

MINUTES
Independence Planning Commission/Board of Zoning Appeals
Tuesday, May 2, 2017
Veterans Room Memorial Hall 5:30 p.m.

Call to Order

Planning Commissioners Present

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

Planning Commissioners Absent

None

*Outside Appointments are not on the Board of Zoning Appeals

Staff Present

Kelly Passauer, Assistant City Manager/Zoning Administrator

Visitors Present

Mr. and Mrs. Nelson Morris, Jeff Ports, Wade Harden, Ryan Modich and Carol Henson.

a. Consider approving minutes of the April 4, 2017 meeting.

Barb Emert made a motion to approve the minutes of the April 4, 2017 Planning Commission/Board of Zoning Appeals minutes, seconded by Philip Umlauf. The motion carried 8-0. Andy McLenon was not present during this vote.

Planning Commission

b. Consider a request to rezone a tract of land from C-3, central business district and R-4, medium density multifamily dwelling district to C-2, commercial services district with a conditional use permit for a drive-in restaurant at 401 – 419 N. 8th Street; and 209 W. Locust.

The applicants Jeff Ports and Wade Harden were both present and reviewed their request. Staff provided the following staff report to the board in written form prior to the meeting:

Summary Regarding Rezoning Request:

The Planning and Zoning Commission received a request from KEP Holdings, LLC to rezone the above listed property from C-3, central business district and R-4, medium density multifamily dwelling district to C-2, commercial services district with a conditional use permit for a drive-in restaurant.

The legal descriptions is:

Lots 1-5, Block 8, Original Plat, City of Independence, Montgomery County, Kansas.

Description of the Tract:

The property requested to be zoned lies in the central portion of the City. The parcels were previously utilized for commercial or residential type uses.

Zoning and Uses of Property Nearby:

The adjacent property to the north is a mix of R-3, R-2, C-2 and R-4. The property to the east is a mixture of R-4, C-2 and C-3. The property to the south is zoned C-3. The property to the west is predominantly R-4.

Character of the Neighborhood:

The area generally consists of commercial, residential and educational uses with a school located within one block to the northwest of this parcel.

Suitability of the Subject Property for the Uses to which it has been Restricted:

The northern portion of this property which is currently zoned R-4, medium density multi-family dwelling district is suitable for its current residential use. The southern portion of this property is currently zoned C-3, central business district. C-3 zoning is typically for downtown type buildings with zero lot lines. Since this property adjoins a highway and is not located in the downtown district, this portion of this property is more suitable for C-2, commercial services district.

Length of Time the Property has Remained vacant as Zoned:

A portion of the property to the north contains residential homes. The south portion of the property adjoining the highway previously contained a City water tower which has been removed. No other development has occurred on this portion of the property for several years.

Extent to which Removal of Restrictions will Detrimentially affect Nearby Property:

The south portion of this half block is already commercially zoned, the north portion that is currently zoned R-4 is cattycorner to commercial zoning to the northeast. There are areas in this neighborhood that are already zoned C-2, although they are not directly adjacent to the property under consideration for rezoning.

Relative Gain to the Public Health, Safety and Welfare by the Destruction of the Petitioner's Property as Compared to the Hardship Imposed upon the Individual Landowners:

Denial of the proposed rezoning will impact the owner's use of the property as it will not allow them to develop a drive thru restaurant as planned.

Conformance with the Comprehensive Plan:

The general development plan map recommends the area requested to be rezoned be developed as residential, while the area directly south and in the next block east be developed as commercial.

The Commercial Goal provides:

To provide sufficient neighborhood and community-wide shopping facilities efficiently distributed throughout the community and adequate opportunity for commercial expansion.

Objective C1 provides:

Encourage the development of business downtown.

Objective C2 provides:

Provide areas away from downtown for clustered and coordinated commercial development to serve businesses with acreage requirements that cannot be accommodated downtown.

Objective C3 provides:

Provide neighborhood convenience shopping adjacent to residential areas but discourage "spot commercial" zoning.

Objective C4 provides:

Limit strip commercial development along major streets to businesses directly serving the motoring public.

This project will provide a business serving the motoring public adjacent to downtown and a residential area.

Objective G1 of the Comprehensive Plan provides:

Direct the location and subdivision design of new development in order to minimize initial and future public and private costs.

This neighborhood already has infrastructure in place to serve this development.

Object H1 of the Comprehensive Plan provides:

Maintain or upgrade the condition and particular character of existing neighborhoods and residential areas.

This development will increase the current encroachment of commercial areas on the residential areas within this neighborhood. Additional protections are included in the recommended conditional use permit to address this encroachment.

Summary Regarding Conditional Use Permit:

Section 901.2 of the zoning code authorizes the Planning and Zoning Commission to recommend a conditional use permit for a permitted use if by its nature and operation has the following characteristics (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 upon the value of or potential development of other properties in the neighborhood, or (4) an extraordinary potential for accidents or danger to the public health or safety. In reviewing this project City staff believes that this use meets those criteria.

The tendency to generate excessive traffic: At present this neighborhood has residential, commercial and educational uses. In addition to the normal highway traffic adjoining the area under consideration, some additional traffic may be generated before and after school while school is in session. This development will generate excessive traffic.

A potential for attracting a large number of persons to the area of the use, thus creating noise or other pollutants: This development will attract a larger number of persons to the area than its current vacant and residential state.

A detrimental effect upon the value of or potential development of other properties in the neighborhood: Based on the present mixed commercial and residential classifications it is believed that this development could influence additional commercial development along this highway corridor. It is unknown if this will have a detrimental effect upon the value of properties.

An extraordinary potential for accidents or danger to the public health or safety: It is anticipated due to the increased traffic entering the property from the highway that there could be a potential for additional traffic accidents.

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 IX of the Zoning Ordinance addresses purpose and authority for granting conditionals uses.

901.0. Purpose and authority.

901.1. Purpose: Conditional uses are 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 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 upon the value of or 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 location and of properties neighboring upon the specific site considered, nor without adequate and sufficient safeguards, when necessary, to lessen the impact of adverse factors.

901.2. Authority to grant permits: The governing body shall have the authority to grant conditional use permits, subject to such conditions of design and operation safeguards and time limitations as it may determine for all conditional uses specified in appendix "A" of this ordinance and for all permitted uses for which the planning and zoning commission has found that by their nature or in their operation have characteristics listed in clauses (1), (2), (3) and (4) of section 901.1 of this article, provided, however, that said conditional use permits for permitted uses shall not establish standards or conditions that are less restrictive than those set out in the district regulations for the district in which said use is located.

(Ord. No. 3863, § 1, 12-20-01)

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 a 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. *The conditional use permit does comply with the C-2 district regulations if the rezoning is approved. The applicant will also be required to follow all other regulations, including off street parking requirements.*
- b. The proposed conditional use at the specified location will contribute to and promote the welfare or convenience of the public. *It is believed that this new drive in restaurant adjacent to downtown and residential areas will contribute to 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. *Based on the character of the neighborhood it is not believed that this expansion will have a detrimental effect on the neighborhood.*
- 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.*The property will be required to meet all district regulations, unless the variances are approved by the Board of Zoning Appeals. The expansion is being built on a parcel that is one half City block in size.*
- e. Off-street parking and loading areas will be provided in accordance with the standards set forth in these regulations (article VII). *The applicant is required to provide adequate parking and will follow the off-street parking regulations.*
- f. Adequate utility, drainage, and other such necessary facilities have been or will be provided. *Drainage will be addressed through the site plan review and will also be addressed in the conditional use permit.*
- 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. *City staff will be working with the applicant to ensure that the ingress and egress will be designed to minimize traffic hazards.*

The zoning and uses of the surrounding properties have been presented in the rezoning report.

Action by the Planning Commission

Any recommendations regarding a conditional use permit for the subject property shall be based on Section 902.2 previously outlined in this report. 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 rezoning the property to C-2, commercial services district with a conditional use permit for a drive-in restaurant with the following conditions:

1. The conditional use permit is not transferable to another location and will be binding on all future owners, assigns or heirs.
2. The applicant will obtain all necessary City of Independence and State of Kansas permits to lawfully operate the uses proposed.
3. All parking, entrance and exit drives must be designed to minimize traffic congestion on public streets.
4. Areas adjacent to residential districts shall be designed to minimize disturbance of residents by the erection between the commercial and residential uses of a sight-obscuring fence of not less than five feet nor more than six feet in height, except where vision clearance is required, in lieu of such sight-obscuring fence, shrubs, trees or hedges may be substituted as approved by City staff.
5. Any additional exterior lighting on site will be designed in such a way that it will not be directed toward or create a nuisance to any adjoining properties. Such lighting will need to be approved by the Zoning Administrator.
6. To limit noise that could affect adjoining areas there shall be no outside audio or paging equipment that exceeds a volume level that can be heard at any of the adjoining residential dwellings.
7. The location of solid waste equipment shall be designed by the company and will need to be approved by City staff. All solid waste shall be kept in containers which shall be screened from adjoining properties.
8. Any off-street parking areas will meet the minimum off street parking requirements; shall be maintained in appearance and shall be used solely for parking of the customers and employees. Such parking area may not be used for storage of vehicles, equipment or other items.
9. A drainage plan designed to adequately handle a 10 year or greater storm event must be submitted by an engineer licensed in the State of Kansas to ensure that any increased runoff will be dealt with in such a way so as not to negatively impact nearby or downstream properties.
10. All property lines must be established by a surveyor licensed in the State of Kansas.
11. A detailed site plan and landscaping plan shall be submitted to and approved by City staff prior to any such work commencing.
12. All improvements will be maintained and kept in serviceable condition; and the property must be kept free of debris and trash.

If any of the above conditions are not met the conditional use permit will no longer be valid. Staff's recommendation is based on the criteria set forth in 902.2, "a through g" of the zoning code.

The Planning Commissioners discussed traffic impacts, residential zone impact along Locust Street, alley egress as it relates to resurfacing the alley and modifying it to one way so no one enters the alley from Chestnut.

A motion was made by Nick McCollam and seconded by Steve McBride to recommend that the City Commission approve rezoning the parcels commonly known as 401-415 N. 8th, excluding two parcels also requested adjoining Locust commonly known as 209 W. Locust and 419 N. 8th, to C-2, commercial services district with a conditional use permit for a drive-in restaurant with the conditions recommended by staff plus an additional condition requiring resurfacing of the alley as follows:

1. The conditional use permit is not transferable to another location and will be binding on all future owners, assigns or heirs.
2. The applicant will obtain all necessary City of Independence and State of Kansas permits to lawfully operate the uses proposed.
3. All parking, entrance and exit drives must be designed to minimize traffic congestion on public streets.
4. Areas adjacent to residential districts shall be designed to minimize disturbance of residents by the erection between the commercial and residential uses of a sight-obscuring fence of not less than five feet nor more than six feet in height, except where vision clearance is required, in lieu of such sight-obscuring fence, shrubs, trees or hedges may be substituted as approved by City staff.
5. Any additional exterior lighting on site will be designed in such a way that it will not be directed toward or create a nuisance to any adjoining properties. Such lighting will need to be approved by the Zoning Administrator.
6. To limit noise that could affect adjoining areas there shall be no outside audio or paging equipment that exceeds a volume level that can be heard at any of the adjoining residential dwellings.
7. The location of solid waste equipment shall be designed by the company and will need to be approved by City staff. All solid waste shall be kept in containers which shall be screened from adjoining properties.
8. Any off-street parking areas will meet the minimum off street parking requirements; shall be maintained in appearance and shall be used solely for parking of the customers and employees. Such parking area may not be used for storage of vehicles, equipment or other items.
9. A drainage plan designed to adequately handle a 10 year or greater storm event must be submitted by an engineer licensed in the State of Kansas to ensure that any increased runoff will be dealt with in such a way so as not to negatively impact nearby or downstream properties.
10. All property lines must be established by a surveyor licensed in the State of Kansas.
11. A detailed site plan and landscaping plan shall be submitted to and approved by City staff prior to any such work commencing.
12. All improvements will be maintained and kept in serviceable condition; and the property must be kept free of debris and trash.

13. The adjoining alley will be resurfaced and improved by the applicant as part of the project. Such resurfacing will need to meet specifications provided by the City, and such work will need to be approved by the Zoning Administrator.

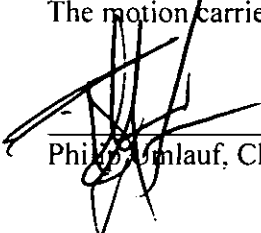
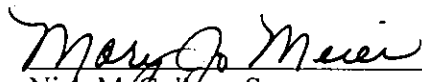
The motion also included a recommendation to the City Commission to make the alley one way with no traffic entering from Chestnut. The motion carried 7-1 with Mary Jo Dancer Meier casting the dissenting vote. Andy McLenon was not present when the vote was taken.

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

d. None.

Adjournment

The meeting was adjourned with a motion by Brent Littleton and a second by Nick McCollam. The motion carried 8-0. Andy McLenon was absent when this vote was taken.


Philip J. Lauf, Chair
~~Nick McCollam, Secretary~~
MARY JO MEIER, VICE - CHAIR