

CITY OF LEAVENWORTH PLANNING COMMISSION
COMMISSION CHAMBERS, CITY HALL
100 N 5th Street, Leavenworth, Kansas 66048
REGULAR SESSION
Monday, September 14, 2020
6:00 PM

CALL TO ORDER:

Commissioners Present

Mike Burke
Claude Wiedower
James Diggs
Joseph Burks

Commissioners Absent

Sherry Hines Whitson
Chris Murphy
Linda Bohnsack

City Staff Present

Julie Hurley
Michelle Baragary
Jackie Porter

Mike Burke, Claude Wiedower, Joseph Burks, Julie Hurley, Jackie Porter and Michelle Baragary were present in the commission chambers. James Diggs participated via GoToMeeting.

Chairman Burke called the meeting to order at 6:00 p.m. and noted a quorum was present.

Chairman Burke welcomed the new Planning Commissioners James Diggs and Joseph Burks.

APPROVAL OF MINUTES: July 13, 2020

Chairman Burke asked for comments or a motion on the minutes presented for approval: July 13, 2020. Joseph Burks and James Diggs recused themselves, as they were not at the July meeting. Chairman Burke tabled the item for the next meeting.

OLD BUSINESS:

None

NEW BUSINESS:

1. 2020-28-REZ – 619 S. 4TH STREET

Conduct a public hearing for Case No. 2020-28 REZ – 619 S. 4th Street. The applicant is requesting a rezoning of the property located at 619 S. 4th Street from OBD, Office Business District, to GBD, General Business District.

Chairman Burke called for the staff report.

City Planner Jackie Porter stated the applicant, Development, Inc., owned by Jeremy Greenamyre, is requesting a rezoning of the property located at 619 S. 4th Street from OBD, Office Business District, to GBD,

General Business District. The office building that operated as an American Family Insurance office has been vacant for 5 to 6 years. Development, Inc. purchased the property in October 2019.

The rezoning is being requested by the property owner to allow the opportunity for a broader variety of uses to be considered at the property. This property is in close proximity to downtown commercial uses.

CONDITIONS OF DETERMINATION

Whenever the Planning Commission or City Commission takes action on an application for amendment to these Development Regulations, and such proposed amendment is not a general revision of existing ordinances, but one which will affect specific property, the Planning Commission and City Commission shall consider the following factors:

- a) The character of the neighborhood;

The subject property is the site of the former American Family Insurance office building, which is currently vacant. To the south is "Leavenworth Laundromat". To the southeast is a single-family home. To the west is "First United Methodist Church". To the northwest is the "First Presbyterian Church". To the north is a single-family home. To the east is a single-family neighborhood. The subject property is located along South 4th Street, which is classified as arterial street and designed to handle high volume traffic.

- b) The zoning and use of properties nearby;

To the south of the subject property is a laundromat, zoned NBD, Neighborhood Business District. To the southeast is a single-family home, zoned R1-6, High Density Single Family Residential District. To the west is a church "First United Methodist Church" zoned OBD, Office Business District. To the northwest is a church "First Presbyterian Church" zoned ODB, Office Business District. To the north is a single-family home, zoned OBD, Office Business District. To the east is a single-family residential neighborhood zoned R1-6, High Density Single Family Residential District. The remainder of the neighborhood consists of single-family homes zoned R1-6, High Density Single Family Residential District and other NBD, Neighborhood Business District.

- c) The suitability of the subject property for the uses to which it has been restricted;

The subject property was built in 1970. The building has been used as an office building, and is unsuited for residential use.

- d) The extent to which removal of the restrictions will detrimentally affect nearby property;

The proposed rezoning should have little detrimental effect upon surrounding properties. The subject building has been used for office space prior to the current owner. No significant effect on nearby property is anticipated due to the rezoning.

- e) The length of time the subject property has remained vacant as zoned;

The existing building has consistently operated in an office business district use since construction in 1970. The last remaining tenant vacated the building after the passing of the previous owner 5 to 6 years ago.

- f) The relative gain to economic development, public health, safety and welfare by the reduction of the value of the landowner's property as compared to the hardship imposed by such reduction upon the individual landowner;

The proposed rezoning will have a positive effect on public health and welfare by providing a correct zoning to correlate with the surrounding properties along a densely used arterial street, which has been proposed by the 2010 Comprehensive Plan to be zoned commercial.

- g) The recommendations of permanent or professional staff;

Staff recommends approval of the rezoning request.

- h) The conformance of the requested change to the adopted or recognized Comprehensive Land Use Plan being utilized by the city;

The area is identified as appropriate for commercial uses on the Future Land Use map. Therefore, staff finds the proposed use to be in conformance with the overall goals of the adopted Comprehensive Plan.

- i) Such other factors as may be relevant to a particular proposed amendment. The factors considered in taking action on any proposed amendment shall be included in the minutes or otherwise be made part of the written record.

No other factors.

REZONING ACTION/OPTIONS:

- Recommend approval of the rezoning request from OBD to GBD to the City Commission
- Recommend denial of the rezoning request from OBD to GBD to the City Commission
- Table the issue for additional information/consideration.

Jackie Porter stated there is a typo in the policy report. Under Rezoning Action/Options, it should be ODB and not R1-6.

Chairman Burke called for discussion among the commissioners.

Mr. Wiedower stated he does not see any conflict with the rezoning request.

With no further questions about the staff report, Chairman Burke opened the public hearing.

With no one else wishing to speak, Chairman Burke closed the public hearing and called for a motion. Mr. Wiedower moved to recommend approval of the rezoning request from OBD to GBD to the City Commission, seconded by Mr. Diggs and approved by a vote of 4-0.

2. 2020-29-SUP – 220 SPRUCE STREET

Conduct a public hearing for Case No. 2020-29 SUP – 220 Spruce Street. The applicant is requesting a Special Use Permit to allow the operation of a Child Care Center in their home located at 220 Spruce Street. The property is currently zoned R1-6 (High Density Single Family Residential District). Child Care Centers are allowed in the R1-6 zoning district with issuance of a special use permit.

Chairman Burke called for the staff report.

Planning Director Julie Hurley stated the applicant, Savannah Nelson, is requesting a Special Use Permit to allow the operation of a Child Care Center in their home located at 220 Spruce Street. The property is currently zoned R1-6 (High Density Single Family Residential). Child Care Centers are allowed in the R1-6 zoning district with issuance of a special use permit. The applicant previously received approval of a Special Use Permit in 2018 to operate a Child Care Center in their home at 1922 5th Avenue. That structure was damaged by fire earlier this year, and the applicant has since relocated to the subject property and intends to continue her Child Care operations.

The applicant is licensed by the State of Kansas to care for a maximum of 12 children, dependent upon the ages of the children in care.

CONDITIONS OF DETERMINATION

In recommending approval of a special use, the Planning Commission may impose such conditions, safeguards and restrictions as may be necessary to carry out the general purpose and intent of the ordinance. The development regulations stipulate specific conditions as a requirement for the approval of Child Care Centers as follows:

1. Shall not be located along an arterial street as designated on the Major Street Plan Map unless indirect vehicular access to that street, such as with a frontage road is available. The City Planner, with the advice of the DRC, shall determine if the drop off and pick up arrangements of a childcare center or business appear safe. Appeal of any negative decision shall be to the City Commission.

The subject property is located along Spruce Street, which is classified as a Residential street.

2. Shall provide at least one hundred (100) square feet of open space per child. This open space shall be 100% enclosed by a minimum four (4) foot high fence or wall.

The subject property includes a back yard area of approximately 2,100 sqft., enclosed by a 4' chain link fence. The back yard is adjacent to an existing alley, and there is approximately 25' from the fenced area to the edge of the paved alley.

3. Shall provide a loading zone capable of accommodating at least two (2) automobiles for the easy picking up and discharging of passengers.

The subject property does not include a driveway or other paved off-street loading area. However, in the area of town in which the property is located, the majority of homes do not have a driveway or other off-street paved parking/loading area. There is ample on-street parking in front of the subject property, and access may be obtained off the rear alley if needed.

4. Shall conform to all requirements of the State of Kansas and shall acquire a State of Kansas Child Care Center License.

The applicants have provided a copy of their Group Day Care Home permit from the Kansas Department of Health and Environment.

5. All childcare centers operated in residential zoning districts shall be the only legal residence of the operator.

The home functions as the only residence of the operator/owner.

6. Childcare centers in residential districts may have one non-illuminated monument sign with no more than 3 square feet per side and a maximum of 2 sides or one non-illuminated sign affixed to the main structure with a maximum of the 3 square feet.

The applicant is currently displaying two yard signs in the front of the house. The applicant will need to remove one of the yard signs.

COMMISSION FINDINGS

The Commission may recommend issuance of a special use permit whenever it finds that:

1. The proposed special use complies with all applicable provisions of this ordinance.

Staff believes that this application complies with all provisions of City of Leavenworth Development Regulations.

2. The proposed special use at the specified location will contribute to and promote the economic development, welfare or convenience of the public.

Child Care Centers are an essential service to working parents in the community, and promote the economic development, welfare and convenience of the public.

3. The special use will not cause substantial injury to the value of other property in the neighborhood in which it is located.

Staff does not feel that the proposed Child Care Center will cause any substantial injury to the value of other property in the neighborhood.

4. The location and size of the special use, the nature and intensity of the operation involved in or conducted in connection with it, and the location of the site with respect to streets giving access to it are such that the special use will not dominate the immediate neighborhood so as to prevent development and use of neighboring property in accordance with the applicable zoning district regulations.

No new structures or building modifications are proposed as part of this special use permit. The property will continue to look and function as a residential structure.

Notification was sent to property owners within 200' of the subject property, as required by Kansas Statue. The policy report states staff had not received any contact from notified property owners; however, since the report was written, staff has received one phone call in opposition to the proposed Special Use.

STAFF RECOMMENDATION:

Staff recommends approval of the Special Use Permit request based on the analysis and findings included herein, subject to the following conditions:

1. A minimum of 1,200 square feet of open space 100% enclosed by a minimum 4' high fence or wall shall be provided and maintained in good condition.

2. A copy of the permanent Group Day Care Home license shall be provided annually upon renewal by the State of Kansas.
3. The operation shall be limited to a maximum of 12 children.
4. No additional home occupations may be carried out at the residence.

Failure to maintain compliance with all conditions shall result in revocation of the Special Use Permit.

ACTION/OPTIONS:

- Motion, based upon findings as stated and conditions as presented, to recommend approval to the City Commission
- Motion, to recommend denial to the City Commission
- Table the issue for additional information/consideration

Chairman Burke called for discussion among the commissioners about the staff report.

With no further questions about the staff report, Chairman Burke opened the public hearing.

With no one else wishing to speak, Chairman Burke closed the public hearing and called for discussion among the commissioners.

Mr. Wiedower stated it is obvious the operator has been in compliance with all the State requirements. He does not feel that one opposition will negatively impact the community in that area.

With no further discussion among commissioners, Chairman Burke called for a motion. Mr. Wiedower moved to recommend approval of the Special Use Permit at 220 Spruce Street to the City Commission, seconded by Mr. Burks and approved by a vote of 4-0.

3. 2020-30 REZ – 728 EISENHOWER RD

Conduct a public hearing for Case No. 2020-30 REZ – 728 Eisenhower Rd. The applicant is requesting a rezoning of their property located at 728 Eisenhower from R1-25, Low Density Single Family Residential District, to GBD, General Business District.

Chairman Burke called for the staff report.

Planning Director Julie Hurley stated the applicant is requesting a rezoning of their property at 728 Eisenhower from R1-25 (Low Density Single Family Residential) to GBD (General Business District). The 14.35 acre lot is currently occupied by a single family home and agricultural uses, and is located directly west of the existing Dillon’s grocery store, and to the east of the existing Westside Family Church.

The rezoning is being requested in order to allow for future commercial development along the Eisenhower Road corridor, and is consistent with the 2010 Comprehensive Plan. The applicant has provided a conceptual site plan showing 3 commercial pad sites along the southern portion of the property adjacent to Eisenhower Road, with mixed-use or multi-family in the northern portion of the site to act as a transition to the single family development to the north. Dependent upon how the

northern portion of the site develops in the future, it is anticipated that an additional rezoning request may be necessary.

The Development Review Committee reviewed the project at their July 23, 2020 meeting and discussed items related to platting, easements, and utilities. No major issues were identified, and all items discussed will be addressed as the site develops.

CONDITIONS OF DETERMINATION

Whenever the Planning Commission or City Commission takes action on an application for amendment to these Development Regulations, and such proposed amendment is not a general revision of existing ordinances, but one which will affect specific property, the Planning Commission and City Commission shall consider the following factors:

- a) The character of the neighborhood;

The subject property is directly adjacent to the Eisenhower Road corridor, with an existing Dillon's grocery store to the east and Westside Family Church to the west. To the north is a single family residential development, and to the south, across Eisenhower Road in Lansing, is a cemetery. Further to the east and west is additional commercial development.

- b) The zoning and use of properties nearby;

To properties to the east and west are zoned GBD, General Business District. The property to the north is zoned R1-9, Medium Density Single Family Residential.

- c) The suitability of the subject property for the uses to which it has been restricted;

The subject property is currently zoned R1-25, Low Density Single Family Residential, which is typical of agricultural uses within the City and does not allow for the highest and best use of a property situated along a major thoroughfare.

- d) The extent to which removal of the restrictions will detrimentally affect nearby property;

The proposed rezoning should have little to not detrimental effect on nearby property. The majority of uses along the Eisenhower Road corridor are commercial or industrial in nature.

- e) The length of time the subject property has remained vacant as zoned;

The property has always been single-family/agricultural in nature.

- f) The relative gain to economic development, public health, safety and welfare by the reduction of the value of the landowner's property as compared to the hardship imposed by such reduction upon the individual landowner;

The proposed rezoning will have a positive effect upon the economic vitality of Leavenworth by allowing for more commercial development along the Eisenhower Road corridor at a time corresponding with major road improvements to be undertaken which are intended to increase the capacity and safety of the corridor.

- g) The recommendations of permanent or professional staff;

Staff recommends approval of the rezoning request.

- h) The conformance of the requested change to the adopted or recognized Comprehensive Land Use Plan being utilized by the city;

The subject area is identified as appropriate for commercial uses in the Comprehensive Plan.

- i) Such other factors as may be relevant to a particular proposed amendment. The factors considered in taking action on any proposed amendment shall be included in the minutes or otherwise be made part of the written record.

No other factors of note.

REZONING ACTION/OPTIONS:

- Recommend approval of the rezoning request from R1-25 to GBD to the City Commission
- Recommend denial of the rezoning request from R1-25 to GBD to the City Commission
- Table the issue for additional information/consideration.

Chairman Burke called for questions about the staff report.

Mr. Burke asked if staff received any oppositions to the rezoning request.

Ms. Hurley stated within the City a 200' notification is required, and anything that borders the city limits requires a 1000' notification. On the south side of the subject property which leads into Lansing, notification was sent to property owners within 1000'. Staff did not receive correspondence for or against the rezoning request.

Chairman Burke opened the public hearing.

Mr. Burke asked if the applicant owned the properties to the north of the subject property.

Mark Rozalski, 5006 Shrine Park Road, approached the commissioners stating he owns the 5 acres directly north of the subject property. Mr. Rozalski vehemently opposes the rezoning request for several reasons. First, the request is too ambiguous. He wants to know what the subject property will be used for. Second, the noise level. He already deals with noisy trucks at Dillon's. Third, how will this affect his property value with a commercial district butted up to his property. He is also concerned this will increase his property taxes.

Dan Sachse, 5004 Shrine Park Road, approached the commissioners stating he owns the property to the north of Mr. Razalski's property. Mr. Sachse stated he is in opposition for many of the same reasons: what will the subject property be used for, how will this affect his property value, increased noise, etc. Would like to know if roads will be installed that would but up against Mr. Rozalski's property or would businesses only be to the south portion of the subject property.

Mr. Burke asked if the applicant was present.

Ms. Hurley responded the applicant is not present.

Mr. Burke asked at what point would the Planning Commission ask the applicant to produce a more detailed plan regarding the usage of the subject property.

Ms. Hurley responded that would occur when they have tenants secured, which may occur at various times through the development. It is much easier to market properties which are already zoned correctly if they are looking for commercial type uses. A site plan would be provided when they have a tenant. This would go through the Development Review Committee and not the Planning Commission.

Mr. Rozalski stated he was approached by a realtor to sell his property but he declined. He further stated Coldwell Banker currently has a for sale sign on the subject property. It is his understanding they do not have a buyer at this time and are just looking for anyone to purchase the property without knowing what type of commercial use will go in there.

Mr. Rozalski further stated he would be more inclined to accept the rezoning if only the frontage of the property was used for commercial use and there was some sort of green space between his property and the subject property.

Mr. Burke stated this board has in the past requested the developers to include some sort of barrier.

Ms. Hurley stated that would be the risk the board would take if they recommended approval with a conceptual site plan and not more of a development final site plan. If this was a set site plan with identified tenants, the board would have more control over requesting certain accommodations and site development features. However, with a conceptual plan as the one presented that it not tied into anything concrete, the board loses a little bit of that control.

Mr. Burke asked if the developer would need to come back to the Planning Commission.

Ms. Hurley responded they would not. Once the rezoning is in place, the developer can put any commercial use on the property that is permitted in that zoning district.

Mr. Burke asked if the commissioners could recommend a condition requiring the developers to come back to the Planning Commission with a more detailed plan.

Ms. Hurley stated the board could not do that since the Planning Commission is not setup to do site plan reviews unless they are tied to a rezoning. The site plan would need to be tied to this rezoning and come through at the time of approval.

Mr. Burks asked Mr. Rozalski how long he has lived at his property on Shrine Park Road.

Mr. Rozalski responded approximately eight years.

Mr. Burks asked if his property value has decreased because of Dillon's.

Mr. Rozalski responded the value of his property has gone up based on the property taxes he pays.

Mr. Burks asked for clarification that the commission cannot ask for a more detailed plan from the applicant.

Ms. Hurley responded the commission can by tabling the issue and requesting a more developed site plan.

Mr. Diggs asked if the commission has the authority to keep part of the subject property residential and rezone the other portion.

Ms. Hurley responded two different zoning district couldn't be placed on one lot, and the subject property could not be divided into two lots from east to west (with a north lot and a south lot) because it would leave the north portion cut-off from any road frontage. Therefore, any rezoning would need to be for the entire lot unless they come through with a more developed site plan in which they were going to plat it into multiple lots that have access and different easements that would allow access to the entire property.

With no further questions or comments, Chairman Burke closed the public hearing and called for discussion among the commissioners.

Mr. Wiedower stated they need to be sensitive to residential owners; however, the commission knows the future of Eisenhower Road and where it is going. The zoning request is from single-family residential to general business, which is the future of Eisenhower Road.

Mr. Wiedower further stated he heard the complaints made about what type of business operation will be going in there and will it increase noise level; but the commission cannot put a condition on those concerns. Mr. Wiedower asked for clarification that the commission is only looking at approving or denying the rezoning request.

Ms. Hurley responded that is correct. The commission does have the option to table the issue and request a more concrete site plan, which could be next month or six months from now depending on where the developer is at with it. It is certainly in the commission's purview to expect a more detailed site plan otherwise the commission would be opening it up to any use that is allowed within the General Business District.

Mr. Burks stated he is not comfortable opening that up to the developer without knowing what their plan might be. Believes he owes it to the community to get more information on the developer's plans.

Mr. Wiedower asked if the Planning Commission needs to know what businesses will be there before approving a rezoning request.

Ms. Hurley interjected and stated she believes there is a difference between knowing the exact business versus the type of use. Again, this is a very conceptual site plan and it is highly unlikely it will stay as it is shown now. It is in the commission's purview to request a detailed site plan. Ms. Hurley used the development going on at 7th Street and Metropolitan. That project has come through the Planning Commission several times. Specific tenants have not been announced but the commission has seen very specific detailed site plan and plat on how this will be developed. That level of development is what you would expect to see on a development like the one brought before the commission today.

With no further comments, Chairman Burke called for a motion. Mr. Burks moved to table the issue pending further information and a more detailed site plan, seconded by Mr. Wiedower and passed by a vote of 4-0.

4. PRICE CHOPPER TIF DISTRICT

Determine consistency of the Redevelopment Project Plan for the Price Chopper TIF District with the adopted Comprehensive Plan.

Chairman Burke called for the staff report.

Planning Director Julie Hurley stated on August 11, 2020, the Leavenworth City Commission adopted an ordinance establishing a Redevelopment (TIF) District encompassing the existing Price Chopper store located at 2107 S. 4th Street. The TIF District shall be in effect for 20 years from the date the Project Plan is approved by the City Commission. As part of the establishment of the TIF District, one cent of the City's sales tax and the incremental ad valorem property taxes generated from the property within the district shall constitute TIF Revenues for the developer.

The owner/developer of the property, Super Market Developers, Inc., has proposed improvements including a multi-million dollar renovation of the interior and exterior of the Price Chopper grocery store to upgrade and enhance the store layout, equipment, offerings and other features, along with improvements to the property just north of the store for parking.

Any eligible project located within a redevelopment district established pursuant to KSA 12-1770 must be found to be consistent with the intent of the adopted Comprehensive Plan of the City. While the 2011 Comprehensive Plan does not specifically address redevelopment of existing services, such as grocery stores, there are several key areas in which this proposal is in line with the Plan.

The Comprehensive Plan states that the 4th Street corridor should be enhanced and emphasized as an integral complimentary commercial corridor leading into downtown. The Plan also emphasizes that incentivizing in-fill development should be prioritized. While not strictly "in-fill", the revitalization of existing businesses that service established areas meets the same overall goal. Finally, the Comprehensive Plan identifies Tax Increment Financing (TIF) as an appropriate and desirable incentive for commercial and retail redevelopment opportunities.

Staff finds that the Redevelopment Project Plan for the Price Chopper TIF District is consistent with the overall intent of the Comprehensive Plan.

ACTION:

Motion finding that the Redevelopment Project Plan, Price Chopper TIF District is consistent with the intent of the Comprehensive Plan.

Ms. Hurley stated Pete Haven, representing the developer, has joined the GoToMeeting if the commissioners have questions for him.

Chairman Burke asked Mr. Haven if he would like to add anything.

(There appears to be technical difficulties on Mr. Haven's end).

With no questions, comments or discussion among the commissioners, Chairman Burke called for a motion. Mr. Wiedower moved that the Redevelopment Project Plan, Price Chopper TIF District is consistent with the overall intent of the adopted Comprehensive Plan, seconded by Mr. Burks and passed by a vote of 4-0.

Ms. Hurley stated there are two items on the agenda for the October meeting.

With no further business, Chairman Burke adjourned the meeting.

The meeting adjourned at 6:49 p.m.

JH/mb