

MINUTES
Independence Planning Commission
Independence Board of Zoning Appeals
Tuesday, January 5, 2021
Veterans Room Memorial Hall 5:30 p.m.

Call to Order

The Planning Commission meeting was called to order by Mary Jo Meier.

Planning Commissioners Present

Michelle Anderson (by phone), Mary Jo Meier (in person), Lisa Richard (in person), Kendall Neill (in person), Anthony Royse (in person), Rachel Lyon (in person), Andy McLenon (in person) (came in at 6:00 p.m.).

Planning Commissioners Absent

Brent Littleton
Barb Emert

Staff Present

Kelly Passauer, City Manager (in person); David Cowan, Assistant City Manager (in person); Jeff Chubb, City Attorney (in person), Lydia Collins, Administrative Aide (in person).

Visitors

Alan Betchan, AAB Engineering, LLC (by phone)
Gayle Wallingford – 108 Morningside Pl
Brad Boyer – 2405 N Penn Ave
John Heckman – 2620 N Penn Ave
Marcy Ballew – 210 Morningside Pl
Bill King – 2205 N 8th St
Susan Scovel – 505 E Locust St
Fr. Zachary Pinaire – 210 N 4th St
Sam Carnes – 100 Morningside Pl
Pat Raglin – 2430 N Penn
Vivian Cottrell – 2508 N Penn Ave
Tim Raglin – 2930 N Penn Ave
Gary Janzen – 2136 N 8th St
Stacy Boyer – 2405 N Penn Ave

Susan Kleinbeck – 119 Bermuda
Loretta McDiarmid – 2304 N 11th St
David Shatney – 2304 N 8th St
Gary Hare – 210 Bermuda
Ellie Culp – 2029 Irving St
Kurt Seiler – 300 Crestview Dr
Toni Jabben – 206 Bermuda St
Jake Jabben – 206 Bermuda St
Nancy Clubine – 2501 N Penn Ave
Jamie Clubine
Kathleen Reynolds – 729 N 11th St

Reorganization

1. Election of Chair

Mary Jo Meier moved to nominate Kendall Neill as Chair. Rachel Lyon seconded. Motion carried.

2. Election of Vice Chair

Tony Royse moved to nominate Lisa Richard as Vice-Chair. Mary Jo Meier seconded. Motion carried.

3. Election of Secretary

Lisa Richard moved to nominate Rachel Lyon as Secretary. Kendall Neill seconded. Motion carried.

Minutes

Consider approving minutes of the November 3, 2020 meeting.

It was noted that Andy McLennon's name was down as being present when in fact he was not.

Kendall Neill made a motion to approve the minutes, as amended, of the November 3, 2020 meeting, Rachel Lyon seconded the motion. The motion carried 6-0.

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

- a. None

Planning Commission

- b. **Public hearing to receive comments on a request to rezone a tract of land from R-1, Large Lot Single-Family Dwelling District to C-1, Neighborhood Business District at 2313 North Pennsylvania Avenue.**

The following staff report was provided to the Planning Commission:

Summary:

The Planning and Zoning Commission received a request from AAB Engineering,

LLC, to rezone a tract of land from R-1, Large Lot Single-Family Dwelling District to C-1, Neighborhood Business District at 2313 N. Pennsylvania Avenue.

The legal description is: The North Half of Lot 7, Block 1, Highland Park Addition to the City of Independence, Montgomery County, Kansas, Except Beginning 100 feet East of the Southwest Corner of the North Half of Lot 7, Thence North 165 feet, Thence West 100 feet to the Place of Beginning; and Except the West 100 feet of the North Half of Lot 7.

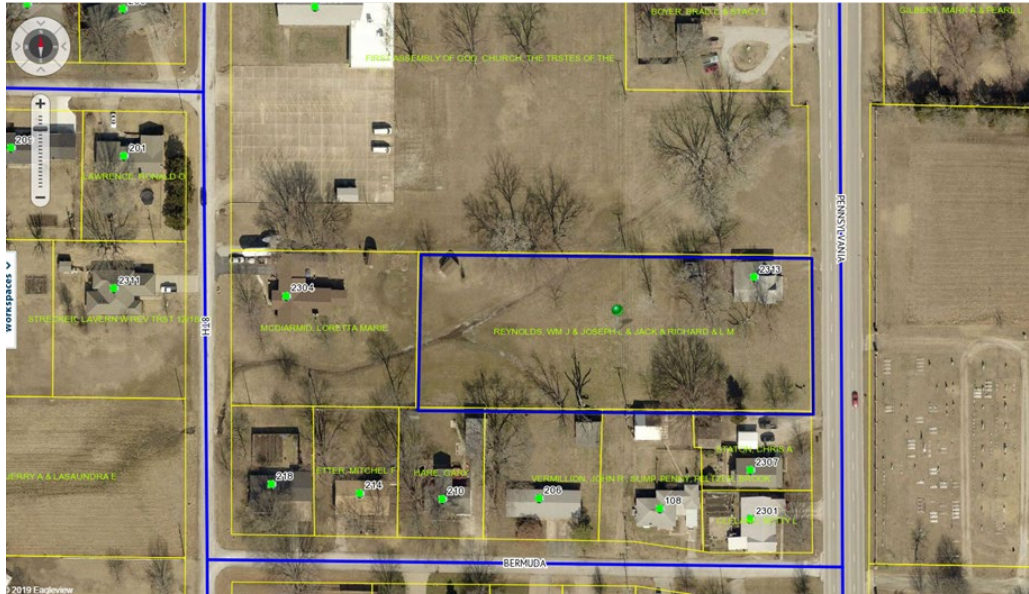
Description of the Tract:

The area requested to be rezoned is 165 feet wide and 400 feet deep. The lot lies in the northern portion of the City. There is a detached one and a half story, finished, single-family residence on the east side of the property. The property is located on a major street, which is also a highway.



Zoning and Uses of Property Nearby:

The property directly north, south and west is zoned R-1, Large Lot Single-Family Dwelling District and is utilized primarily for residential purposes with a church property directly north. The property to the east is Mount Hope Cemetery, Catholic Cemetery and Lutheran Cemetery. Approximately 550 feet south there are C-2 zoned properties starting at Mulberry Street.



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

The property under consideration is currently zoned R-1, Large Lot Single-Family Dwelling District. The property is suitable for the present residential use classification.

Length of Time the Property has Remained vacant as Zoned:

The property is not vacant as it currently contains a residential structure. However, we believe the structure has not been occupied since approximately 2014.

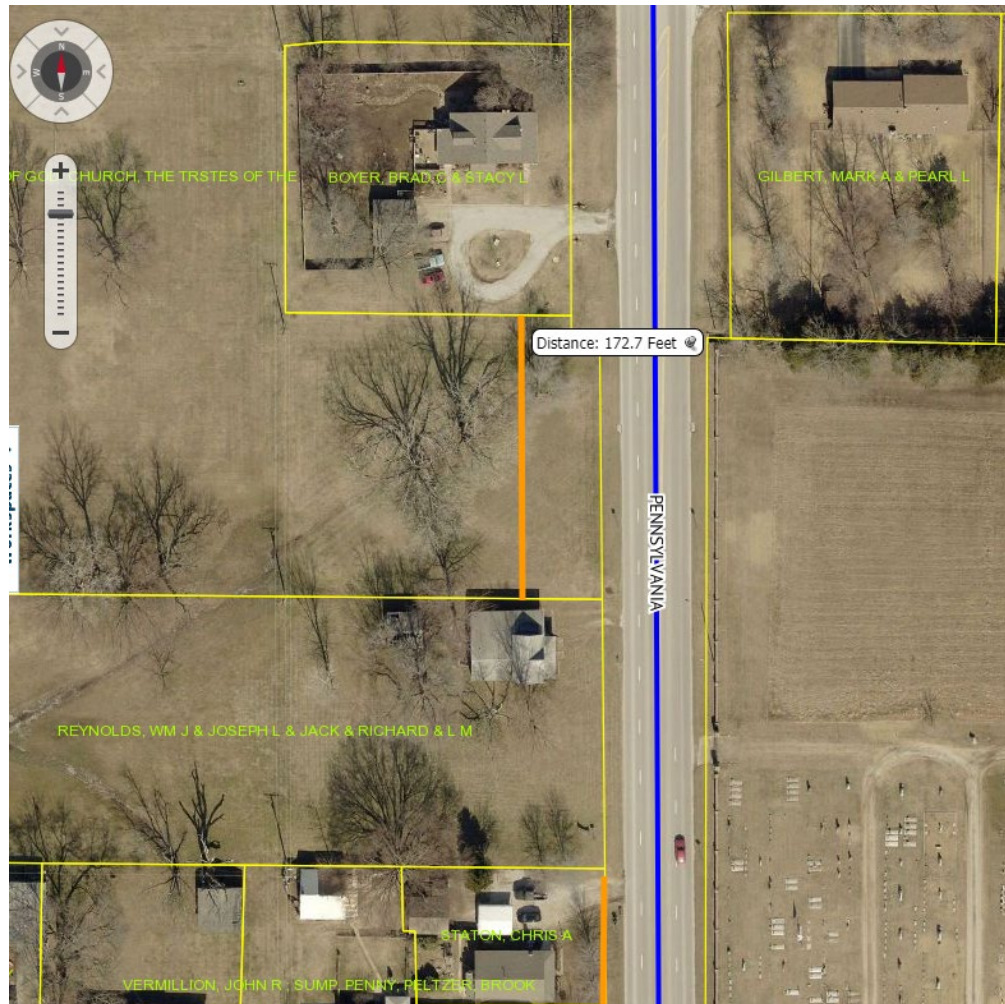




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Extent to which Removal of Restrictions will Detrimentially affect Nearby Property:

Since North Penn is also a highway this area is already a high traffic area. Although the proposed store will generate additional traffic, it is not anticipated to significantly increase the daily traffic counts on North Penn



Avenue. It is anticipated the neighbors to the south would be most affected, as the church property directly to the north is primarily undeveloped which serves as a buffer to the residential structure that is approximately 170 feet north.

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:

The property is presently zoned for residential use; therefore, it is not likely that the value of the petitioner's property will be reduced. It is also anticipated that permitting the rezoning as requested would have minimal impact on the public health, safety and welfare. Denial of the proposed

rezoning will impact the proposed owner's use of the property as they would like to enhance their facilities without restrictions included in the R-1 zone, which would not allow a Commercial Retail Store. Development of such a store in this location would be a gain to the welfare of those in the residential neighborhoods in the north portion of the City, as it would provide the availability of daily necessities closer to their residences. This was a concern previously voiced by residents residing in the northern portion of the City after Braum's moved from North Penn to West Main. Also, since there is already an established Dollar General Store located on East Main that serves the central and southern portions of the City, this will ensure the local traffic generated by the proposed new location will be primarily those that live in the northern portions of the City.

Conformance with the Comprehensive Plan:

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

Objective C1 – Encourage the development of business downtown.

Policy C11 – The Central Business District (CBD) shall be the primary regional retail center in the City.

Policy C12 – The enhancement of the CBD to attract both shoppers and prospective businesses through development and redevelopment efforts of the private and public sectors shall be encouraged.

Objective C2 – Provide areas away from downtown for clustered and coordinated commercial development to serve businesses with acreage requirements that cannot be accommodated in downtown.

Policy C21 – Planned commercial areas shall be provided for large lot users (i.e., lumber yards, auto and farm implement dealers). These uses shall be clustered along U.S. 75 west of the Missouri-Pacific right-of-way but no further than 1/2 mile west of Peter Pan Road to minimize their impact on surrounding uses and traffic patterns rather than being allowed to form a long commercial strip and be limited to properties having direct vehicular access to the highway.

Objective C3 – Provide neighborhood convenience shopping adjacent to residential areas but discourage “spot commercial” zoning.

Policy C31 -- Coordinated neighborhood shopping centers or groups of stores which primarily provide goods and services to local residents only, such as grocery stores, pharmacies and laundromats, shall be allowed in residential areas, but no individual store may exceed 5,000 S.F. in total floor area. Such shopping facilities should be encouraged in the southeast, southwest and Fruitland areas of the community.

Policy C32 -- Neighborhood shopping centers should not be larger than 12 acres in area.

Policy C33 -- The enhancement of neighborhood shopping centers shall be encouraged to attract both shoppers and prospective businesses through the development and redevelopment efforts of the private and public sectors.

Objective C4 – Limit strip commercial development along the major streets to business directly serving the motoring public.

Policy C41 -- Strip commercial development, single commercial uses stringing out along a street, shall be limited to those uses directly serving the motoring public such as motels, service stations and fast-food restaurants.

Policy C42 -- Strip commercial development shall be limited to major highway entrances to the City and shall be permitted only limited access to Major streets via frontage roads. Generally, commercial use shall be confined to the west side of Pennsylvania between Oak and Mulberry, west on U. S. 75 as far as 1/2 mile west of Peter Pan Road.

Policy C43 -- The Zoning Ordinance should be updated to limit the types of businesses located on the highways outside of the Central Business District.

The uses in the C-1 district provide commercial locations for small areas of convenience shopping facilities in and near residential neighborhoods. Such convenience shopping facilities will often occupy a small area, frequently at an intersection or on a major street, in an area that is otherwise wholly residential.

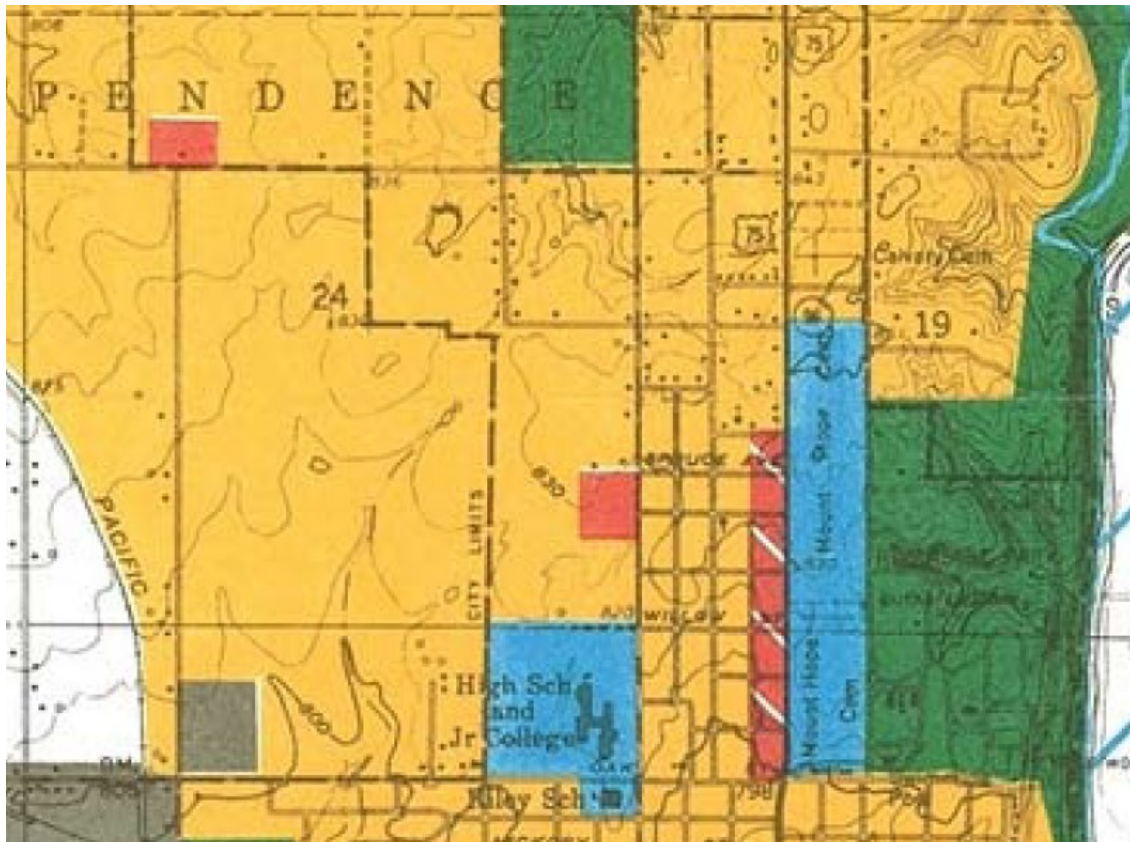
The City's Comprehensive Plan indicates that residential areas are compatible with neighborhood commercial developments, and commercial developments on North Penn are addressed to infill the commercial strip opposite the cemetery (pages 66 and 83, of the 1982 Comprehensive Plan):

“The convenience shopping facilities consist of a small commercial center. It should contain adequate parking areas and is usually patronized by two or more neighborhoods no further than one mile from the furthest home. These small commercial centers would not draw any substantial business from downtown, but rather only provide daily necessities. Their uses could include a grocery store, a dry-cleaners, a pharmacy, and a service station.”

“Commercial development along Pennsylvania is shown as being limited to infilling of the commercial strip opposite the cemetery. A small neighborhood shopping center site is shown at 10th and Spruce and Taylor and 21st Streets.”

While the 1982 General Development Plan map shows the specific area for this development as residential, the majority of the area on North Penn

opposite the cemetery is shown as commercial.



The Comprehensive Plan recognizes the fact that all businesses will not be accommodated by the central business district and indicates that the Commercial Goal is to provide sufficient neighborhood and community wide shopping facilities efficiently distributed throughout the City and adequate opportunity for commercial expansion. (Table 5-1, page 68 of the 1982 Comprehensive Plan).

Staff Analysis

Rezoning this lot to C-1 would fit the character of the neighborhood as properties on the north, south and west are zoned R-1 where a C-1 Neighborhood Business would be allowed. The intended continued use of the property by the applicant for a retail store does match the intent of the C-1 Neighborhood Business district. The proposed store would retail daily necessities, which would consist of primarily grocery and apparel type merchandise. The permitted and conditional use table permits both of these uses in a C-1 zone:

Land Use Category	Code	Permitted Zoning District												
		A-1	R-1	R-2	R-3	R-4	R-5	O/P	C-1	C-2	C-3	C-4	M-1	M-2
Groceries—retail	5410								P	P	P	P		

		Permitted Zoning District												
Land Use Category	Code	A-1	R-1	R-2	R-3	R-4	R-5	O/P	C-1	C-2	C-3	C-4	M-1	M-2
Apparel and accessories—retail	5610								P	P	P	P		

However, the size of the store proposed is 130' X 70, or 9,100 square feet which exceeds the use limitations for the C-1 zone in Section 509.8.a. which states; *“No separate business establishment shall occupy more than 5,000 square feet of floor space. Each separate business establishment shall operate independently from adjacent business establishments.”* This is consistent with the Comprehensive Plan which states in Policy C31, *“Coordinated neighborhood shopping centers or groups of stores which primarily provide goods and services to local residents only, such as grocery stores, pharmacies and laundromats, shall be allowed in residential areas, but no individual store may exceed 5,000 S.F. in total floor area.”*

In speaking with the applicant, I advised them that if the C-1 zoning was approved it would require a variance from the 5,000 square feet use limitation in Section 509.8.a. The applicant advised that they may wish to pursue a P.U.D. designation along with the C-1 zoning, which would include the requirements of the C-1 district, with the exception of the square footage limitation. The P.U.D. process requires a preliminary and final plat, which could be reviewed and approved at the same meeting. If this option is taken, then the hearing for the P.U.D. could not be held sooner than the February 2, 2021 Planning Commission meeting, if the information is received in time to meet the publication requirements for that meeting.

Another option would be for the applicant to request rezoning to C-2, commercial services district. This zone is already located on North Penn approximately 1 ½ blocks or 550 feet south of the tract requested for rezoning. Section 510.1 describes the intent as; *“District C-2 is intended primarily for general trades and commercial services located at specific points on major thoroughfares outside of central or neighborhood business districts. This district is particularly appropriate adjoining a major highway. Such an area draws highway trade uses such as restaurants, service stations, and motels which are not totally compatible with shopping center developments but which may be grouped together quite advantageously as highway service centers.”* Staff’s concern with this option is since it is not directly adjoining an existing C-2 district, it would be a spot zone within an area primarily zoned residential with less restrictions than a C-1 district. Staff is further concerned this could open the door for additional uses in the future that may not be compatible with the nearby residential properties.

Acting Chair Mary Jo Meier opened the public hearing.

Alan Betchan of AAB Engineering represented the applicant and stated that he was asking for a continuance to the next meeting to develop plans to meet all requirements. He stated that would give them more time to make modifications and to reach out to the neighbors as a whole. He asked that this item be tabled so that they can deal with all issues at once.

Lisa Richard asked if the request was to increase the size of the building. Alan Betchan stated that the maximum is 5,000 feet and we’re asking to get a variance for the additional 4,100

square feet. He further stated that they could request a C-2 zoning but that would not be beneficial to the neighborhood. Lisa Richard asked where the 9,100 square feet was coming from. Alan Betchan stated that they are allowed to make modifications that make it more fitting to the property it is on, which is why they would like to pursue a P.U.D. at a future meeting. Lisa Richard asked if they have to comply with the requirements with the district if you get a P.U.D. Kelly Passauer replied that the P.U.D. could modify the building size limitation if approved after the zoning request is approved, but it would still be in a C-1 district. Lisa Richard asked where that was in the code. Kelly Passauer stated that when you do a P.U.D. you can modify the requirements specifically to the P.U.D. There would be restrictions in the P.U.D. A P.U.D. can be commercial or residential.

Mary Jo Meier moved to adjourn the hearing as requested, which died due to a lack of a second. Kendall Neill suggested that we hear from the public that were in attendance.

Kurt Seiler, 300 Crestview Dr. – My family and I lived in Neodesha right next to a Dollar General. There was trash and increased foot traffic by our house. We moved to Independence to a house away from the commercial district. The impression everyone has is of a beautiful cemetery. Now if Dollar General comes in that is the impression people would have, trash and increased traffic. The cons insurmountably outweigh the pros.

John Heckman, 2620 N Penn Ave – My wife and I were born and raised in Independence and one of the main things is the character of the neighborhood in the R-1 district. In the comprehensive plan it clearly states that businesses should be on the west side. There is a Dollar General appropriately located on E Main already. The intent of nearly doubling the size will not fit in this neighborhood. This store is more of a variety store. Putting the store here would be spot zoning and we don't want that. There will be three lanes coming in and it would cause traffic hazards. Drainage will be an issue and will need a lot of work. The site now is dark, with a few lights on in houses. In a Dollar General the lights will be harsh and cause a problem. I believe the request should be denied as it doesn't comply with the Comprehensive plan, it is larger than allowed and if they go to C-2 that will cause spot zoning. A P.U.D. will bend the rules to allow a building twice the size it should be. (See attached for full report.)

Stacy Boyer, 2405 N Penn – My house is directly north, and the lights will bother us 24/7. We moved here to be in a residential area where we could raise our kids. We have spent thousands of dollars making a nice home for ourselves. There should not be any commercial business put into our neighborhood. There will be serious drainage issues. When Dollar General moves into a place they eventually just leave the building empty. Traffic is a major concern, both foot and vehicular. We already have a lot of trash to pick up because of the highway. I am concerned about shoplifters running through our yards. Fencing will not hinder drug use in the parking lot. Dollar Generals are usually unkempt, dirty and an eyesore. They only employ 6 to 7 people which would not increase employment in the community. Employees are not

treated well and are overworked and underpaid. These should all be considered. These corporations do not care about communities. Adding another building will only add stress to the neighborhood. (See attached for full report.)

Nancy Clubine, 2501 N Penn – I inherited my home after growing up in it. Taylor Rd was just like a cow path and there were few homes around. Over the years many nice homes have been built and we would like to keep it residential. Has a plan been approved by KDOT for entering and leaving the highway? The applicant's representative Alan Betchan stated that they cannot get that until everything else lined up as there is a whole process, and zoning has to be in place.

Brad Boyer, 2405 N Penn – I moved in back in 1996 when Dillon's came in. We had 6 food stores and then everybody left town and the businesses closed down. We're lucky to have G & W Foods and Walmart. We are doing well but could be doing a lot better. Bringing in another store will make that worse. Along with what my wife stated, the shoplifters are out there and there are a lot of them. Putting in a store in a residential neighborhood would cause them problems. At G & W Foods, we serve healthier meals than Dollar General offers. We have fresh food whereas Dollar General does not.

Gary Janzen, 2136 N 8th – we moved to Independence a little over three years ago to our forever home. We chose nice neighborhoods where kids are safe. Where we lived in Oklahoma there was a neighborhood Walmart and the housing prices plummeted. Businesses need to be in commercial areas not residential areas.

Father Zachary Pinaire, 210 N 4th – I received a notice because this will affect the Catholic cemetery. I would not want a general store across from my church or rectory. In a similar state, a cemetery is a place of rest and peace. The point where this Dollar General Store wants to go in is literally 5 minutes from the existing Dollar General Store.

Tony Royse asked if they could make it bigger after the requested rezoning was approved. Kelly Passauer stated that they would not be able to do that if the maximum size was restricted when it is approved. They would have to come back with a variance or PUD to modify the allowed size. Tony stated that we have had seven (7) citizens come forward and twenty (20) other people here that do not want the rezoning.

Kelly Passauer went through the following options which were displayed on the slideshow being presented:

Option 1: Approve the rezoning to C-1 and include restrictions that require meeting the C-1 district regulations, which would require complying with the C-1 district regulations, unless variances are granted or a P.U.D. is approved modifying such district regulations.

Suggested Motion to approve with restrictions:

I move to recommend approving a request to rezone tracts of land located at 2313 North. Pennsylvania Avenue from R-1, Large Lot Single-Family Dwelling District to C-1, Neighborhood Business District with the following restrictions which shall be binding on all future owners, assigns or heirs:

1. The applicant will obtain all necessary City of Independence and State of Kansas licenses and/or permits to operate the uses proposed.
2. All parking, entrance and exit drives must be designed to minimize traffic congestion on public streets.
3. 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.
4. 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 under separate ownership other than the auto dealership and service center properties.
5. 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.
6. 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 of the business. Such parking area may not be used for storage of vehicles, equipment or merchandise.
7. 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.
8. All property lines must be established by a surveyor licensed in the State of Kansas.
9. A detailed site plan shall be submitted to and approved by City staff prior to any such work commencing.
10. All improvements will be maintained and kept in serviceable condition; and the property must be kept free of debris and trash.
11. The applicant will comply with the C-1 district regulations, unless variances are granted or a P.U.D. is approved modifying such district regulations.

This motion is based on the following findings: Conformance with the Comprehensive Plan, Character of the Neighborhood, Zoning and uses of properties nearby, Availability and adequacy of required utilities and services to serve the proposed use, and staff recommendation.

Option 2: Adjourn the public hearing to allow the applicant time to apply for a variance or P.U.D. so that all matters could be considered at the same meeting.

Suggested Motion to adjourn:

I move to adjourn the public hearing to Tuesday, February 2, 2020 at 5:30 PM for a request to rezone a tract of land located at 2313 North. Pennsylvania Avenue from R-1, Large Lot Single-Family Dwelling District to C-1, Neighborhood Business District.

Option 3: Deny the request. If the Commission accepted this recommendation and the applicant wished to proceed with this project, this would require the applicant to restart the zoning process over.

Suggested Motion to deny:

I move to recommend denying a request to rezone a tract of land located at 2313 North Pennsylvania Avenue from R-1, Large Lot Single-Family Dwelling District to C-1, Neighborhood Business District. This motion is based on the following findings: Conformance with the Comprehensive Plan, Character of the Neighborhood, Zoning and uses of properties nearby, Availability and adequacy of required utilities and services to serve the proposed use, and staff recommendation.

Tony Royse moved to deny a request to rezone a tract of land located at 2313 North. Pennsylvania Avenue from R-1, Large Lot Single-Family Dwelling District to C-1, Neighborhood Business District. Kendall Neill seconded. Lisa Richard and Michelle Anderson dissented. Motion carried 5-2.

d. Other discussion as requested at the October 6, 2020 meeting:

1. Tiny houses

Kelly Passauer asked what additional information the Planning and Zoning Board wanted on this subject. Rachel Lyon stated you could encourage a tiny homes subdivision rather than a mobile home court on West Laurel Street. Lisa Richard asked about tiny houses being placed on a lot where there is another home. Susan Scovel stated that there is a place in Bartlesville that has tiny houses and Independence could have something like that on the east side of town. Community based would be better than dotted throughout the town. Kelly Passauer said that would be an excellent use of a P.U.D. as the district regulations could be modified to fit such a development.

Andy McClenon moved to table this discussion until the next meeting and to see if April Nutt, Housing Director, is available to discuss it. Kendall Neill seconded. Motion carried 7-0.

2. Marijuana dispensaries

It was discussed to review the conditional and permitted use table to see where it would fit, and also setting specific restrictions as a special conditional use.

Andy McClenon moved to table this discussion until their March meeting. Kendall Neill seconded. Motion carried 7-0.

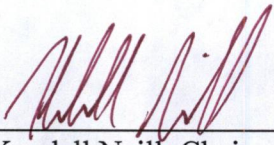
3. County Gravel Parking Lot Status -- Conditional Use Permit for Supplementary Parking at the Southwest Corner of Wald Avenue & Myrtle Street
- i. The City Commission on February 4, 2010 approved the attached conditional use permit for a supplementary parking lot at the southwest corner of Wald Avenue and Myrtle Street. The original conditional use permit indicated that all the requirements had to be met within one year of approval, or by February 4, 2011.
 - ii. On December 8, 2016 the City Commission extended the timeframe to meet the requirements of the conditional use permit originally approved until December 31, 2017.
 - iii. On April 27, 2017, the County requested certain conditions of the conditional use permit be waived by the City Commission relating to hard surfacing, screening, lighting, service drives, drainage, approved plan, minimum parking space dimensions, etc. The Commission took no action and tabled this item.
 - iv. On December 28, 2017 the City Commission provided the County an additional extension to meet the conditions of a conditional use permit for a supplementary parking lot at the southwest corner of Wald Avenue and Myrtle Street until December 31, 2018.
 - v. On January 24, 2019 the City Commission denied text amendments recommended by the Planning Commission that would have modified the off-street parking requirements, leaving the ordinances as they currently exist.
 - vi. On May 15, 2019 City staff contacted the County to ask for an update of their intentions and offered the following options:
 1. Ask the Commission to provide another extension.
 2. Ask the Commission to waive the requirements (which was previously tabled).
 3. Ask the Commission to reconsider modifying the code.
 4. Come into compliance with the conditional use permit
 - vii. On June 25, 2019 City staff inquired again, as no response was received from the May 15, 2019 email. Jim Wright indicated that the County was “actively researching our options.”
 - viii. On October 29, 2020 City staff contacted Jim Wright at the County for an update, advising them that the Planning Commission was inquiring on the status. Mr. Wright replied that they did not have any additional information, but they would bring it up at the next County Commission meeting.

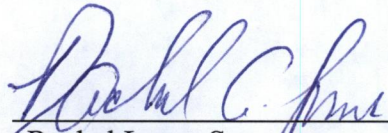
Kelly Passauer reported that she contacted Jim Wright and he had replied back today and stated that there were no updates on this subject. Tony Royse stated that Montgomery County has been out of compliance for 10 years and they need to comply. The City complied when they were told. Kelly Passauer suggested sending a notice to have a County representative appear at the next meeting.

Mary Jo Meier moved to have City staff contact Montgomery County and request that a representative appear at the next meeting. Tony Royse seconded. Motion carried 7-0.

Adjournment

Tony Royse moved to adjourn the meeting, with Lisa Richard seconding the motion, which passed 7-0.



Kendall Neill, Chair

Rachel Lyon, Secretary