

MINUTES

Independence Planning Commission Independence Board of Zoning Appeals

**Tuesday, February 2, 2021
Civic Center Memorial Hall 5:30 p.m.**

Call to Order

The Planning Commission meeting was called to order by Kendall Neill.

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), Barb Emert (in person), Brent Littleton (by phone)

Planning Commissioners Absent

Andy McLenon

Staff Present

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

Visitors

Larry McManus
Jim Wright
Stacy Boyer
Nancy Clubine
Tamisha Sewell
Kathleen Reynolds
Tim Raglin

Minutes

- a. **Consider approving minutes of the January 5, 2021 meeting.**

Tony Royse made a motion to approve the minutes of the January 5, 2021 meeting, Rachel Lyon seconded the motion. The motion carried 8 - 0.

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

- b. **Public hearing to receive comments on a variance request to exceed the maximum size allowed for a wall sign in a C-2, commercial services district at 311 East Main Street.**

The following staff report was provided:

Overview of Variance Requested

The Board of Zoning Appeals has received an application from The Tree House of Family Learning Center, represented by Tamisha Sewell, to grant a variance from the sign regulations provided for in the zoning ordinance. Their request is to create a mural of a tree house with a sky background and the name of the daycare on it. The entire mural exceeds sign size regulations for a wall sign.

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.

Review of Request

The applicant is requesting to paint an 8' X 33' or 264 sq. ft. mural on the east side of the building. 20% of the total area of the east façade (approximately 830 sq. ft) is approximately 165 sq. ft. The City Code does not specifically address murals; however, the City Attorney has advised that they are classified as a sign. Painted wall signs that shall not exceed 20 square feet in area is the closest reference to this type of signage.

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; Other than the very long shape of the building, staff did not find a condition unique to this property not ordinarily found in the C-2 district. There have been community murals painted on downtown buildings in the C-3 zone with City Commission approval.*
- b. *That the granting of the permit for the variance will not adversely affect the rights of the adjacent property owners or residents; It is not believed that this mural will create any adverse effects to adjacent property owners.*
- 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 hardship would be that the applicant would not be allowed to paint a mural that exceeds the sign regulations. The applicant would consider leaving the name of the business off the mural and placing a sign on the front (north) façade stating the business name.*
- 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 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. According to section 801.2 of the zoning code, the intent and purpose of the sign code is: "Regulation of the location, size, placement, and certain*

features of signs is necessary to enable the public to locate goods, services, and facilities in the City of Independence without difficulty and confusion, to encourage the general attractiveness of the community, and to protect property values therein. " The purpose of this sign is to provide a fun theme to a daycare business. It is not clear whether the request is opposed to the general spirit and intent of the zoning regulations since murals which may not include advertising are not clearly addressed.

Staff Analysis

If the Board of Zoning Appeals wishes to approve this request, one option may be to require that any text included in the sign not exceed the 20 square foot maximum.

Possible Motions

To deny:

I move to deny a variance to exceed the maximum size allowed for a wall sign in a C-2, commercial services district at 311 East Main Street due to the size of the proposed sign greatly exceeds what is allowed.

To approve:

I move to approve a variance to exceed the maximum size allowed for a wall sign in a C-2, commercial services district at 311 East Main Street on the condition that any text not exceed 20 square feet.

Kendall Neill opened the hearing.

Tamisha Sewell stated that she wishes to paint the outside of the building to make it look nicer, incorporating the windows into the mural. Tamisha and others will be doing the painting.

Kendall Neill asked what we have done in the past. Kelly Passauer stated that previous murals were not for a specific business as they were community focused art as part of ASTRA. Kendall stated that 165 square feet would be 20% of the building area and that murals are classified as signs. Rachel Lyon asked if the issue was the name of the business. Kelly stated that the entire mural is considered a sign according to the City Attorney. Kendall asked if part of the issue is that part of the labor would cut into the budget. Tamisha said yes and that it is entirely concrete and there is not really room out front and no sign can be put into the right-of-way. Kendal stated this would be a one of a kind in the area and asked if it is in the historical district. Tamisha said it is just outside the historical downtown district. Barb Emert said this would be a big improvement. Rachel said she agreed and if they could stay within the 20% it would look great.

Kendall Neill made a motion to approve a variance to exceed the maximum size allowed for a wall sign in a C-2, commercial services district at 311 East Main Street on the condition that any text not exceed 20 square feet, Rachel Lyon seconded the motion. The motion carried 7 – 1 with Michelle Anderson dissenting.

c. Other discussion:

1. County Gravel Parking Lot Status -- Conditional Use Permit for Supplementary Parking at the Southwest Corner of Wald Avenue & Myrtle Street
 - a. County Representative(s) – Jim Wright asked that the City reconsider allowing them to continue with the original conditional use permit. Kelly Passauer said that the City Commission extended the conditional use permit previously. After that there were text amendments recommended by the Planning Commission relating to hard surfacing of parking areas in industrial zones that the City Commission denied. Jim Wright asked the Planning Commission to remove some of the conditions included in the original conditional use permit. Lisa asked who prepared the documentation the County provided at the meeting. Kelly Passauer stated that was what the County previously submitted to the City Commission in 2017 which was tabled. Lisa Richard asked what the changes were from the resolution that was approved. Jim Wright stated that the hard surface, screening, and lighting requirements were removed. Lisa Richard suggested that a new resolution be prepared with the three changes. Kelly Passauer stated that she believes there are more changes than that requested by the County. Lisa Richard asked for a red-line document to compare so that they know exactly what they are considering. Rachel Lyon asked if there had been any other concerns and Jim Wright said not to his knowledge. Lisa Richard asked why the Commission tabled it and Kelly Passauer said she believes it might have been tabled because the Planning Commission was reviewing text amendments regarding gravel parking lots. However, the Commission did not accept the Planning Commission's recommended modifications, so the code stayed the same. Kendall Neill asked if there were any others that had been forced to comply. Tony Royse stated that the City had to comply and concreted their apparatus bay driveway to come into compliance. He also said it is always going to be used as a parking lot so that will not change. Larry McManus, County Commissioner said they were never notified after the item was tabled in 2017 and if the County did not have this parking area it would force their employees to park in the street. Jim Wright said across the street to the east and to the north there is gravel parking. Kelly Passauer said the existing gravel parking lots are grandfathered in. Kendall Neill stated that he did not feel like they had enough information.
2. Tiny houses
 - a. April Nutt, Housing Authority Director – Kelly Passauer stated that she put together the information that had been presented previously, and that information had been shared with April. April stated she was here to answer questions. Rachel Lyon asked April if she saw a benefit to having tiny homes. April said after some research that tiny homes are difficult to get loans on as the County considers them as a glorified shed. They are technically considered an RV by banks and should not be allowed across the community. April brought up concerns about what requirements will

there be as far as foundations, etc. She further stated that a lot of communities are using them for Veterans and underserved people. Long-term she questioned if they would be like a mobile home and if this is this how the community wants to go. Building codes will have to be considered like hooking up to City services or have a compost service. She further stated that they depreciate just like a car and if used to subsidize she would be concerned, but rentals would be a different story.

Rachel asked if a permanent foundation was installed would it still be considered an RV, and April replied that it would. Lisa Richard asked if the City has a minimum size for homes. Kelly Passauer said the current Building Code requires one living area to be a minimum of 120 square feet. However, if the Commission adopted a new Building Code it requires a minimum of 75 square feet for each habitable room. Lisa Richard asked if they had the square footage and hooked up to City services if they might be allowed. David Cowan stated that most of the tiny homes are not going to have one room that is 120 square feet, and there are other building code requirements that might be a challenge. Another concern that was brought up was whether they would devalue a neighborhood. It was discussed to allow them in a specified area which might be more viable.

Further questions were asked about the classification as an RV. Jeff Chub said the banks look at securing collateral and when these homes are brought in and placed on property it is considered personal property. If it is permanently affixed, it can have an elimination affidavit and be changed to real estate.

Mary Jo Meier recommends looking at the place in Bartlesville for the underprivileged. When compared to some of our trailer parks here, it looks nicer. It would meet a need and look nice.

April Nutt said the one in Bartlesville is a rental community, and that these types of developments pop up in larger cities where rent is high.

Kendall Neill asked if they were within City limits and if so, we could get with the City of Bartlesville to get some information for them.

Kelly Passauer said the Planning Commission could develop regulations.

Rachel Lyon said she could not rebuild on her property because of the size of her lot. Mary Jo Meier asked if anyone had asked about doing a 501(c)3. April Nutt said no one had asked her or the Housing Authority and David Cowan said that he gets about one call a month asking if they can build a tiny house.

Kendall Neill said the houses in Bartlesville are not that tiny. April Nutt said they are 564 sq ft but they will not appreciate or appraise out. Mary Jo Meier said it looks good as a well thought-out pre-planned community, it is very aesthetic and they are prefabbed so you just put them together.

Kendall Neill asked who owned the tiny houses and Mary Jo Meier said it is a corporation. April said she tried to reach out but they have not called her back. The rent includes all utilities which makes it easy for those who have challenged incomes. Barb Emert asked how they are heated and

cooled. April Nutt said they are like a regular home, all electric or gas, you just have to be careful about mold issues. Kelly Passauer asked April if there was a certain minimum size she would recommend. April Nutt said she could research it. Kelly Passauer asked if the board would like to have April Nutt research this topic. Kendall Neill said we could all do some research and get back together to discuss. April Nutt said she could reach out to Lawrence and see why the one there is outside city limits. She can also reach out to the City of Bartlesville. I have not found any communities of our size that have tiny houses. Kelly Passauer asked if David Cowan could research what size of structures are being built. David Cowan said there has been no residential construction in the past year and the newest construction is a very large house. April said you could have an area where tiny homes could remain on wheels. Kelly Passauer suggested that we revisit this at the April meeting.

3. To discuss at the July meeting -- Marijuana dispensaries
 - a. Review the conditional and permitted use table.
 - b. Setting specific restrictions as a special conditional use.
4. To discuss at the March meeting – 2313 N. Penn Avenue Rezoning

Adjournment

Barb Emert moved to adjourn the meeting, with Kendall Neill seconding the motion, which passed 8 - 0.


Kendall Neill, Chair


Rachel Lyon, Secretary