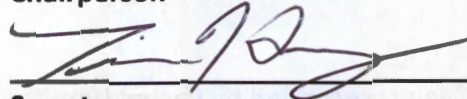
On the motion of Kendall Neill, seconded by Mary Jo Meier, the Commission moved to adjourn the meeting.

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

Nay: None



Chairperson



Secretary