

MINUTES OF THE REGULAR PLANNING COMMISSION MEETING

**PLANNING COMMISSION/
BOARD OF ZONING APPEALS
November 20, 2007**

Commissioners Present: Cowman, McLean, Gage, L. Smith, Wrischnik, Bonner
Commissioners Absent: Rhodes

Others Present: Justin Givens, Amy Barenklau, Brian McCauley, Annette Gordon-Howell, Kathie Mendenhall, Clint Burkdoll.

Item 1: Consider minutes from the October 16, 2007 meeting

Chair Cowman called the meeting to order with the first order of business the consideration of the minutes from the October 16, 2007 meeting.

Commissioners Gage and Bonner made a motion to approve the minutes as submitted with Cowman, McLean, Gage, Wrischnik and Bonner voting in favor. Commissioner Smith abstained from voting.

Item 3: Public Hearing – Consider an application for a variance on the minimum lot size to house a horse – 600 North Mulberry

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. Thad and Annette Gordon-Howell of 600 North Mulberry Street (The Circus House) have applied for a variance from the minimum lot size required to house a horse. The Howell's son was diagnosed with Cerebral Palsy and has been involved with hippo-therapy since he was two. Hippo-therapy has been used recently to assist in improving the patient's senses and muscle control. The Howell's have been traveling some distance for their sons therapy sessions and feel that having a horse on their property would further his rehabilitation.

Analysis:

To approve a variance, the Board of Zoning Appeals shall apply the following standards with staff commentary included in *italics*:

- A. Under no conditions shall a variance permit a use that is not otherwise permitted in the district. The applicant shall be instructed to submit a zoning change request (Section

21.210) or a beneficial use appeal (Division 21.400), which are the only ways such a change of use may occur.

Section 03.350 of the LDO shows that a horse would be allowed if the lot is over 3 acres. This lot contains only 1.2 acres and is in a Suburban Zoning District.

SECTION 03.350 DOMESTIC EXOTIC ANIMALS/FARM ANIMALS AS PETS

- A. This section applies only to farm animals and exotic animals kept as pets and not commercial purposes.
- B. Minimum lot area is 3 acres.
- C. Maximum of 2 animals or 10 adult fowl/exotic cage birds or 1 animal and 5 adult fowl/exotic cage birds are allowed.
- D. A fence or cage of sufficient size, based on the carrying capacity of the land as defined by the Stockman's Handbook, must be provided. If not identified in the Stockman's Handbook, the zoning administration shall make a determination based on similar size/type animals identified in the handbook or by consulting a veterinarian.
- E. Proof of state permits (if applicable).
- F. The shed, yard, pen or other place which any animals or fowl are kept shall be maintained in a manner that is not offensive to those residing in the vicinity or annoying to the public.

(Ordinance 2799, 06/11/02)

- B. Special circumstances or conditions exist peculiar to the land or building for which the variance is sought that do not apply generally to lots, land, or buildings in the neighborhood.

This property is completely isolated by farmland and railroad property.

- C. The special circumstances and conditions have not resulted from any act of the applicant subsequent to this Ordinance's adoption.

Most likely, this property was chiseled out of a larger parcel of land. Had at that time the existing owners known of future requirements for housing animals staff would assume that sufficient space would have been reserved for animal husbandry especially since this house did at one time house circus animals much larger than the horse that is being requested.

- D. The special circumstances and conditions are such that strict application of this Ordinance's provisions would deprive the applicant of the reasonable use of the land or building.

Based on location and existing land uses and the anticipation of future land use to continue in the same manner, staff feels that this request is not unreasonable and would be allowed in similar situations.

- E. Granting the variance is necessary to relieve the applicant of an unnecessary hardship imposed by the regulations.

The Stockman's Handbook would allow for 2.4 adult horse per acre but our regulations only allow for farm animals on lots over 3 acres. Staff feels that based on the location of this property, the absence of neighboring residential units and the extensive farmland the provisions of the LDO do create a hardship.

- F. The variance granted is the minimum necessary to relieve the unnecessary hardship and permit a reasonable use of the land.
Staff agrees that granting this variance is at the minimum necessary for the housing of the horse.
- G. Granting the variance will not be injurious to the neighborhood surrounding the land where the variance is proposed, and is otherwise not detrimental to the public welfare.
This property is very limited in habitable neighbors. It is isolated by the railroad tracks and is surrounded by farmland and floodplain. In addition, a horse being on this property will not affect the industrial nature of neighboring properties.
- H. Granting the variance is in harmony with this Ordinance's purposes and intent.
The LDO limits animals on smaller lots to protect neighbors and the animals themselves. The established limits are based on accepted animal husbandry practices and lands large enough to minimize the impact on adjacent property owners. Staff does not feel that a horse on this property will negatively affect any adjacent property owner and according to the LDO, the carrying capacity for this property would be two horses.
- I. Granting the variance is not inconsistent with the Comprehensive Plan.
Staff does not feel that this request is inconsistent with the Comprehensive Plan and would not have a negative impact on future development in the area, especially due to the limited available land for development.

Issue:

Does the Planning Commission wish to approve this Variance Application?

Actions:

Approve / Not Approve the Variance Application

Recommendation:

It is staffs recommendation that the Planning Commission approve the Variance with the following conditions;

1. At no time shall the owner exceed the carrying capacity of 2.4 animals per acre
2. At no time shall private riding lessons or other hippo-therapy sessions be offered on the property except those specifically for the owner.

Annette Gordon-Howell explained that for someone who is not proficient at walking the hippo-therapy works the muscles to help in efforts to walk better.

There were no additional comments from those in attendance.

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

Commissioners Gage and Cowman made a motion to approve the variance on the minimum lot size to house a horse. All Commissioners voted in favor.

Item 2: CUP Renewal – 103 North Pearl

Planner Givens stated that the applicant, Kathie Mendenhall was in attendance, then presented the staff brief. In June of 2006, the Paola Planning Commission did approve a Conditional Use Permit for 103 N. Pearl for Pet Grooming Services. Originally, Robin Keith applied for the permits as Pampered Pets. At this time the applicant, Kathie Mendenhall, who will own and operate The Paw Spa has requested that the CUP be renewed.

Conditional Use Permits are issued to properties for a specific use and are not exclusive to the business that originally applies for the permit. In this case, a new business has opened under the original Conditional Use Permit.

Analysis:

The original CUP listed 12 conditions, which would govern the pet grooming services use at this location. Following is a copy of those conditions with staff commentary in *italics* as to the completeness and adherence to each item.

- 1) Adequate ventilation shall be provided between adjoining structures.
Staff has received no complaints as to odor drift or any other ventilation issue at this time and feels as this item has been met.
- 2) Prior to receiving a permit, the applicant must submit copies of approvals from all regulatory agencies having jurisdiction over pet grooming services.
There are no regulatory agencies that have jurisdiction over pet grooming services but the applicant is a licensed business with the State of Kansas and has a Federal Tax ID number. Staff feels that this item has been met.
- 3) All pet waste shall be disposed of in an approved manner.
Pet waste is disposed of in bags and removed off the property by the trash service. Staff does not know of any issues with waste being disposed of in this manner and feels that this item has been met.
- 4) Noise levels shall be limited so as not to disturb surrounding properties.
Staff has not received any complaints about noise from any neighboring properties.
- 5) All chemicals used in the grooming process shall be non-destructive to the public sanitary sewer system.
The applicant uses non-toxic materials in their grooming process and staff feels that this item has been met.

- 6) No overnight boarding of pets is permitted.
The applicant states that overnight boarding is not practiced and animals will not be boarded over night.
- 7) Hours of operation are limited to 7am – 7pm Monday through Friday and 8am – 5pm on Saturday.
The applicant has not exceed these hours of operation
- 8) Grass over sidewalk be eliminated.
Still needs to be completed.
- 9) One street tree be installed along Piankishaw prior to the one-year renewal.
Still needs to be completed.

As the new operator of the business Ms. Mendenhall is aware that these items have not been met at this time but has assured staff that the sidewalk will be cleaned and cleared and a street tree will be planted at the earliest possible time.

- 10) Parking stalls be defined by adequate painting or marking tape.
The parking lot is striped with yellow paint
- 11) After one year, the conditional use permit shall be reviewed by the Planning Commission to ensure compliance. The property owner shall be responsible for notifying adjoining property owners (as identified by the abstractor's search for the original CUP request) by regular mail two weeks in advance of the Planning Commission's review. If the owner will be requesting an amendment to the CUP, the notification shall follow the same procedures as the original CUP notification. Adjoining property owners will have an opportunity to comment on compliance to the conditions of the CUP. This would be June of 2007.
As the business was in limbo, the exact one-year review was not completed until this date. It would be staffs recommendation that the CUP be reviewed again in one year, as the applicant is a new operator of an existing business that requires a conditional use permit.

- 12) At any time, the City may institute revocation of the conditional use permit for violations of the conditions of approval, expiration, or the reasons specified in Section 21.225 of the Land Development Ordinance. The City shall provide notice to the landowner and public in the same manner as was provided for the establishment of the conditional use permit.
This condition shall remain in effect.

Issue:

Does the Planning Commission wish to approve this CUP Renewal?

Actions:

Approve / Not Approve the CUP Renewal

Recommendation:

It is staffs recommendation that the Planning Commission recommend the approval of the Conditional Use Permit to the City Council with the following conditions:

- 1) Adequate ventilation remains between adjoining structures.
- 2) All pet waste shall be disposed of in an approved manner.
- 3) Noise levels shall be limited so as not to disturb surrounding properties.
- 4) All chemicals used in the grooming process shall be non-destructive to the public sanitary sewer system.
- 5) No overnight boarding of pets is permitted.
- 6) Hours of operation are limited to 7am – 7pm Monday through Friday and 8am – 5pm on Saturday.
- 7) Grass over sidewalk is eliminated.
- 8) One street tree be installed along Piankishaw prior to the one-year renewal.
- 9) Parking stalls are maintained by adequate painting or marking tape.
- 10) After one year, the conditional use permit shall be reviewed by the Planning Commission to ensure compliance. This would be November of 2008.
- 11) At any time, the City may institute revocation of the conditional use permit for violations of the conditions of approval, expiration, or the reasons specified in Section 21.225 of the Land Development Ordinance. The City shall provide notice to the landowner and public in the same manner as was provided for the establishment of the conditional use permit.

Kathie stated that she intends to use a power washer to clean the sidewalk and that she has a tree ready to plant in the spring time. She stated she has cleaned up the business since taking over and was not aware of any complaints. She explained that the community has really supported her.

There were no other comments from those in attendance.

Commissioners Gage and Smith made a motion to renew the Conditional Use Permit with the existing conditions. All Commissioners voted in favor.

Planner Givens stated this recommendation would be taken to the City Council the following week.

Item 4: Public Hearing Continued – Consider an application for re-zoning – Pinnacle Point Sub-development – from NC-R2 to NC-R3

Commissioner Cowman stated the Public Hearing was reconvened.

Planner Givens stated that Clint Burkdoll was in attendance, then presented the staff brief. 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:

SECTION 21.211 STANDARDS FOR ZONING MAP AMENDMENT

In evaluating a request for a Zoning Map Amendment, the following standards shall be considered with staff commentary provided in *italics*:

- A. The proposed change is consistent with the City’s Comprehensive Plan and the purposes of this Ordinance. In areas of new development, consistency with the Comprehensive Plan shall be considered to meet the standards in B., C., and D. below, unless the proposed amendment would threaten public health, safety, and welfare if so designated as planned in the Comprehensive Plan.

The following information is taken from Chapter 3 Housing Action Plan of the 2006 Comprehensive Plan. While owner-occupied housing comprises the large majority of residential units in Paola, attention may need to increasingly turn to the supply and cost of rental units.

GOAL 1. SUPPORT THE AVAILABILITY OF HOUSING IN PAOLA AND THE COMMUNITY GROWTH AREA FOR ALL AGES AND INCOME GROUPS.

Action:

1. Direct the Planning Office and Planning Commission to identify “opportunity sites” for infill development/redevelopment of new housing of varied types and costs, throughout the City and Growth Area. Develop and maintain a map showing these opportunity sites and make it available to developers and others.
2. Consider approaches such as density bonuses and transfer of development rights to provide more lots for housing, and to encourage higher density housing where such is appropriate.

GOAL 3. ENSURE THE DISPERSAL OF AFFORDABLE HOUSING THROUGHOUT THE CITY AND GROWTH AREA.

Concentrating affordable housing into confined areas of the City could potentially lead to unfair and unhealthy community perceptions about those areas. Such concentration can also lead to perceptions of isolation and separation of low-income families residing there, who do not feel they are seen as part of the community. Consequently, affordable housing should be dispersed throughout the community.

Action:

1. Examine the LDO and City-adopted building codes for any provisions, which may unintentionally restrict the construction of affordable housing in any residential zoning district.
3. Consider amending the LDO to create incentives for developers to construct affordable housing, both single-family and multi-family, e.g., density bonuses.

Staff feels that this re-zoning request would allow for the type of housing that is encouraged by the Comprehensive Plan.

- B. The proposed change is consistent with the character of the neighborhood.
The neighboring areas are currently zoned NC-R3 and have a mixed use of housing type.
- C. The extent to which the property is consistent with the zoning and use of nearby properties.
The proposed use for this property would be multi-family housing and this use would blend within the area
- D. The suitability of the property for the uses to which it has been proposed or restricted.
While no definite site plan has been presented to staff, a conceptual plan shows that the building design will maximize the buildable space and minimize any impacts to the floodplain.
- E. The extent to which the proposed use would substantially harm the value of nearby property.
There are several single-family houses in the area as well as multi-family government assisted housing developments. The proposed use will be for market-based multi-family apartments and should not have a negative impact on the areas property value.
- F. The length of time a property has remained vacant as zoned, where the zoning is different from nearby developed properties.
This property has been zoned NC-R1 and NC-R2. Prior to the recent text amendments, no development had occurred of this property in the previous two zoning classifications. If approved the new classification will allow for a use that will maximize the property's value for development.
- G. The gain, if any, to the public health, safety and welfare due to denial of the proposed amendment as compared to the hardship imposed upon the landowner, if any, as a result of denial of the proposed amendment.
The re-zoning should not have any impact on public health, safety or welfare and the proposed land use plan would work to minimize any impacts into the flood plain that may negatively affect the public. Additionally, by developing a mix of uses and housing types in the area, a more diverse neighborhood is created.
- H. Recommendations of permanent or professional Staff.
Staff feels comfortable with recommending the property to be re-zoned and feels that it is consistent with the Comprehensive Plan and LDO

Issue:

Does the Planning Commission wish to recommend the approval of this Zoning Map Amendment to the City Council?

Action:

Recommend / Not Recommend the property for re-zoning

Recommendation:

It is staff recommendation that the Pinnacle Point Sub-development be rezoned from NC-R2 to NC-R3

Mr. Burkdoll stated that he felt this would be a nice addition to the neighborhood with clean units that are not government subsidized.

There were no other comments from those in attendance.

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

Commissioners Cowman and Bonner made a motion to approve recommendation of the re-zoning of the property to NC-R3. All Commissioners voted in favor.

Planner Givens stated that this recommendation would be taken to the City Council the following week.

Item 5: Items from Staff

Planner Givens told the Commissioners about a MARC (Mid-America Regional Council) meeting that he attended in October. He told the Commissioners that issues this Commission is dealing with are the same that others in the country are dealing with; and some issues Paola has dealt with proactively are now being faced by other jurisdictions.

Item 6: Items from Commissioners

The Commissioners did not have any items at this time.

Item 7: Adjournment

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