

MINUTES
Independence Planning Commission/Board of Zoning Appeals
Tuesday, February 7, 2017
Veterans Room, Memorial Hall 5:30 p.m.

Call to Order

Planning Commissioners Present

Philip Umlauf, Jim Hardy, Mary Jo (Dancer) Meier, Steve McBride, Brian Beecham, Andy McLenon* and Nick McCollam*

Planning Commissioners Absent

Two vacancies due to resignations (Mary Schmidt and Darnell Lawrie)

*Outside Appointments are not on the Board of Zoning Appeals

Staff Present

Kelly Passauer, Assistant City Manager/Zoning Administrator
Jeff Chubb, City Attorney

Visitors Present

Brent Littleton, Jason Wenzel, Mike Conway

a. Consider approving minutes of the December 6, 2017 meetings.

Mary Jo Meier made a motion to approve the minutes of the December 6, 2017 Planning Commission/Board of Zoning Appeals minutes, seconded by Brian Beecham. The motion carried 7-0.

b. Reorganization:

- a. Election of Chair**
- b. Election of Vice Chair**
- c. Election of Secretary**

A motion was made by Steve McBride to nominate Philip Umlauf as Chair, seconded by Mary Jo Meier. The motion carried 7-0. A motion was made by Steve McBride to nominate Mary Jo Meier as Vice Chair, seconded by Philip Umlauf. The motion carried 7-0. A motion was made by Steve McBride to nominate Nick McCollam as Secretary, seconded by Philip Umlauf. The motion carried 7-0.

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

c. Consider a variance request from number and size of signs allowed in a C-4 zoned district at 510 and 584 North Peter Pan Road.

Staff provided the following staff report to the board in written form prior to the meeting:

Introduction

The City zoning code establishes standards and requirements but also recognizes that "not one size fits all" and provides for relief from such standards. There are procedures included in the ordinance to provide for exceptions through variances to meet special circumstances if certain criteria are met. There are five conditions that need to be met which are as follows:

- 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 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;*
- e. *That granting the variance desired will not be opposed to the general spirit and intent of the zoning regulations.*

The providing of variances is dealt with on an individual case basis when the standards create an unnecessary hardship. The practice of granting variances should be the exception, rather than the rule. In considering requests for variances, the board should consider past actions or precedence, consistency and in the issues being discussed tonight to ensure that no business receives an unfair advantage over competing businesses and the impact of any variance on community aesthetics.

Variances may only be approved for specific development requirements and cannot be considered to permit a land use which is in violation of the zoning ordinance. Types of development requirements in which variances may be considered include lot area coverage, lot size, set back requirements and signage requirements just to name a few.

The decision of the Board of Zoning Appeals is final and the action of the board is not considered by the City Commission. If either the City Commission or the applicant requesting the variance disagree with the Board of Zoning Appeals' decision, then the only appeal is to district court.

Overview of Variance Requested

The Board of Zoning Appeals has received an application from Labette Health Foundation, Inc. to grant a variance from the sign regulations provided for in the zoning ordinance. Their request is to exceed the number and size of signs allowed in a C-4 zone at 510 and 584 North Peter Pan Road.

Section 802.5 subsection "a" provides for the following:

802.5. District C-2, general business district and District C-4, highway commercial district:

- a. *Wall and marquee sign: Each business or commercial establishment shall be permitted not more than three illuminated or non-illuminated wall or marquee signs, not more than one on a facade, the total area of which sign shall not exceed 20 percent of the total area of the facade upon which it is placed. Such signs shall not extend above the average roof level of a one-story building more than five feet, and shall not extend above the average level of a two or more story building. Any signs painted directly upon wall surfaces shall not exceed 20 square feet in area.*
- b. *Projecting and detached sign: In lieu of one of the above attached signs, one projecting sign or one detached sign shall be permitted for each establishment, provided such*

projecting sign shall not exceed the area or height requirements of paragraph "a." above; and such detached sign shall not exceed 30 feet in height, nor shall it exceed 150 square feet in area per face nor more than 300 square feet total of all faces. Such detached and projecting signs shall be located not less than three feet from the property line providing it does not interfere with traffic view or other signs as might be obstructed from view. In the case of a shopping center, only one detached sign shall be allowed for the center, and one detached sign will be allowed for any service station which is part of the center.

- c. *Electronic sign: Electronic signs consisting of LED/Reader board electronic changeable copy) or electronic display center (video display sign) as defined in this ordinance are permitted and must meet the following requirements:*
1. *Detached sign: The sign must be a detached sign and the electronic portion may not exceed more than 20 percent of the allowable square footage per face of said detached sign.*
 2. *Duration: Any portion of the message or image must have a minimum duration of eight seconds.*
 3. *Off-premises advertising: All messages displayed shall be directly related to the business for which the sign was constructed.*
 4. *Setback: The leading edge of the sign must be a minimum of 100 feet from an abutting residential district boundary.*
 5. *LED/Reader board (electronic changeable copy) signs shall have the following additional restrictions:*
 - i. *Limited text: The text of the sign must be limited to ten words to allow passing motorists to read the entire copy with minimal distraction.*
 6. *Electronic display center (video display) signs shall have the following additional restrictions:*
 - i. *Brightness: The sign must not exceed a maximum illumination of 5,000 nits (candelas per square meter) during daylight hours and a maximum of 500 nits (candelas per square meter) between dusk and dawn.*
 - ii. *Dimmer control: The sign must have an automatic dimmer control to produce a distinct illumination change as required.*
 - iii. *Audio or pyrotechnics: Audio speakers or any form of pyrotechnics are prohibited.*

Review of Request

The applicant on their application is requesting variances to exceed the total number and size of signs as follows:

1. At the north (side) facade, provide one (1) illuminated" EMERGENCY" wall mounted sign.
2. At the west (front) facade, provide two (2) illuminated wall mounted signs plus one (1) illuminated wall mounted company logo sign (see attached bldg. signage rendering).
3. At the west (front) facade southern entrance, provide one (1) non-illuminated tenant name sign with logo (approximately 20 square foot total).
4. At the west (front) southern entrance, provide one (1) detached ground illuminated tenant (monument) sign 5'-0" long x 5'-0" high up to 25 square feet per side or 65 square feet total for four (4) sides. (see location per attached sheet C1.0).

5. Provide up to five (5) smaller detached, ground mounted "directional signs" each up to 50 square feet total for four (4) sides. These may be illuminated text or illuminated-by ground lighting (see locations per attached sheet C1 0).
6. Provide a "future" detached (monument) sign w/ digital display board up to 200 square feet per side or 450 square feet total for four (4) sides (see location per attached sheet C1 0).

The sign code for a C-4 district allows a maximum of three (3) signs, which may be a combination of one (1) detached sign and two (2) wall signs with only one (1) wall sign per façade. The request appears to be for a total of twelve (12) signs planned; five (5) wall signs (one (1) on the north façade, three (3) on the west façade and one (1) on the west southern entrance) and seven (7) detached signs (five (5) directional signs, one (1) monument sign and one (1) electronic monument sign). The applicant has indicated that the wall signs requested on the west façade are less than 20% of the total area of the west façade. The "future" detached sign proposed totals 200 square feet per side, or 450 square feet total for all sides. This exceeds the size allowed for a detached sign of 150 square feet per side or 300 square feet total. At this time the applicant has not requested a variance for the maximum 20% of allowable square footage for the electronic portion of the sign. For a sign meeting the sign requirements this would be a maximum of thirty (30) square feet for the electronic portion per side for a two (2) sided sign. If a 200 square feet per side sign is allowed, this would provide for a maximum of forty (40) square feet for the electronic portion per side. Electronic signs are also required to be placed 100' from residential zoned properties. To the west across the road there are properties zoned County R-1 Residential.

Board of Zoning Appeals Considerations

In considering the providing of a variance we wish to provide the following information:

- 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 or district; and is not created by any action or actions of the property owner or the applicant; This is a medical facility, so it is unique to the area and is not a typical commercial type use.*
- b. *That the granting of the permit for the variance will not adversely affect the rights of the adjacent property owners or residents; The variance requests do not appear to create any adverse effects to adjacent property owners as long as the 100' distance is met for adjoining residential properties. A previous conditional use permit was approved for this project that provides additional protections for adjacent property owners regarding directional lighting; noise from audio or paging equipment; traffic congestion from parking, entrance and exit drives; screening of solid waste; drainage and runoff issues, etc.*
- 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; This is a medical facility which has additional signage needs; many of the signs requested are directional signs for safety purposes.*
- d. *That the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare; It does not appear that the variance will adversely affect public health, safety or general welfare.*

- e. *That granting the variance desired will not be opposed to the general spirit and intent of the zoning regulations.* The variance requests are not opposed to the zoning regulations.

Staff Recommendation

1. Staff recommends **approving** the variance to exceed the maximum of three signs allowed in a C-4 district by allowing for the following twelve signs:
 - i) Five (5) wall signs as follows:
 - (1) North Façade -- This one (1) sign shall not exceed 20% of the total area of the north façade.
 - (a) One (1) illuminated "EMERGENCY" wall mounted sign.
 - (2) West Façade -- The total of these four (4) signs shall not exceed 20% of the total area of the west façade.
 - (a) Two (2) illuminated wall mounted signs plus one (1) illuminated wall mounted company logo sign on the west (front) façade; and
 - (b) One (1) non-illuminated tenant name sign with logo on the west (front) façade southern entrance.
 - ii) Seven (7) detached signs as follows:
 - (1) One (1) detached ground illuminated tenant (monument) sign 5'-0" long x 5'-0" high up to 25 square feet per side or 65 square feet total for four (4) sides at the west (front) entrance;
 - (2) One (1) "future" detached (monument) sign w/digital display board up to 200 square feet per side or 450 square feet total for four (4) sides; and
 - (3) Five (5) smaller detached, ground mounted "directional signs" each up to 50 square feet total for four (4) sides.
2. City staff recommends **approving** the variance to exceed the maximum size of a detached sign in a C-4 district of 150 square feet per face or 300 square feet total for the "future" detached monument sign w/digital display board up to 200 square feet per side or 450 square feet total for four (4) sides. The electronic portion of this sign may not exceed 20% per face, or 40 square feet per side on two sides and the sign must be located 100' from any residential zoned properties.

A motion was made by Philip Umlauf and seconded by Jim Hardy to approve the variance requests as recommended by staff. The motion carried 5-0.

- d. **Consider a variance request to reduce the setbacks in an M-2 zone at 741 Hackney Avenue.**

The applicant Mike Conway reviewed his request. Staff provided the following report:

Overview of Variance Requested

The Board of Zoning Appeals has received the attached application from Michael Conway requesting a variance from the district regulations. Mr. Conway is planning on constructing a building on a parcel in the West Laurel Industrial Park which is zoned M-2, heavy industrial.

Specifically, the variances are from the following sections shown in bold which state:

514.4. M-2 Intensity of use regulations:

- a. ***Minimum lot area:*** Five acres unless the proposed project abuts an existing industrial zone.

- b. *Minimum lot width:* No requirement.
- c. *Maximum lot coverage:* 60 percent.

514.5. Height regulations:

- a. *Maximum structure height:* 60 feet or four stories (whichever is smaller).
Exception: Grain elevator may exceed height limitation provided in this section as a conditional use (article IX).

514.6. Yard regulations:

- a. *Minimum front yard:* 30 feet measured from property line.
- b. *Minimum side yard:* 20 feet.
Exceptions: 30 feet when abutting a street or any commercial zone; 50 feet when abutting any "R" district.
- c. ***Minimum rear yard: 30 feet.***
Exceptions: 80 feet when abutting any C-1 or O&P district; 100 feet when abutting any "R" district.

The district regulations of the City zoning ordinance above state that in an M-2, heavy industrial district the minimum rear yard setback shall be 30 feet. The applicant is requesting that the 30' setback be encroached 20' for a reduced rear yard setback of 10'.

In reviewing the conditions that must be met when considering the variance, we wish to provide the following information:

- 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 or district; and is not created by any action or actions of the property owner or the applicant; There is a utility easement in the front yard that makes a large portion of the lot unusable since you cannot build over a utility easement. The building must be shifted back in order to not encroach on the utility easement.*
- b. *That the granting of the permit for the variance will not adversely affect the rights of the adjacent property owners or residents; City staff does not foresee that approval of these variances will adversely affect the rights of any 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; The applicant has indicated that without the variance they would not have enough space to construct their building due to the utility easement in the front yard.*
- d. *That the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare; Staff does not foresee this creating any adverse impact on the public health, safety, morals, order, convenience, prosperity, or general welfare.*

e. *That granting the variance desired will not be opposed to the general spirit and intent of the zoning regulations.* The Comprehensive Plan indicates that opportunities for industrial growth should be provided, which includes favorable land use. Considering the unique situation of the utility easement consuming a large portion of the front yard, staff does not feel that approval of this variance will be opposed to the general spirit and intent of the zoning regulations.

Staff Recommendation

Staff recommends approving the variance as requested by reducing the 30' setback 20' for a reduced rear yard setback of 10'.

A motion was made by Steve McBride and seconded by Philip Umlauf to approve the variance requests as recommended by staff. The motion carried 5-0.

Planning Commission

- e. **Consider a request for a conditional use permit for a daycare at 511 S. 4th Street.**
The applicant was not present. City staff provided the following report:

Summary

The Planning and Zoning Commission has received a request for a conditional use permit from Mary and Kenneth Wilson for a daycare at 511 S. 4th Street.

City Zoning Code Section 403.0 defines a day care facility as follows:

Day care facility: Any place, home or institution which receives four or more children under the age of 18 years for any part of the 24-hour day for compensation; provided, however, this definition shall not include public and private schools organized, operated or approved under the laws of the state, custody of children fixed by a court of competent jurisdiction, children related by blood or marriage, to the day care provider, caring for children within an institutional building while their parents or legal guardians are attending services, meetings or classes or engaged in church activities.

Appendix "A" of the Zoning Ordinance allows a day care facility as a permitted use in the C-1 and C-2 districts. Day care facilities are allowed as a conditional use in the A-1, R-1, R-2, R-3, R-4, R-5, O/P and C-3 zones. Day care facilities are not permitted in the M-1 and M-2 zones.

Conditional Use Permit

The zoning ordinance in section 901.1 (page 87) describes the purpose of a conditional use as:

"...those types of uses which are considered by the City to be essentially desirable, necessary or convenient to the community but which by their nature or in their operation have:

- 1) a tendency to generate excessive traffic,*

- 2) a potential for attracting a large number of persons to the area of the use thus creating noise or other pollutants,
- 3) a detrimental effect on the value of potential development of other properties in the neighborhood, or
- 4) an extraordinary potential for accidents or danger to the public health or safety.

Such conditional uses cannot be allowed to locate as a 'right' on any parcel of land within certain districts without consideration of existing conditions at the proposed locations and of properties neighboring the specific site considered, nor without adequate and sufficient safeguards, when necessary, to lessen the impact of adverse effects."

Staff Report

Article X of the Zoning Ordinance addresses special provisions applying to miscellaneous conditional uses:

1001.0. Purpose.

1001.1. Purpose: In granting a conditional use, the city may impose such conditions, safeguards and restrictions upon the premises benefited by the conditional use as may be necessary to reduce or minimize any potentially injurious effect of such conditional uses upon other property in the neighborhood, and to carry out the general purpose and intent of these regulations. Any lessening or subverting of those limitations and requirements constitutes a variance and must be treated accordingly. The following additional conditions shall be a requirement for the approval of the following conditional uses.

Section 610 and 1003 address the minimum provisions the Planning Commission should consider when authorizing a day-care facility in a residential district:

610.0. Family day care homes.

610.1. Definition: A "family day care home" shall be defined as any facility for the care of four or more children, but no more than ten children, including the homeowner's or resident's children, on a professional basis, and subject to state licensing, which is operated out of the residence in which the owner resides.

610.2. [Home occupation license:] Each family day care home must obtain a home occupation license and comply with the restrictions, limitations and requirements contained in 605.0 except as modified herein:

- a. *Said facility shall be allowed one sign, not to exceed 18 inches by 36 inches in dimension, which shall be attached to the house.*
- b. *Outdoor storage of materials shall be permitted insofar as such materials or equipment are utilized as part of the day care operation.*
- c. *The primary resident of the dwelling must operate the facility, who need not be an owner of the dwelling.*
- d. *Said facility shall be exempt from all off-street parking requirements included in 701.0.*

- e. *Children at play on the exterior of the house shall not be considered visible evidence of the business as provided by section 605.1 f.*

610.3. Special conditions:

- a. *No day care home may operate in an apartment or duplex.*
- b. *Each applicant for a home occupation license under this section shall be licensed or registered by the State of Kansas prior to receiving such home occupation license.*
- c. *Any family day care home or facility shall be operated in a manner that will not adversely affect other properties and uses in the area.*

1003.0. Day care facilities for more than four children.

1003.1. Special conditions: Day care facilities for more than four children shall meet the following provisions when authorized as a conditional use in any residential district:

- a. *City, county and state standards: All day care facilities shall be licensed by the state and shall meet all city, county and state health department requirements pertaining to facilities, equipment and other features.*
- b. *Loading zone: A loading zone capable of accommodating one car for every ten children shall be provided in addition to the required parking area in order to provide for easy pickup and discharge of passengers.*
- c. *Operation: Any day care facility shall be operated in a manner that will not adversely affect other properties and uses in the area.*
- d. *Screening required: Any day care facility located in a building other than a residential dwelling or any residential dwelling used for a day care facility for seven or more children shall provide a visual screen along all property lines abutting any residential use.*

In addition to the above special conditions required by the zoning code, the Planning Commission has the authority to place additional conditions on the site that they deem necessary to protect the best interests of the City, the surrounding property and to achieve the objectives of the ordinance.

City staff has reviewed the sites regarding the above special conditions and wishes to provide the following:

- a. *City, county and state standards: The applicant would be required to meet all City, county and state standards which includes receiving a State daycare license and a City occupation license.*
- b. *Loading zone: One off-street loading zone for every ten children is required by code. However, if the daycare facility is only licensed for nine children or less an off-street loading zone is not required.*
- c. *Operation: City staff is not aware of any issues in the operation of this day care that would adversely affect adjoining property owners.*

- d. *Screening required:* Screening is only required for seven or more children, if this facility is licensed for six children or less then no screening is required.

In considering those types of uses which may be desirable, necessary or convenient to the community, the Commission should review and make recommendations based in part on 901.1.

Additionally, the decision of the Planning Commission to recommend approval or denial of the proposed conditional use shall be based on the following criteria (902.2):

- a. *The proposed conditional use complies with all applicable provisions of these regulations, including intensity of use regulations, yard regulations and use limitation.*
- b. *The proposed conditional use at the specified location will contribute to and promote the welfare or convenience of the public.*
- c. *The proposed conditional use will not cause substantial injury to the value of other property in the neighborhood in which it is to be located.*
- d. *The location and size of the conditional use, the nature and intensity of the operation involved in or conducted in connection with it, and the location of the site with respect to streets giving access to it are such that the conditional use will not dominate the immediate use of the neighboring property in accordance with the applicable zoning district regulations. In determining whether the conditional use will so dominate the immediate neighborhood, consideration shall be given to:*
 - 1. *The location, nature and height of buildings, structures, walls and fences on the site, and*
 - 2. *The nature and extent of landscaping and screening on the site.*
- e. *Off-street parking and loading areas will be provided in accordance with the standards set forth in these regulations (article VII).*
- f. *Adequate utility, drainage, and other such necessary facilities have been or will be provided.*
- g. *Adequate access roads or entrance and exit drives will be provided and shall be so designed to prevent traffic hazards and to minimize traffic congestion in public streets and alleys.*

Action by the Planning Commission

Any recommendations regarding a conditional use permit for the subject properties shall be based on Section 902.2 previously outlined in this report. After considering any public comments the Planning Commission may either approve or deny the requests. If the requests are approved the applicants must be required to meet the special conditions required for a day care facility within a specified period of time in addition to any other conditions the Planning Commission wishes to require. Following your action, the application and your recommendation will be forwarded to the City Commission at which time they will have 30 days to adopt, modify or deny the Planning Commission's recommendation.

Staff Recommendation

City staff recommends **granting** the conditional use permit with the following conditions:

1. The applicant must meet all the "special conditions" set forth in Section 1003.1 a, b, c and d of the Zoning Code as follows:
 - a. *City, county and state standards: All day care facilities shall be licensed by the state and shall meet all city, county and state health department requirements pertaining to facilities, equipment and other features.*
 - b. *Loading zone: A "hard surfaced" loading zone capable of accommodating one car for every ten children shall be provided in addition to the required parking area in order to provide for easy pickup and discharge of passengers.*
 - c. *Operation: Any day care facility shall be operated in a manner that will not adversely affect other properties and uses in the area.*
 - d. *Screening required: Any day care facility located in a building other than a residential dwelling or any residential dwelling used for a day care facility for seven or more children shall provide a visual screen along all property lines abutting any residential use.*
2. The conditional use permit is not transferable to another property owner or to another location.
3. The applicant must be in compliance with all City codes and must continue to be in compliance with all City codes. This would include the requirement to acquire a City occupation license which must be renewed annually.

If any of the above conditions are not met the conditional use permit will no longer be valid. The basis of staff's recommendation is that granting the conditional use permit is consistent with the criteria "a through g" of Section 902.2 of the zoning code.

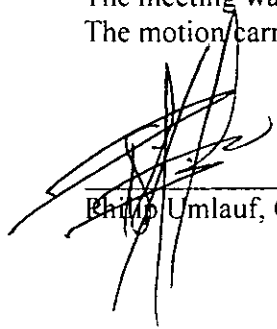
A motion was made by Nick McCollam and seconded by Andy McLenon to approve the conditional use permit with the conditions as recommended by staff. The motion carried 7-0.

f. Orientation with the City Attorney.

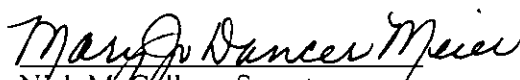
The City Attorney reviewed an orientation packet which had been previously provided.

Adjournment

The meeting was adjourned with a motion by Nick McCollam and a second by Andy McLenon. The motion carried 7-0



Philip Umlauf, Chair



Nick McCollam, Secretary
Mary Jo Dancer, Vice Chair
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