

MINUTES

Independence Planning Commission Independence Board of Zoning Appeals

Tuesday, November 6, 2018

Veterans Room

Memorial Hall

5:30 p.m.

Call to Order

Planning Commissioner Present

Jim Hardy, Nick McCollam (outside), Andy McLenon (outside), Philipp Umlauf, Brian Beecham and Michelle Anderson

Planning Commissioners Absent

Barb Emert, Steve McBride, and Mary Jo Meier Andy McLenon (outside)

Staff Present

Kelly Passauer, Assistant City Manager/Zoning Administrator

Visitors

Mike Prunty, Ray and Donna Rothgeb, Art & LaVerne Schenk and Rusty Arnold

Minutes

- a. Consider approving minutes from the October 2, 2018 meeting.

Jim Hardy made a motion to approve the minutes of the October 2, 2018 meeting, Andy McLenon seconded the motion. The motion carried 6-0.

Planning Commission

- b. Consider a text amendment to Appendix B-Zoning of the City code, including Appendix A. "Listing of Permitted and Conditional Uses" and any related definitions in Article IV. "Rules and interpretation"; relating to "Microbreweries", "Bottling and canning soft drinks and carbonated water", and "Beer, wine and alcoholic beverages – wholesale".

The following staff report was provided:

On October 11, 2018 the City Commission accepted staff's recommendation to initiate a public hearing for text amendments to Appendix A. "Listing of Permitted and Conditional Uses" and any related definitions in Article IV of the zoning ordinance relating to "Microbreweries"; "Bottling and canning soft drinks and carbonated water"; and "Beer, wine and alcoholic beverages – wholesale". The City Commission or Planning Commission may initiate text amendments to

the zoning code. The Request for Commission Action (RCA) that staff prepared for the October 11, 2018 City Commission meeting is attached.

Specifically, the recommended modifications are as follows:

1. Add "Microbreweries" to the permitted and conditional use table and include C-2 and C-3 as a conditional use, and M-1 and M-2 as a permitted use, and add the statutory definitions: "Microbrewery -- means a brewery licensed by the director to manufacture, store and sell domestic beer."; and "Beer -- means a beverage, containing more than 3.2% alcohol by weight, obtained by alcoholic fermentation of an infusion or concoction of barley, or other grain, malt and hops in water and includes beer, ale, stout, lager beer, porter and similar beverages having such alcoholic content."
2. Modify "Bottling and canning soft drinks and carbonated waters" in the permitted and conditional use table to add C-2 and C-3 as a conditional use.
3. Modify "Beer, wine and alcoholic beverages—wholesale" to include C-2 as a conditional use. NOTE: This is not related to the microbrewery, just something I found that needs to be cleaned up.

Staff believes this change is consistent with the intent and purpose of the zoning regulations; the zoned districts C-2, C-3, C-4 (follows the same uses as C-2), M-1 and M-2 will be affected as their permitted and conditional uses will be modified as it relates to "Microbreweries", "Bottling and canning soft drinks and carbonated water", and "Beer, wine and alcoholic beverages – wholesale"; and the proposed amendment is made necessary because of changed or changing social values, new planning concepts or other social economic conditions in the areas and zoning districts affected.

A motion was made by Philipp Umlauf, seconded by Michelle Anderson to recommend accepting staff's recommendation and proposed text amendment modifications; and submitting such recommended modifications to the City Commission for approval. The motion carried 6-0.

- c. Consider a request to rezone tracts of land from R-4, medium density multifamily dwelling district to M-1, light industrial district on the east side of the 2200 block of North 21st Street.

The applicant's representative, Superintendent Rusty Arnold, was present and described the project, which was to build a bus barn on the south portion of the property. He stated that they would construct a 6' metal fence around two sides that face residential areas. He stated the busses will not always be there as some drivers take them home at night. He further stated in the Summer there would not be much activity. He stated the rest of the property would continue to be farmed.

Jim Hardy asked about the water runoff. Mr. Arnold stated that the bulk of the water runs to the east, then it goes to Whiskey Creek. Mr. Rothgeb indicated that he was concerned that the water runs northwest toward his property. He further stated that

Cohen Esrey had built slabs to control the water flow when they developed the apartments.

Mr. Rothgeb asked about the number of busses entering off 21st Street and indicated that the area was mostly residential, and not commercial.

Donna Rothgeb indicated that she was concerned about traffic safety and conflicts with farm equipment that utilize that road. She further stated that when it rains they have water close to their house. Brian Beecham asked if they were in a flood zone, to which they did not think they were.

Jim Hardy indicated that he had concerns putting this in the middle of residential areas, with busses leaving at 6 AM in the morning, headlights will be shining on living room windows. He further stated he was concerned with drainage, as he worked with people that lived on Whiskey Creek and he worked for Standard Motors for 35 years and he had to clean 6" of water out of the plant several times.

Rusty Arnold stated that the water drops to the southeast, that there is a berm there and any water goes that way, based on what is there. Ray Rothgeb stated that he may have to concede that point.

Mike Prunty stated that water in the drainage ditch overflows and comes on to the west side and that his crawl space is always wet. He further stated that the residents of the apartments come out early in the morning to go to work and hit 21st Street "pedal to the metal".

Nick McCollam stated that the bus barn where it is now is dealing with speeding drivers.

Brian Beecham stated that it came down to whether it is commercial or residential.

Philipp Umlauf stated that it is currently zoned R-4, and if it is developed it would be more like Pheasant Point with even more hard surface than what is proposed with the bus barn. Ray Rothgeb indicated that he didn't think anyone would dispute that. He is more concerned about putting this type of zoning in that neighborhood.

Staff provided the following report:

Summary Regarding Rezoning Request:

The Planning and Zoning Commission received a request from USD 446 to rezone the above listed property from R-4, medium density multifamily dwelling district to M-1, light industrial district on the east side of the 2200 block of North 21st Street.

The legal description is:

Phase 2 of Pheasant Point Addition, also described as:

The W/2 of the SE/4 of the NW/4 of Section 24, Township 32 South, Range 15 East, City of Independence, Montgomery County, Kansas

EXCEPT: Commencing at the Northwest Corner of the SE/4 of the NW/4; thence N.90°00'00"E. along the North line of said SE/4 of the NW/4 a distance of 660.71 feet to the NE corner of the W/2 of the SE/4 of the NW/4; thence S.00°17'46"E. along the East line of said W/2 of the SE/4 of the NW/4 a distance of 40.00 feet to the Point of Beginning; thence S.00°17'46"E. along the East line of said W/2 of the SE/4 of the NW/4 a distance of 625.18 feet; thence N.90°00'00"W. a distance of 147.45 feet; thence S.00°18'10"E. a distance of 70.00 feet; thence N.90°00'00"W. a distance of 60.00 feet; thence N.74°00'00"W. a distance of 95.00 feet; thence N.90°00'00"W. a distance of 322.00 feet; thence N.00°18'10"W. a distance of 669.00 feet; thence S.90°00'00"E. a distance of 620.70 feet to the point of beginning; and

EXCEPT: A tract of land located in a portion of Pheasant Point Addition, to the City of Independence, and being more particularly described as follows: Commencing at the SE corner of Pheasant Point Addition; thence N.00°17'46"W. along the East line of said addition a distance of 30.00 feet to the point of beginning; thence N.89°51'07"W. along the North Right of Way line of Mulberry Street as platted in said addition a distance of 114.32 feet; thence N.00°17'46"W. a distance of 114.32 feet; thence S.89°51'07"E. a distance of 114.32 feet to the East line of Pheasant Point Addition; thence S.00°17'46"E. along said line a distance of 114.32 feet to the point of beginning

Description of the Tract:

The property requested to be rezoned consists of a 7.83 acre tract which lies in the northeast portion of the City. The parcel was originally platted for the second phase of the Pheasant Point Apartments development; however, it was never developed. The property has been utilized for agricultural purposes for many years.

Zoning and Uses of Property Nearby:

The property to the north is zoned R-4 and includes an apartment complex. The property to the east is zoned R-3, however, it has not been developed and is currently being utilized for agricultural purposes. The property to the south is in the County and is utilized for agricultural purposes. The property to the west is in the County and is used for residential and agricultural purposes.

Character of the Neighborhood:

The area generally consists of residential and agricultural uses.

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

This property is suitable for its previous residential use, although it has never been developed as residential as it is being utilized for agricultural purposes.

Length of Time the Property has Remained vacant as Zoned:

The property is currently vacant and has been utilized for agricultural purposes for several years.

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

With the exception of the apartment complex directly to the north, the other adjoining areas are not densely populated, so it not believed there will be a detrimental effect on those properties. However, fencing, screening or other minimizing efforts should be considered, particularly in regards to the apartment complex directly north of this parcel. The M-1 industrial district includes the following use limitations which will apply to this parcel if rezoned:

513.8. Use limitations:

- a. All operations and activities shall be conducted within a building or buildings. Storage may be maintained outside said building or buildings provided the view of said storage area is properly screened from adjacent streets and residential areas.
- b. No retail sales or service shall be permitted except when incidental or accessory to a permitted use.
- c. No building shall be used for residential purposes except that a watchman may reside on the premises.

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 construct a bus garaging and equipment maintenance facility to serve the children attending the USD 446 school facilities.

Conformance with the Comprehensive Plan:

The general development plan map recommends the area requested to be rezoned be developed as residential.

Objective I-1: Target industrial development to locations which maximize efficient usage of public and semi-public land and semi-public facilities necessary and minimize the cost of development. The proposal under consideration will minimize development costs as existing infrastructure is nearby.

Policy I-12: Industrial sites shall have access to arterial streets; preferably those leading directly to major highways. The proposal under consideration is on a collector street that is utilized as a minor arterial due to the heavy traffic in this area. The 1982 Comprehensive Plan suggest improving this street and realigning it to provide a more direct access from the northwest

area to Main Street, by continuing the street directly south of the railroad tracks along Whiskey Creek.

Policy I-13: *In addition to highway access, industrial parks and sites preferably shall have access to railroad and airport facilities.* The proposal under consideration does not require railroad access and we are not suggesting rezoning any additional property for industrial uses in this area at this time.

Policy I-14: *Whenever possible, public water and sewer service should be provided.* City water and sewer service are existing in the area and can be extended to serve this facility.

Objective I-2: *Direct industrial activities to locations offering the least negative impact on surrounding land uses and the environment.* The proposal under consideration should have little impact on the surrounding area if proper screening is implemented. The most objectionable issue may be the noise of the busses starting up early in the morning. Care should be taken to ensure they are not having to back up to leave the grounds in the morning, thus eliminating the additional noise of backup alarms.

Police I-21: *New industrial uses shall be separated or buffered from surround non-industrial uses. Heavy industrial uses shall be located away from existing or projected residential growth areas and opposite the prevailing winds.* Screening is being recommended by the construction of a site obscuring fence as a condition of the rezoning. This is not only for the visual appearance, but also to address safety issues as several children live in the apartment complex adjoining this parcel. No heavy industrial uses are allowed in an M-1 district.

Policy I-23: *Access should be provided to industrial areas in a manner which prevents traffic through residential areas.* The busses will be serving residential areas in the City and in the County. The only other traffic will be from the employees coming to work at this location. Traffic to this parcel will come directly from 21st Street.

The proposal is consistent with industrial goals and objectives of the comprehensive plan which primarily set out general geographic criteria for locating industrial facilities within the City. However, the application is not consistent with the General Development Plan Map which indicates this area as residential.

This development will increase the encroachment of industrial areas on the residential areas within this neighborhood. However, since it is bus facility and not a manufacturing facility, the encroachment should be minimal.

Staff Recommendation

City staff recommends rezoning the property to M-1, light industrial district with the following restrictions:

1. The applicant will obtain all necessary City of Independence and State of Kansas licenses and/or permits to lawfully operate the uses proposed.
2. All parking, entrance and exit drives must be designed to minimize traffic congestion on public streets.
3. Areas adjacent to residential districts shall be designed to minimize disturbance of residents by the erection between the industrial 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.
4. 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.
5. 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.
6. 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.
7. 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 USD 446 vehicles and employee vehicles. Such parking area may not be used for storage of equipment or other items.
8. 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.
9. All property lines must be established by a surveyor licensed in the State of Kansas.
10. A detailed site plan shall be submitted to and approved by City staff prior to any such work commencing.
11. All improvements will be maintained and kept in serviceable condition; and the property must be kept free of debris and trash.

Andy McLennon moved to approve the rezoning with the restrictions as recommended by City staff. The motion was seconded by Philipp Umlauf. The motion carried 6-0.

- d. Report on Feedback from the November 5, 2018 City Commission meeting regarding the text amendment to the off-street parking requirements.

Staff advised that the Commission had concerns regarding the recommended text amendments relating to the off-street parking requirements that would allow gravel in industrial zones if ADA requirements were met. Some of the feedback from the Commission included:

- They want to know what the initial intent of text amendment was.
- They had the following concerns:
 - The appearance of large gravel parking lots.
 - Gravel running off in heavy rains.
 - Ability to adequately mark ADA spots.
- Suggestions to consider:
 - Limiting the size of gravel parking lots to a maximum number of spaces.
 - Continue to require new buildings or new industries to hard surface required off-street parking but allow existing industries that already have a gravel parking lot that is grandfathered in (a non-conforming use) to expand (enlarge) their existing gravel parking lot.
 - However, if they have an existing hard surfaced parking lot any expansion (enlargement) would have to be hard surfaced.

Staff advised that we can add this item back on the Planning Commission's December 4, 2018 agenda for formal reconsideration.

Jim Hardy asked about the ADA requirements, and Philipp Umlauf suggested requiring a minimum number of ADA spots to be hard-surfaced. Brian Beecham stated that there was a company in Chanute that had hard-surfaced ADA spots, and the rest of the lot was gravel. Philipp Umlauf stated that there are ways to control gravel runoff in heavy rains by providing a larger aggregate of gravel on the edges. Andy McLenon stated that the number one item on the survey for the City's Community-Based Strategic Plan was Economic Development. He further stated that he wasn't sure what the cost was for asphalt verses gravel, however, he doesn't want the City to miss out on an opportunity because a company chooses to locate in Chanute rather than Independence because of this requirement. He further stated; "What the community is telling us, there is a large expense for a company that they can very easily choose another location and forgo that expense. They have to comply with ADA, it is federal law, if they want to keep replacing their gravel every time it rains two inches, I would make it an option for them. The interesting thing is we get to revisit the Fire Department Building. Two years ago that was put up with a gravel parking lot, it would be interesting to see if the City is willing to fund hard surfacing that. I respectfully disagree with the comments from the

Commission.” Philipp Umlauf stated that he would like to see a time limit for that. Nick McCollam stated that the concerns are logical and that they can look at it more but can’t make a decision tonight with the lack of notice.

Nick McCollam moved to reconsider the text amendment relating to off-street parking at the December 4, 2018 meeting. The motion was seconded by Philipp Umlauf. The motion carried 6-0.

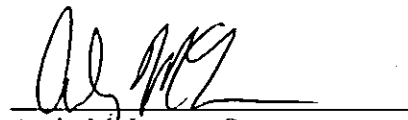
Board of Zoning Appeals

e. None.

Adjournment

The meeting was adjourned with a motion by Brian Beecham, seconded by Philipp Umlauf. The motion carried 6-0


~~Nick McCollam, Chair~~
Vice-Chair


Andy McLendon, Secretary