

**CITY OF LEAVENWORTH PLANNING COMMISSION**  
**COMMISSION CHAMBERS, CITY HALL**  
100 N 5<sup>th</sup> Street, Leavenworth, Kansas 66048  
**REGULAR SESSION**  
**Monday, March 6, 2023**  
6:00 PM

---

**CALL TO ORDER:**

**Commissioners Present**

Joe Burks  
Bill Waugh  
Kathy Kem  
James Diggs  
Brian Stephens  
Sherry Whitson

**Commissioners Absent**

Don Homan

**City Staff Present**

Julie Hurley  
Michelle Baragary  
Bethany Falvey

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

**APPROVAL OF MINUTES:** December 5, 2022

Chairman Burks asked for comments or a motion on the minutes presented for approval: December 5, 2022. Commissioner Stephens moved to approve the minutes as presented, seconded by Commissioner Whitson and approved by a vote of 6-0.

Planning Director Julie Hurley introduced the new City Planner Bethany Falvey.

**OLD BUSINESS:**

None

**NEW BUSINESS:**

**1. 2023-04 SUP – 113 SENECA STREET**

Conduct a public hearing for Case No. 2023-04 SUP – 113 Seneca Street. The applicant is requesting a Special Use Permit to allow a two-family dwelling in the CBD, Central Business District, located at 113 Seneca Street. Two-family dwellings are allowed in the CBD with the approval of a Special Use Permit.

Chairman Burks called for the staff report.

City Planner Bethany Falvey stated the applicant, NLG, LLC, is requesting a Special Use Permit to allow a two-family dwelling in the CBD zoning district located at 113 Seneca Street. Two-family dwellings

are allowed in the downtown redevelopment overlay district with the approval of a Special Use Permit.

The structure has evidence of previously functioning as a two-family dwelling based on separate entrances and electric boxes, but has been vacant for over 2 years. Previously the structure was considered an existing legal nonconforming use. Section 1.05.D of the adopted Development Regulations states:

*When a nonconforming use is abandoned for a period of twenty-four (24) consecutive months any subsequent use or occupancy of such land after this period shall comply with the regulations of the zoning district in which such land is located.*

The applicant intends to renovate and restore the structure to its previous use, to include new electrical, plumbing, HVAC, walls, ceilings, doors, windows, fixtures, cabinetry, and flooring.

### **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.

*Currently the property is vacant. If approved, the property will fill a need in the community by providing a two-family housing option. Restoring the property to its previous use will continue to fill that need.*

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 use 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 function as it did previously.*

Notification was sent to property owners within 200' of the subject property, as required by Kansas Statute. Since notifications were mailed, staff has received no comments or inquiries.

### **STAFF RECOMMENDATION:**

Staff recommends approval of the Special Use Permit request based on the analysis and findings included herein.

**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 Burks asked for questions from commissioners about the staff report.

Commissioner Kem asked if the structure to the west is currently being used as multi-family.

Ms. Falvey responded in the affirmative stating the structure to the west is legal nonconforming but has been a continued use.

Chairman Burks called upon the applicant to speak about the subject property.

Chioma Njoku, owner/applicant resides at 601 Cottonwood Dr., stated the property is vacant, and is an eye sore for the community. They want to renovate it to bring it back to a functional use, and meet a need for the military by using the property as a rental.

Commissioner Whitson asked what their timeline is for completion.

Ms. Njoku responded they would like it available for rent by May 1<sup>st</sup>.

With no further questions for the applicant, Chairman Burks opened the public hearing. With no one wishing to speak, Chairman Burks closed the public hearing and called for a motion. Commissioner Diggs moved to recommend approval of the special use permit to the City Commissioner to allow a two-family dwelling in the CBD, seconded by Commissioner Kem and passed by a vote of 6-0.

**2. 2023-07 REZ – 3523 10<sup>TH</sup> AVENUE**

Conduct a public hearing for Case No. 2023-07 REZ – 3523 10<sup>th</sup> Avenue. The applicant is requesting a rezoning of their property located at 3523 10<sup>th</sup> Avenue from R-MF, Residential Multi Family District, to R1-9, Medium Density Single Family Residential District.

Chairman Burks called for the staff report.

Planning Director Julie Hurley stated the owner and applicant, Nicholas Tevebaugh, is requesting a rezoning of their property located at 3523 10<sup>th</sup> Avenue from R-MF, Residential Multi Family District, to R1-9, Medium Density Single Family Residential District. The property is 2.8 acres in size and is occupied by a single family home. The owner is requesting the rezoning in order to bring the zoning of the property into conformance with the actual use of the property for marketing purposes to aid in the sale of the property. The property is identified as appropriate for Single Family uses on the Future Land Use map, and no development is proposed as part of this rezoning application.

**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 2.8 acres in size and is located on 10<sup>th</sup> Avenue, just south of Gatewood Street. There are a mix of uses nearby, included single family, multi family, a mobile home park, and the Richard Warren Middle School campus across 10<sup>th</sup> Street.*

- b) The zoning and use of properties nearby;

*The properties directly to the north are zoned R-MF, Residential Multi Family District, and are developed with single family homes. Further to the north is the Pin Oak Acres apartment complex, which is zoned PUD, Planned Unit Development. The property is zoned MP, Mobile Home Park District, and is developed with the Woodmore Court mobile home park. The property directly to the south is zoned R1-9, Medium Density Single Family Residential District, and is vacant and currently owned by the City of Leavenworth. The properties further to the south are zoned R1-9 and are developed with single family homes. The property to the west, across 10<sup>th</sup> Avenue, is zoned R1-9, and is occupied by the Richard Warren Middle School campus.*

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

*The subject property is occupied by a single family home and has been identified as appropriate for single family uses on the Future Land Use map.*

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

*The proposed rezoning should have no detrimental effect upon surrounding properties, as there is no development proposed as part of the rezoning request.*

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

*The subject property is not vacant.*

- 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 neutral impact on economic development, public health, safety, and welfare, as there is no development proposed as part of the rezoning request.*

- 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 single family residential uses on the Comprehensive Land Use 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.*

After the required notice was published and mailed to property owners within 200' of the subject property as required by Kansas State Statute, staff received one call from a notified property owner to clarify the property being included in the request. No other comments have been received.

**REZONING ACTION/OPTIONS:**

- Recommend approval of the rezoning request from R-MF to R1-9 to the City Commission
- Recommend denial of the rezoning request from R-MF to R1-9 to the City Commission
- Table the issue for additional information/consideration.

Chairman Burks asked for questions from commissioners about the staff report.

With no questions about the staff report, Chairman Burks opened the public hearing. With no one wishing to speak, Chairman Burks closed the public hearing and called for a motion. Commissioner Whitson moved to recommend approval of the rezoning request from R-MF to R1-9 to the City Commission for property located at 3523 10<sup>th</sup> Avenue, seconded by Commissioner Diggs and approved by a vote of 6-0.

**OTHER BUSINESS:**

**None**

Ms. Hurley stated there are items on the agenda for April. She also informed the commissioners one of the applicants will be flying in from California, and stressed the importance of a quorum.

Staff will send an email to the commissioners of their terms as a couple terms are due to expire in May.

The meeting adjourned at 6:18 p.m.

Minutes taken by Planning Assistant Michelle Baragary.