

**Minutes of the
Planning & Zoning Commission Regular Meeting
City of Parkville, Missouri
Tuesday, September 8, 2015 at 5:30 p.m.
City Hall Boardroom**

1. CALL TO ORDER

Acting Chairman Cary called the meeting to order at 5:33 pm.

2. ROLL CALL

Commissioners Present:

Keith Cary, Acting Chairman
Bob Lock, Secretary
Bryant Lamer
Walt Lane
John Delich
Doug Krtek
Michael Wright
Pam Scott

Commissioners Absent with Prior Notice:

Dean Katerndahl, Chairman

A quorum of the Planning Commission was present.

Staff Present:

Sean Ackerson, Assistant City Administrator / Community Development Director
Emily Crook, Department Assistant
Zach Tusinger, Planning Intern

3. GENERAL BUSINESS

A. Approval of Planning & Zoning Meeting Agenda.

Acting Chairman Cary called for any discussion of the proposed agenda.

Commissioner Delich moved to approve the agenda, Commissioner Krtek seconded. Motion passed: 8-0.

B. Approve the minutes from the June 09, 2015 Planning and Zoning Commission meeting.

Acting Chairman Cary called for any discussion of the minutes. Commissioner Wright stated that he was in attendance at the August 11, 2015 meeting, but the minutes do not reflect that. He requested a revision. **Commissioner Lamer moved to approve the minutes as amended [to show Commissioner Wright was in attendance], Commissioner Scott seconded. Motion passed: 8-0.**

4. PUBLIC HEARING

A. An application for a text amendment to Chapter 442, “OTD” Old Town District to restrict ground floor uses on Main Street between the railroad tracks to the south and 2nd Street to the north. Case PZ15-26, City of Parkville, applicant.

Acting Chairman Cary introduced the application. Then, he asked Community Development Director Ackerson or Planning Intern Tusinger to explain the proposed amendment.

Planning Intern Tusinger gave an overview of the application and the history prior to being brought to the Planning and Zoning Commission. The amendment would limit uses on the first floor to retail uses with noted exceptions. He showed a map summarizing the properties that would be affected by the text amendment were it to pass. Most of the property owners between the railroad tracks and 2nd Street want the first floor uses to be retail only because they believe that it will create a more active, vibrant retail destination, with good foot traffic that drives retail sales.

Tusinger summarized a proposed definition for “retail.” He explained that the text amendments were to restrict first floor uses to retail, but that an escape hatch to allow non-retail uses if the space cannot be leased for retail uses. If the first floor tenant leaves the property, the proposed text amendment would require the property owner to advertise the space as retail for three months. If they cannot find someone to lease the space in that period of time, they can request an administrative exception from the Community Development Director. Tusinger notes that the regulations for first story retail would not apply to non-conforming businesses. If the non-conforming business vacates the space, the property owner would have 12 months to rent out the space to another non-conforming business. If the aforementioned office moves, only an equally non-conforming business or a more conforming business is allowed to rent the space.

Planning Intern Tusinger noted that, in this case, the Community Development Department was not required to provide advanced notice of the meeting to individual property owners, but notices were given anyway in the form of certified mail, an announcement in the newspaper, and signs posted in Downtown Parkville. He, also, noted that there was one letter sent via email that opposed any code changes.

Following Planning Intern Tusinger’s explanation of the application, Acting Chairman Cary asked for comments or questions from the commissioners.

Commissioner Lamer asked about the minimum time required for advertisement to receive an administrative exception. Community Development Director Ackerson replied that the administrative exception would be administered on a case-by-case basis and the form of advertising would be considered. He stated they would be looking for a good faith effort to meet the code. Planning Intern Tusinger added that there would be a provision to appeal the Community Development Director’s ruling included in the code change. An appeal could be filed with the Board of Zoning Adjustment.

Commissioner Scott asked to include more specific details regarding the advertising requirements and commented that the administrative exception would be left entirely to the Community Development Director's discretion. She asked what the definition of "advertising" is in regards to issuing an administrative exception. Community Development Director Ackerson stated that, in every case, a vacancy cannot be filled until it has been advertised for at least three months with a preference to conventional advertising methods. Discussion ensued about alternatives, and which advertising items were required.

Commissioner Scott asked who the Board of Zoning Adjustment was to which Community Development Director Ackerson replied that it consisted of five members and confirmed that Commissioner Scott used to serve on the Board.

Commissioner Delich asked if there would be a property owner in attendance who would be speaking against the application. Community Development Director Ackerson stated that he did not believe that that was the case. Planning Intern Tusinger added that the only property owner who would be affected by the code change who is not interested in any modifications to the code is the owner of Peddler's Wagon, Teri Hahs. Commissioner Delich stated that he had read the email and believed the amendment addressed those concerns. Discussion ensued about changes that led to the text amendment before them.

Commissioner Krtek expressed concern that three months may not be enough time to lease space to another retail tenant. Community Development Director Ackerson replied that, in Planning Intern Tusinger's research, they found that other communities have similar time frames in place for leasing to retail tenants. The potential text amendment is only modeling these other community's ordinances. Planning Intern Tusinger added that Mission and Overland Park are two of the communities that have similar time frames. Those communities do not grant many administrative exceptions.

Commissioner Krtek clarified that the three month guideline was only a minimum requirement, not a maximum requirement, and that owners could advertise for longer periods.

Commissioner Scott asked if there was a time limit on how long a current tenant could stay, referencing language about non-conforming uses. Community Development Director stated that there was not a time limit in place. If, however, a retail tenant leaves and a new tenant cannot be found, the property owner can appeal for an administrative exception. Although, if an exception is granted, it will not apply to future vacancies – the exception is not then considered a non-conforming legal use, which would extend the advertising period to 12 months. The property owner would have to reapply were he to have the same problem leasing to retail tenants.

Commissioner Scott clarified that the businesses that are currently occupying the first floor space are allowed to stay for as long as they want. Community Development Director Ackerson stated that they will not be asked to leave until they are ready. Planning Intern Tusinger, then, presented, slides informing what businesses have conforming and non-conforming uses. The non-conforming businesses will not be asked to break their leases. They can renew. Community Development Director

Ackerson added that there will be no government involved in the terms of any lease, and there is no requirement to amortize non-conforming use out over time. The leases will be between the tenants and the property owners.

Commissioner Lamer asked why paragraph 16 of the code was removed. Community Development Director Ackerson stated that the reason was because it was a lot of legal language that was hard to understand and is covered in other sections of the document.

Commissioner Wright asked about the phrase “and where the goods can be immediately removed from the premises.” He asked why it was included as it seems restrictive and possibly not forward thinking. Community Development Director Ackerson stated that the reason is to make sure that consumer-retail is the primary use. Internet sales can supplement in-store sales, but by themselves were not considered to help accomplish the objective of an active, walkable district.

Commissioner Wright asked about places like art galleries where products are ordered. The product may not be readily available at the gallery. Community Development Director Ackerson stated that sales of off-site or ordered products were allowed to augment in-store sales. Most of the shops that already occupy the first floors between the railroad tracks and 2nd Street provide something that can be bought on-site and taken off-site, meeting the retail definition.

Commissioner Lane asked if the property owners and the tenants were contacted. Community Development Director Ackerson stated that the property owners were contacted but, in some cases, the property owners are also the tenants.

Acting Chairman Cary asked if the commissioners had any more questions. Seeing none, he opened the public hearing.

Tom Hustler (insert address, owner English Landing Center) stated that he would like his property to become a part of the potential ordinance. He considers his property to be a continuation of the shops in Downtown Parkville. He thinks that including his property in the ordinance would add to the profitability of Downtown Parkville and was concerned that non-retail uses moving out of downtown would likely move to English Landing Center impacting other retailers there. Discussion ensued about revisions to maximum square footage restrictions. Discussion ensued about how the amendment might apply to English Landing Centers.

Hillary Murray (insert address, owner 109 and 111 Main Street) has a vacancy at 109 Main and had multiple offers from non-conforming use businesses since her last tenant moved out last June, but she believes in the vision of Downtown Parkville. She is waiting for a retail opportunity to approach her. If she were to lease to a non-conforming use, she believes that the employees would contribute only to the dining establishments. She believes that the 12-month clause for non-conforming should be reduced. Discussion ensued.

Community Development Director Ackerson reinforced that the property owners want to see Parkville as a retail destination in 10 years. When the neighboring space becomes non-retail, the foot-traffic decreases to shops past the business.

Acting Chairman Cary is concerned that Teri Hahs believes that a code change will limit her ability to lease or sell her property. The City could be seen as overstepping their boundaries. Community Development Director replied that the City is already restricting uses and the code change would only redefine the uses and restrictions. He understands the concerns that Teri Hahs has. They are addressed by the administrative exception provision. She and other property owners who agree with her could apply for an administrative exception from the Community Development Director.

Commissioner Scott asked Mr. Hutsler what the time frame would have been for leasing a space prior to the economic depression in 2008. Mr. Hustler confirmed that a space could have been leased within three months' time in a good economy.

Commissioner Scott expressed concerns about government regulating uses. She asked if the business owners are united on this and other issues and if there would be an ordinance about a business' operating hours and making pedestrian traffic safer.

Mike Emmick (insert address, owner 101, 103, and 105 Main) stated that he too does not like government regulations. He stated that businesses should be open at reasonable hours and that parking needs to be addressed, but through lease contract, not City regulation. It is difficult to make any changes when the property owners do not recognize that they are working for their customers. Acting Chairman Cary asked why they supported the City regulating uses, but not hours of operation and parking. Discussion ensued.

Mr. Emmick stated that he is a property owner of a non-conforming business and he supports the code change.

Commissioner Scott asked if this kind of ordinance is common in other local communities like Weston or on a national scale. Community Development Director Ackerson stated that Weston did not have an ordinance similar to the one proposed, but other communities have the ability to make their own decisions based upon their individual needs. Planning Intern Tusinger added that there are examples of other communities nationally that have similar clauses. He gave examples of communities in Colorado and California.

Commissioner Scott stated that she is not comfortable with restricting uses, but acknowledged the concerns about being too restrictive. However, the existing language lends itself to one person have sole charge of administrative decisions – the Community Development Director. The advertising clause should be amended to be clearer and hair salons should be included as a conforming business use as they do sell products.

Ackerson said that he was fine with that idea, but he did not want the wording to be too specific, disallowing valid options or creating provisions that couldn't be enforced. He

envisions that advertising today may not be the same in the future and specific wording might lend itself to being too restrictive someday.

Hillary Murray was acknowledged as an expert and she agreed to help create additional language.

Commissioner Krtek was also recognized as an expert, and cautioned against being over restrictive and forcing an owner to use a realtor which may not be necessary. Discussion ensued. He suggested the requirements be reasonable. Based on the conversation Ackerson suggested better defining the options, clarifying that advertising must be three consecutive months and that one or more advertising methods are required.

Commissioner Delich stated that the language can be refined but there are appeals built in and there are more critical decisions that the staff could be making. He recommended moving on.

Acting Chairman Cary asked if Mr. Hustler's property could be included in consideration for the motion tonight. Community Development Director Ackerson stated that he could not as he is not a part of the current application. A separate advertisement would be required.

Commissioner Scott said that the wording should be more specific for the Board of Zoning Adjustment. They do not have the experience the Community Development Director Ackerson has. In order to make an informed decision, if an appeal were to be made, a checklist would be very helpful. Ackerson agreed that she had a good point. A checklist would, also, be beneficial to the property owners.

Commissioner Krtek asked about the inclusion of hair salons. Community Development Director Ackerson stated that, if hair salons were to be included in the code, the code could apply to other uses like Mike Emmick's Edward Jones, as well. While they are bringing people downtown, they may affect Parkville as a retail destination. He noted that the petitions decided not to include personal services.

Commissioner Lock thought that the application should be approved with the "good faith" clause, with issues to be addressed if an issue arises.

Commissioner Krtek asked how to move forward in the approval process. Community Development Director Ackerson stated that the wording issue could be resolved by making it a part of the motion or the application could be tabled until next month returning with modified language.

Commissioner Lamer reminded staff to include language that clarifies that not all advertising requirements are required – the use of "or" versus "and."

Commissioner Delich asked for the staff recommendation. Community Development Director Ackerson stated that he is comfortable with either option. He could easily modify the language in regards to the advertising section to make it clearer.

Commission Krtek asked if a motion could be made. Acting Chairman Cary stated that he was willing to entertain any motion, summarizing options.

Commissioner Scott asked if anyone on the commission felt comfortable with making a recommendation as to the time limit for vacancy. Commissioner Krtek said that it depends on the market. Community Development Director Ackerson stated that the reason that the 12-month period was a common provision for a sunset or abandonment period, and confirmed that legal counsel supported 12 months, but also supported a shorter period so long as it was reasonable. Discussion ensued regarding how the requirement applied.

Commissioner Lamer stated he believed there was some immediacy to the application and that it should be acted on. He asked the business owners present if they were comfortable with the 12-month clause. Ms. Murray stated that the 12-month clause was too long and that it should become a 6-month time frame. Commissioner Lamer stated that he would recommend 6 months.

Acting Chairman Cary asked, if multiple businesses accept the 12-month clause, if it is fair to change the clause without notice. Community Development Director Ackerson stated that the 12 months was not included in the original draft forwarded with the public hearing. Instead the 12 months was added by staff after the last staff meeting with property owners. He didn't believe the change would be an issue. Discussion ensued about why the period was necessary at all. Ackerson stated it was a compromise that was added to address some owners' concerns about losing substantial investments if forced to advertise for retail uses immediately.

Acting Chairman Cary said he would entertain a motion. Discussion ensued about the potential motion. **Commissioner Lamer moved for acceptance of 4A subject to council approval and analysis of item 2,A,2 as discussed [clarifying the advertising requirements in Section 442.015, A,2,a,ii] and revision of 12 months to 6 months [in Section 442.015, D,5], all subject to staff analysis and approval, Commissioner Delich seconded: Motion passed 8-0.**

5. REGULAR BUSINESS

A. An application for the Preliminary Plat of Cider Mill Ridge – 6th in an “R-2” Single-Family Residential District. Case PZ15-30, FiveStar Lifestyles, applicant.

Acting Chairman Cary introduced the application and then asked Community Development Director Ackerson to explain it.

Ackerson presented images of the National and the subject property. He gave an overview of the zoning code with considerations. He stated that the property in question was in an “R-2 CUP” Single-Family Residential District with a Community Unit Plan overlay. He described the minimum lot size and the setbacks. The plan met all of the requirements for the lots, streets, and utilities. He stated that Public Works Director Abel confirmed that the storm sewer and the sewer can provide service and that it is

consistent with the Master Plan. He said that a final plat was submitted separately with improvement plans. He listed staff findings and recommended conditions for approval and stated that, if the preliminary plan were approved, the final plat should be available to the Planning and Zoning Commission next month.

Acting Chairman Cary asked for comments or questions from the commissioners.

Commissioner Scott asked if there would be an increase of traffic on Bell Road, stating it does not need more traffic. Community Development Director Ackerson stated that he could not say specifically, but confirmed that a traffic study was completed for the master development and improvements had been made accordingly. There are plans for future development to the south but it should not make any future connections on Bell Road. She reiterated her concern about traffic on Bell Road.

Commissioner Wright stated that there was a tremendous grade differential on the plat. He asked if the fire department had approved the plan. Community Development Director Ackerson confirmed they have. The developers work with similar topography elsewhere. Ackerson stated that the fire department does not assess individual grades, instead they are revised by the City's public works department who had concluded they meet the applicable standards. Instead the fire department determines whether they can turn the truck around on the street.

Dale Brouk (8835 NW 63rd Street) spoke on behalf of the applicant, explaining how the grades would work. The entries to the houses are at street level. The developers will be building down the hillside.

Acting Chairman Cary called for a motion. **Commissioner Delich moved to approve the application for the Preliminary Plat of Cider Mill Ridge – 6th be approved according to staff recommendations and stipulations they require. Commissioner Wright seconded: motion passed 8-0.**

6. UNFINISHED BUSINESS

7. OTHER BUSINESS

A. Project Updates

1. Quik Trip: They are behind their expectations. They wanted to be open by May or June of 2016, but that was with the project starting now. They hope to complete it by next summer. The final plat will go to the Planning and Zoning Commission before going to the Board of Aldermen.
2. Thousand Oaks West: There have not been any further plans submitted. They owners have been working on the conditions of prior approval, but there is no projection for submittal. The residents have asked to be made aware of the next application. He stated the City had committed to posting information on the City webpage and residents could call for updates.

3. Bella Vista: The Final Plat is expected soon. It would come back to the Commission before proceeding to the Board. He did not have any updates about relocating the VFW.

B. Applications submitted for October 13, 2015 meeting:

1. Final Plat - Cider Mill Ridge 6th Plat
2. Revised Preliminary Plat for Thousand Oaks Estates
3. Final Plat - Thousand Oaks 16th Plat
4. Final Plat - Thousand Oaks 19th Plat

C. Upcoming meetings & dates of importance:

Acting Chairman Cary acknowledged the following upcoming meetings:

- Board of Aldermen Meetings: Tuesday, September 15, 2015 and Tuesday, October 06, 2015 at 7:00 pm.
- Planning & Zoning Commission Regular meeting Tuesday, September 14, 2015 at 5:30 pm.

8. ADJOURNMENT

Seeing no other discussion, Acting Chairman Cary called for a motion to adjourn.

Commissioner Scott moved to adjourn, Commissioner Lane seconded: 8-0. Meeting adjourned at 7:23 p.m.

Submitted by:

Emily Crook
Community Development Department Assistant

09/11/2015
Date