

MINUTES OF THE REGULAR PLANNING COMMISSION MEETING

**PLANNING COMMISSION/
BOARD OF ZONING APPEALS
October 16, 2007**

Commissioners Present: Cowman, Gage, McLean, Wrischnik, Bonner

Others Present: Justin Givens, Amy Barenklau, Brian McCauley, Jay Wieland, Pat Hewitt, Mr. & Mrs. Lynn Martin, Bill Brewer, Ray Minden, Mr. Chafoori, and others.

Planner Givens and the Commissioners welcomed new City Manager Jay Wieland to the community and the meeting.

Item 1: Consider minutes from the September 18, 2007 meeting

Chair Cowman called the meeting to order with the first order of business the consideration of the minutes from the September 18, 2007 meeting.

Commissioners Gage and McLean made a motion to approve the minutes as submitted with all Commissioners voting in favor.

Item 2: Conditional Use Permit Renewal – item removed from agenda.

Planner Givens stated that staff had been informed letters would be sent, but had learned that they were not, so the renewal was pulled from the agenda.

Item 3: Public Hearing – Consider an application for a Conditional Use Permit for Family Auto, LLC located at 809 and 811 South Silver – Heavy Retail in the Thoroughfare Access district.

Commissioners Gage and Cowman made a motion to open the public hearing with all Commissioners voting in favor.

Planner Givens stated that the applicant was in attendance then presented the staff brief. Family Auto, LLC is requesting a Conditional Use Permit be issued for 809 and 811 South Silver. The two properties share a drive and are under contract to be owned jointly by the applicant. The applicant approached staff several months ago inquiring about locations for an auto dealership. He stated that he had been selling cars through the internet but was limited in the number of cars he could sale without a dealer's license and in order to get a dealers license he needed a physical

location that was properly zoned for an auto dealership. He located the two properties on South Silver and felt that while he would need a conditional use permit; these properties would accommodate his needs.

Analysis:

Table 3.110 A shows that Heavy Retail and Service requires a conditional use permit in the Thoroughfare Access District.

SECTION 21.220 CONDITIONAL USES

Certain land uses and developments present unique problems with respect to their property location. Such land uses and developments are identified as conditional uses in each particular zoning district (see Table 03.110). Analysis and judgment of the consequences of each use and development is necessary to preserve and promote the public health, safety, and welfare.

Approval of a conditional use application shall be dependent upon findings that the proposed use fully complies with this Ordinance. The applications shall be filed and duly advertised. A public hearing shall be held per this Article's requirements. In addition, conditional uses shall require a site plan or plat approval, as appropriate, which may be approved separately or concurrently. Also, the following additional standards shall be met:

- A. The proposed use shall be consistent with the Comprehensive Plan's purposes, goals, objectives, and policies, including standards for building and structural intensities and densities, and intensities of use.

Staff feels that this project is consistent with the Comprehensive Plan, as it will allow an existing property to be converted into a use that promotes economic development and infill especially on the under-developed south side.

- B. The proposed use shall be compatible with the character of land in the immediate vicinity.
Staff feels that this use will be compatible with surrounding uses that include a gas/convenience store and other heavy retail and service properties.

- C. The proposed use's design shall minimize adverse effects, including visual impact of the proposed use on adjacent lands.
An 8' brick wall is in place on sides and rear of the property as well as a screened gate that will minimize the visual impact of the property to the park space located adjacent to the property.

- D. The proposed use shall minimize adverse impacts on the environment, traffic and congestion, infrastructure, or governmental services.
As this is, an infill or change of use for an existing building all infrastructure and services are all ready in place so no new service requirements would be required.

In pre-application conferences with the applicant, he has stated a willingness to work with staff, the Planning Commission and City Council to satisfy all of the conditions and stipulations that are placed on the property in order for the Conditional Use Permit to be approved. In analyzing the site plan, staff feels that the screening is already in place, which would generally be required to increase the opacity. The site area is below the minimum but ample space is provided for customer parking as well as for vehicles for sale.

The applicant has not provided a landscape, signage, or lighting plan but staff is confident that those requirements will be met. One area that may be an issue for the applicant would be the graveled area in the rear of the property. There is concrete parking in the front, which could suffice for the use depending on the number of cars that will be on the property. The applicant understands that part of this space may be required to be paved if rear areas will be used for vehicle or customer parking.

Issue:

Does the Planning Commission wish to recommend approval of the Conditional Use Permit – Heavy Retail and Service for 809 and 811 South Silver?

Actions:

Recommend / Not Recommend the Conditional Use Permit
Table the matter for further study

Recommendation:

Staff recommends that the Conditional Use Permit be recommended to the City Council

Commissioner Gage asked if the applicant had a landscape plan, which the applicant indicated he had drawn out some shrubs and trees.

Commissioner Cowman inquired about the rear area and if it would be used for parking. Planner Givens stated it was currently gravel, but grown up with weeds and grass and indicated he understood the applicant had intentions to use for parking which was verified with the applicant.

There was a discussion about how much area had to be paved and how many cars would be allowed. Commissioner Bonner inquired how many cars were required to be on display. Mr. Chafoori indicated he was only required to have one on display to maintain his dealer's license. Commissioner Cowman expressed his concern to not deviate from what other businesses had been required to pave in the past, and if all the lot was not paved, how they could ensure that the part not paved would not be used for parking.

Commissioner Cowman inquired about the wall and fence and if they were in good repair and confirmed if they were not, they would be repaired or replaced. Commissioner Bonner inquired about lighting of the property. The applicant stated that eventually he would like to completely remodel the buildings, but for now he planned to have minimal lighting.

Commissioner Gage inquired about signs and if there would be work inside the buildings. The applicant stated plans are to eventually utilize the buildings for office space and possibly a show room, but he did not have any intentions to perform repair work on the vehicles.

There were no additional comments from those in attendance.

Commissioners Gage and McLean made a motion to close the public hearing with all Commissioners voting in favor.

Commissioners Cowman and Bonner made a motion to recommend approval of the CUP with the following conditions:

- 1. The fence and wall in the rear to be repaired or replaced as needed to be in good condition.*
- 2. All parking areas to be paved.*
- 3. No parking in unpaved areas.*
- 4. Sign, lighting and landscaping plans to be submitted and approved.*

All Commissioners voted in favor.

Planner Givens informed the applicant that the CUP recommendation would be forwarded to the City Council for their approval the following Tuesday.

Item 4: Sign Deviation – Consider a request for a Sign Deviation from Lynn Martin for Cactus Jack’s – 602 North Pearl

Planner Givens presented the staff brief. Mr. Lynn Martin approached staff sometime ago with a proposal for several murals that would be painted on various buildings throughout Paola. Mr. Martin felt that this would be a way to help promote tourism in the city. He described his project to staff and was told that he would need to provide more details (sketches, locations, property owner permission) prior to getting approval from the Planning Commission and the City Council.

On or about September 16, 2007 staff received information that a larger mural was being painted on a business located at 602 N. Pearl. Upon investigation, it was learned that Mr. Martin was painting a large mural on the wall of Cactus Jacks. This mural was in violation of the Chapter 7 of the Paola LDO. A stop work order was issued, hand delivered to the occupants of the property and registered letters were sent to the property owner and occupant.

After receiving the stop work order, Mr. Martin approached staff, stating that he thought that he had in fact received permission to proceed with his project after our original meeting. After being informed that staff did not agree with that statement he asked what options he had for the sign. Staff stated that he had three options:

1. Remove the sign completely
2. Re-size the sign to make it compliant with LDO regulations
3. Apply for a Sign Deviation, which would have to be approved by the Planning Commission.

After some consideration, Mr. Martin has asked that the Planning Commission consider his application for a Sign Deviation.

Analysis:

Section 21.245 provides several criteria that the Planning Commission shall consider when acting upon a request for a sign deviation, they are as follows with staff commentary provided in *italics*:

Purpose and Intent of Code: Is granting of the deviation in compliance with the general purpose and intent of the City's signage regulations?

- A. **Impacts on Adjacent Properties:** Will granting of the deviation adversely affect neighboring property owners or residents? Is the image presented by the sign or attention-attracting device consistent or compatible with that in the area as a whole?

The applicant feels that granting the deviation will not have a negative impact on adjacent properties, as this sign is not off the building. It does not protrude or extend out into any right-of-ways. He also feels that the overall design has been done to promote tourism within the City. Something that the applicant feels has been neglected.

- B. **Safety:** Will granting of the deviation adversely affect safety? For free-standing signs, a safe sight-distance setback is required, and the sign location must not encroach upon potential future right-of-way needs. The use of signs or attention-attracting devices should not significantly distract traffic on adjacent streets.

The concern of safety for this sign at this site is a valid one. This is a high traffic intersection with several buildings, crossroads, and drives located in close proximity to one another. Recently, the City installed traffic lights at the intersection to help control traffic. As this sign is more than a typical sign designed to promote a product or location. The design of this sign requires drivers to focus on the sign to absorb the information that is trying to be conveyed.

- C. **Visual Clutter:** Will granting of the proposed deviation significantly clutter the visual landscape of the area? The proposed deviation, in addition to all existing or potential future signs on nearby tracts, should be reviewed for their impact on cluttering the visual landscape. Reductions in the total number of signs or their size may be needed, or setbacks increased, to compensate for other signs and attention-attracting devices in the area.

Outside of its large size, Staff does not feel that this sign will add to the visual clutter in the area. The businesses in the location already have their maximum amount of signs and a wall sign would be encourage in this area, as it is a high traffic area. Poles signs would significantly increase the visual clutter and would not be encouraged.

- D. **Site Constraints:** In some situations, topography, landscaping, existing buildings or unusual building design may substantially block visibility of the applicant's existing or proposed signs from multiple directions. While visibility of a sign or attention-attracting device is not to be guaranteed from all directions, deviations may be appropriate to provide reasonable visibility of a business's main sign.

There are no site constraints that negatively affect this sign. At this location, the sign can be seen clearly from southbound traffic on Silver and east/west bound traffic on Baptiste.

- E. **Lighting:** Sign or attention-attracting device lighting should not disturb residents of nearby residential land uses or adversely affect traffic on adjacent streets.

There is no lighting for this sign and none is proposed. The intersection and area is well lit at night.

- F. **Promotion Of High Quality - Unique Design:** The proposed sign(s) should be of high quality and must be compatible and integrate aesthetically with daytime/nighttime color, lighting and signs of the development and adjacent buildings. Facade signs may include unique copy design including painting of walls or integration into canopies/awnings, shapes, materials, lighting and other design features compatible with the architecture of the development of surrounding area. Attention-attracting devices should be of a unique, high quality design, which accentuates the architecture of the building(s) served, versus functioning solely to draw attention to it.

The applicant feels that the sign is of unique design "painted by a well known and renowned artist" and will help to promote tourism within the City. Mr. Martin originally intended for this to be a theme throughout the community. He has proposed a similar sign for a billboard that he owns on private property to the south of town adjacent to US 169 and has proposed distributing flyers at local businesses that explain the seven wonders and provide their locations to help encourage tourism in the city.

Staff estimates that the sign itself is roughly 250 sq. ft. In the TA District a wall sign on the front façade of a structure may be 10% of the wall size. For this building, it was estimated that a compliant sign would need to be 82 sq. ft. This calculation did take into consideration the wall sign currently in place advertising the occupant's restaurant.

Issue:

Does the Planning Commission wish to approve this Sign Deviation?

Actions:

Approve / Not Approve the Sign Deviation

Planner Givens stated the applicant was in attendance to address the issue and answer any questions.

Commissioner Cowman inquired if the applicant had plans to paint murals on other sites in Paola and Mr. Martin indicated he had hopes that it would be followed up by others.

Mr. Martin gave a history of how he made the decision to have this down and that he felt he was doing something to encourage tourism in Paola. He explained he had been to other cities where

this had been done and he had taken time to stop and tour the city due to the murals and felt it might help in our community.

Bob Locke, a friend of Mr. Martin stated that this had been done in Nevada, MO and he felt it was very tastefully done. He was supportive and felt it would help the city.

Commissioner Cowman expressed his concern about the maintenance of the mural and who would be responsible or what would happen if in disrepair. He also stated his concern when deviating from the specific sign regulations that are in place.

Commissioner Bonner agreed that murals do draw attention, as he had been in a town in the Southwest with a large number of murals and it did draw people in to look. He said he felt that there is a need for controls for any possible future murals.

Commissioner Gage said he did not consider a mural the same as a sign. He mentioned that in Canada the murals are commissioned and painted by the City or the Chamber. He stated that there has to be control, and the LDO should specifically address murals.

City Manager Wieland addressed the Commissioners and explained that Sterling, IL where he previously was employed has a mural society by city ordinance that controls murals. The society approves, commissions, paints and maintains all the murals. The murals in Sterling tell the history of the community and the society is in charge of the whole process.

Planner Givens told the Commissioners that he had spoken with the owner of J&J Metals and he was in support of the mural.

Commissioners Gage and Cowman made a motion to approve the sign deviation with all Commissioners voting in favor.

Item 5: Final Site Plan – Consider a final site plan for Town Square Corner – a mixed use development.

Planner Givens presented the staff brief. At the February 20, 2007 Planning Commission meeting, BOW Properties submitted a Preliminary Site Plan for a Mixed Use Residential/Commercial project to be located at the corner of Silver and Peoria. This was the second attempt to develop the property. The first being high-density apartments. That plan was not approved and the developers returned with the present plan.

During the meeting, Commissioners had concern with the security for residents and those occupants of the commercial spaces as well as design materials and colors. Those issues have been worked through and are addressed in the Analysis Section and the Site Plan.

Analysis: BOW Properties is proposing a 10 unit mixed use development. Six units will be Condominium Apartments that will be on the second and third floors of the structure. These

units will take access from either a parking garage in the basement level or an entrance that is on Peoria Street. The street level will house four retail/commercial spaces that will face Silver Street. There will be no access for the businesses or the public to the shared common space of the residential area. Residents will have electronic key access to both the garage door and the street door.

As with all downtown uses, parking may be an issue. It is virtually impossible for this development to meet the current downtown parking standards. The developers have provided the required number of parking spaces for the residents. This will alleviate some parking concerns. Parking for the commercial spaces will be provided from the shared parking around the square and the public parking spaces that will remain once the Fire Station is complete.

Since the original submittal, the developers have added a third story for residential use. This loft space will be utilized by one of the six residential units. There has been some concern voiced that the loft space may exceed the maximum height of downtown buildings. The LDO provides that buildings in the downtown district not exceed 45'. As provided in this plan the third story loft will be below the 45' maximum.

The LDO also provides for increased design standards and review for Downtown Buildings. Those standards are as follows with staff commentary in *italics*.

SECTION 15.210 DOWNTOWN DISTRICT STANDARDS

The Downtown District contains the City Square, Court House Square, City Hall, and Library. The standards of this district are to maintain the historic image and character of the downtown area and to ensure that new buildings fit into that character. All buildings shall be reviewed during site plan approval by the planning commission for adherence to the following:

- A. **Building Material.** Red brick masonry is the preferred building fascia. Stone and other brick masonry may be approved, provided the building fits into the context of its neighbors and is not a sharp contrast to existing buildings.

The developers have called for a yellow stucco finish for the structure with wrought iron rails, planters and other highlights including complimentary awnings and sconces. While not the preferred red brick, the buildings design and style will compliment the downtown area.

- B. **Building Height.** All buildings shall be at least two stories in height. If the use proposed is such that two stories are impractical, then the architecture and street facade(s) should be such that the two-story character of the streets is maintained.

The building main building will be two stories with a loft space creating a partial third story and a sub-grade parking garage and will be compatible with the surrounding buildings.

- C. **Architectural Style.** There is no single style that is mandated for the downtown area. However, building elevations should be sensitive to the scale and style of neighboring buildings. Overall window placement, window size, decorative trim or material, and colors should be consistent with the general street face.

While slightly different, staff feels that the lines of this building, materials used and colors selected will blend seamlessly with the buildings in the downtown area.

- D. **General.** In looking at neighboring structures it should be understood that some older buildings have been degraded with applications of more modern materials over the original building facade. In these cases the Planning Commission may insist on a facade that more closely resembles the original styles, or is in keeping with buildings further down the same street that have preserved their historic character.

Issue:

Does the Planning Commission wish to recommend approval of the Final Site Plan for Town Square Corner

Actions:

Recommend / Not Recommend the Conditional Use Permit
Table the matter for further study

Recommendation:

Staff recommends that the Final Site Plan be recommended to the City Council

Bill Brewer, one of the partners of BOW Properties was in attendance.

Commissioner Cowman asked if the design could be changed so that the third floor façade could match others on the Square and set back so as to not be visible. Mr. Brewer stated that the building was designed so that residents could see over the front of the building, as they plan to have a courtyard area on that third floor.

Commissioner Bonner inquired about security of the building. Mr. Brewer stated that the garage and upper level would be card operated and a security card would have to be used for entry.

Commissioners Cowman and Bonner made a motion to approve the final site plan with all Commissioners voting in favor.

Item 6: Public Hearing (continued) – Consider a text amendment to the Paola Land Development Ordinance – Table 3.110A. General Use Table and other affected sections.

Planner Givens presented the staff brief. During discussion last meeting of Text Amendments for Multi-Family Housing in NC zones, several questions arose concerning Group Homes and their permitted use throughout most districts. Staff was instructed to research certain situations (Lakemary Group Home) and other group homes and provide information as to possible text amendments limiting group homes in residential districts.

Analysis:

Lakemary – The Lakemary Group Home required a re-zoning from Suburban to Thoroughfare Access because of the type of home that was proposed. The home itself was considered Single-Family Attached a use that is not permitted in the Suburban District. At the time of the re-

zoning, a Single Family home was on the subject property. Lakemary could have used this home as a group home but instead wished to remove the structure and build a new structure that would better suit their needs. This is why the re-zoning was requested.

As for amending Table 3.110 A to limit group homes or the types of group homes, after consulting with various other municipalities staff is recommending these types of changes be considered very carefully or not at all.

A group home is defined by the LDO as;

Group Home. A group home is a building that would otherwise be categorized as a single-family home, except for the fact that the number of unrelated individuals living in the unit does not qualify under the definition of family. The operation of a group home shall be a family living environment, not an institutional environment where staff manages the living and controls activities. If the unit would otherwise qualify as other types of dwelling units defined in this Ordinance, such as apartment or attached housing, then the use shall be treated as such. Co-ops, nursing homes, other institutional residential and boarding house type of operations are expressly excluded since these are institutional or commercial lodging uses.

The main concern with group homes is the liability for the City both in knowing what type of home it is as well as in asking what type of home it is. For instance, if the city were to change the group home use to require a Conditional Use Permit a logical question would be to ask what type of residents would be living in the unit. If the City would permit a home under certain situations (Lakemary) and then deny a home (halfway house for sex offenders), the city could open itself up for discrimination lawsuits. By choosing one type of handicap over another, the city would be liable. Additionally, if the city allowed a certain home through a Conditional Use Permit, it may be liable if something were to occur at the residence or in the community. At this time it is better to allow state licensing and fire regulations be the beveling limitations on these types of homes and to keep the city distant from applying its own regulations which may be unconstitutional.

Issue:

Does the Planning Commission wish to approve the Text Amendments as previously submitted or make additional changes to the LDO with respect to Group Homes?

Actions:

Approve / Not Approve the Proposed Text Amendments
Propose Additional Text Amendments for adoption to include Group Homes

Recommendation:

It is Staffs recommendation that the Planning Commission recommend the approval of the original text amendments to the City Council modifying Table 3.110 A and other text to reflect the desired changes in the Neighborhood Conservation Districts only at this time.

If the Planning Commission wishes to continue to look at possible changes to the Group Home Use, staff would recommend a separate action and further time so that more information including legal ramifications may be presented to the Commission.

Commissioner Bonner asked how it could sex offenders and others groups of individuals be considered handicapped and therefore discriminated against? Planner Givens stated that mental illness is considered a handicap and therefore discrimination could be something that needs more thought before pursuing the group home issue.

Commissioner Cowman asked for clarification that if 4 college people lived in a 4 bedroom home, it would be considered a group home under the current guidelines. Planner Givens stated that it would.

Commissioner Cowman said he felt that group home guidelines was a bigger issue and that a better definition of a group home should be a start. He felt that this item should be dealt with separately. Commissioner Bonner agreed and said that there needs to be some type of control in place.

There were no additional comments from the public.

Commissioners Gage and Cowman made a motion to close the public hearing with all Commissioners voting in favor.

Planner Givens reviewed the changes with the Commissioners.

Commissioners Cowman and Gage made a motion to recommend approval of the text amendments to the LDO. All Commissioners voted in favor.

Item 7: Public Hearing – Consider an application for rezoning – Pinnacle Point Sub-development – NC-R2 to NC-R3

Commissioners Cowman and Bonner made a motion to open the public hearing. All Commissioners voted in favor.

Planner Givens presented the staff brief and explained why the recommendation for tabling the hearing. Mesa Development, the owners of Pinnacle Point, a subdivision located on east Ottawa has requested a zoning change. The property is currently zoned NC-R2 and the owners are requesting the property be rezoned to NC-R3 to allow for a proposed 18 unit multi-family apartment complex. This rezoning coincides with the proposed text amendments for the NC districts.

Analysis:

As required by statute, notification must be published in the official newspaper 20 to 30 days prior to the hearing date. Attached is an email correspondence stating that while the publication was sent to the paper in time it was not processed to meet the publication timeframe. Registered

letters were already sent to property owners within 200 feet of the property stating the time and date of the hearing.

It is staffs recommendation that the public hearing be opened – continued to the November 20, 2007 meeting – and reconvened at that point when official notification will be published in the paper.

Commissioners Cowman and Gage made a motion to table the hearing until the November 20, 2007 meeting. All Commissioners voted in favor.

Item 8: Items from Staff

Planner Givens presented the staff brief on Proto Machine. Based on several criteria in the LDO, staff approved a temporary accessory structure (mobile sales office) for Herron, Inc. located at 101 Lewis Drive. Mr. Herron stated to staff that they were in need of more office space for the sales of new skateboard trucks. Trucks are what attaches the wheels to the board its self. Mr. Herron has created a new carbon-fiber truck that he is beginning to manufacture and sale. Mr. Herron further stated that the building they are currently using is to be sold within a year and building additional office space would not be logical at this time.

Mr. Herron has agreed that the structure will not be on site for more than one year and that the structure will be fully skirted and blocked. Additionally, the structure will be placed as to meet all setback requirements for accessory structures.

Included in the Commission packets was information about the structure and Mr. Herron’s letter.

The Commissioners all indicated they were fine with the building, even though 12 months was more than normal.

Item 9: Items from Commissioners

Commissioner Gage asked staff to begin work on establishing guidelines for murals, as well as a definition for the LDO. Commissioner Cowman expressed his concern for ongoing issues involving murals.

Item 10: Adjournment

Commissioners Cowman and Bonner made a motion to adjourn with all Commissioners voting in favor.