

CITY OF LEAVENWORTH PLANNING COMMISSION
COMMISSION CHAMBERS, CITY HALL
100 N 5th Street, Leavenworth, Kansas 66048
REGULAR SESSION
Monday, April 3, 2023
6:00 PM

CALL TO ORDER:

Commissioners Present

Joe Burks
Don Homan
Kathy Kem
James Diggs
Brian Stephens

Commissioners Absent

Sherry Hines Whitson
Bill Waugh

City Staff Present

Bethany Falvey
Michelle Baragary

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

APPROVAL OF MINUTES: March 6, 2023

Chairman Burks asked for comments or a motion on the minutes presented for approval: March 6, 2023. Commissioner Stephens moved to approve the minutes as presented, seconded by Commissioner Diggs and approved by a vote of 5-0.

OLD BUSINESS:

None

NEW BUSINESS:

1. 2023-09 SUP – 728 POTTAWATOMIE

Conduct a public hearing for Case No. 2023-09 SUP – 728 Pottawatomie. The applicant is requesting a Special Use Permit to allow a two-family dwelling in the R1-6 zoning district, High Density Single Family Residential District, located at 728 Pottawatomie. Two-family dwellings are allowed in the R1-6 zoning district with the approval of a Special Use Permit.

Chairman Burks called for the staff report.

City Planner Bethany Falvey stated the applicant, Depaul USA, Inc., is requesting a Special Use Permit to allow a two-family dwelling in the R1-6 zoning district, located at 728 Pottawatomie. Two-family dwellings are allowed in the R1-6 zoning district with the approval of a Special Use Permit.

The property previously had a four-plex apartment building, but was demolished in January 2017. It is currently a vacant lot. The applicant is proposing construction of a two-family residential dwelling on the property.

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 a vacant lot. If approved, the property will fill a need in the community by providing a two-family housing option. Constructing a residential property on a vacant lot 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.
A new construction of a residential duplex is proposed as part of this special use permit. The property will be returned to a residential use, as it had previously.

Notification was sent to property owners within 200’ of the subject property, as required by Kansas Statue. 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 with included conditions
- 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.

With no questions about the staff report, Chairman Burks called on the applicant to speak.

Sr. Vickie Perkins, 311 Kiowa representing Leavenworth Attainable Housing a subsidiary of Depaul USA, stated they work to get people who are homeless or on the verge of becoming homeless into

property they can manage. Property they can manage must be affordable, in that they can pay the rent, attainable in that they are not charged deposits or that they receive help paying utilities, and sustainable in that a housing support specialist meets with them once a week to make sure they are able to manage what they need to do.

Sr. Vickie further stated they have nine houses they are working with now who are all families. The request for the special use permit for the duplex is to help house individual people in Leavenworth find a home they can afford to live in. The duplex would be one-bedroom on each side.

Commissioner Kem stated the rendering provided in the packets looks to be a single-family dwelling, and asked how it is configured to be a duplex.

Sr. Vickie responded she is not sure if the duplex will be sideways or facing the street but it is two small one-bedroom.

Commissioner Homan asked if the units are front to back.

Sr. Vickie responded the units are side-by-side.

Commissioner Diggs asked staff if they had said the property value of the proposed duplex is equal to or close to the property value of existing properties in that neighborhood.

Ms. Falvey stated property values are determined by Leavenworth County.

Commissioner Diggs referred to staff stating in the policy report that staff does not believe approval of the special use permit will decrease the property value for surrounding properties.

Chairman Burks stated staff based that on historical happenings of the same size and same location, staff does not anticipate this request would decrease property value. Using the data they have, it is more of a staff assumption than based on fact.

Ms. Falvey stated the subject property previously had a four-plex on it.

Commissioner Diggs stated since a four-flex is larger, he would imagine a four-plex would increase the value more than the proposed duplex.

Chairman Burks stated it is hard to anticipate what the true value would be but based on historical data staff does not believe the proposed duplex will negatively affect property values in that area. Chairman Burks further stated based on what was previously there and has been demolished, the proposed duplex will improve the community's value.

Commissioner Homan asked what the size of the units are.

Ms. Falvey responded that the site plan appears to show the total size of the duplex at just under 1,000 sqft.

Sr. Vickie believes each side of the duplex is approximately 600 sqft.

Commissioner Stephens asked what Depaul's criteria is for individuals to be accepted.

Sr. Vickie responded there are four pillars they would have to agree to be part of:

1. Agree to work with a financial advisor.
2. They must have the ability to receive healthcare. If they do not have insurance, Sr. Vickie will get them set up with St. Vincent's Clinic, and sometimes with The Guidance Center, if necessary.
3. Community – once a month all the residents are brought together to build a community so they have some support for each other because many of the residents have not had that type of support in the past.
4. A Housing Support Specialist visits the house once a week to make sure the house is clean and properly taken care of.

Commissioner Stephens asked if there is a time limit on how long an individual can live there.

Sr. Vickie responded in the negative stating it is permanent housing. With that said, Sr. Vickie further stated they have a resident that is now talking about owning her own home. The program will help any resident who gets to the point of wanting to move forward but if they never get to that point, this is permanent housing for them.

Commissioner Stephens asked if there is a high turnover with the nine houses they currently have in Leavenworth.

Sr. Vickie responded they have only had one person move.

Commissioner Homan asked if the fourth pillar also pertains to exterior maintenance and the yard area.

Sr. Vickie responded that they have a person who maintains the yard on five of their houses. On one of the houses, the tenant himself maintains his yard, and the other houses are currently being rehabbed. Sr. Vickie further stated the tenants are told to keep the outside clean, and not to put a bunch of stuff on the front porch, as it does not look nice in the neighborhood.

Ms. Falvey stated Code Enforcement would pick-up on any violations.

Commissioner Homan said he drove around that area today, and would not say there are many code enforcement officers driving in that area with how that area looked.

Commissioner Stephens asked if anyone can apply or if there are exclusions to who can apply.

Sr. Vickie responded that anyone can apply but that does not mean they will be accepted.

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 Stephens moved to recommend approval of the Special Use Permit based upon the findings as stated to the City Commission to allow a two-family dwelling in the R1-6 zoning district located at 728 Pottawatomie, seconded by Commissioner Kem, and passed by a vote of 5-0.

2. 2023-10 SUP – 1906 5TH AVENUE

Conduct a public hearing for Case No. 2023-10 SUP – 1906 5th Avenue. The applicant is requesting a Special Use Permit to allow a two-family dwelling in the R1-6 zoning district, High Density Single

Family Residential District, located at 1906 5th Avenue. Two-family dwellings are allowed in the R1-6 zoning district with the approval of a Special Use Permit.

Chairman Burks called for the staff report.

City Planner Bethany Falvey stated the applicant, TFP Holds, LLC, is requesting a Special Use Permit to allow a two-family dwelling in the R1-6 zoning district, located at 1906 5th Ave. Two-family dwellings are allowed in the R1-6 zoning district with the approval of a Special Use Permit.

The property is currently an existing legal, non-conforming use as a two-family dwelling. Section 1.05.D of the adopted Development Regulations states:

Any lawfully existing nonconforming use of part or all of a structure or any lawfully existing nonconforming use of land, not involving a structure or only involving a structure which is accessory to such use or land, may be continued, so long as otherwise lawful.

The applicant is seeking the Special Use Permit to make the use conforming, specifically because “without a special use permit a loss of 50% or greater must be rebuilt as a single family home,” due to the zoning.

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 functioning as a legal, nonconforming two-family dwelling. If approved, the property will fill a need in the community by continuing to provide a two-family housing option. Continuing the use as a two-family dwelling will 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 is currently.

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 with included conditions
- 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 Homan asked for clarification that the special use permit is being requested so this property will no longer be nonconforming.

Ms. Falvey responded in the affirmative.

Commissioner Homan asked if more than 50% of this structure is destroyed that the structure can be rebuilt as a duplex with the issuance of a special use permit.

Ms. Falvey responded in the affirmative.

Janet Chow, realtor representing the applicant, stated the applicant is requesting the special use permit so the property will no longer be nonconforming. The property was purchased in May 2022, and the owner has renovated the interior and exterior of the duplex. Currently, both sides of the duplex have tenants. The owner is trying to refinance but lenders will not approve the loan as the property is nonconforming, and if damaged by 50% or greater, the property must be rebuilt as a single family home.

Commissioner Stephens asked if the current owner purchased the property as a duplex.

Ms. Chow responded in the affirmative stating the property was listed as a duplex. Ms. Chow further stated the county records also identifies the property as multi-family.

Commissioner Homan asked if the owner owns other properties in that area.

Ms. Chow responded in the negative stating he does not own properties near the subject property but he does own properties in the KCK area.

Chairman Burks opened the public hearing.

Charles Darden, 701 Cottonwood Dr., Lansing, KS, stated he owns the property across the street at 1903 5th Avenue. Mr. Darden stated when he received the notification of the special use permit, he thought they were trying to create another unit within the existing two units but now he understands that is not the case. Mr. Darden did express some concern with noise level and congestion on the street because more cars tend to park on the street when living in duplexes.

With no one else wishing to speak, Chairman Burks closed the public hearing and called for a motion. Commissioner Homan moved to recommend approval of the Special Use Permit based upon the findings as stated to the City Commission to allow a two-family dwelling in the R1-6 zoning district located at 1906 5th Avenue, seconded by Commissioner Stephens, and passed by a vote of 5-0.

3. 2023-11 TXT – ARTICLE 9

Conduct a public hearing for Case No. 2023-11 TXT for proposed text amendments to Article 9 of the adopted Development Regulations.

Chairman Burks called for the staff report.

City Planner Bethany Falvey stated the City Commission adopted the Development Regulations in June 2016 after a yearlong comprehensive update process. The Historic Preservation section, Article 9, has not had a comprehensive update since that time. This update will ensure it remains up to date and comprehensive. The proposed amendments update the code to reflect current practice and laws, add clarification to current practices and policies, and reorganize the existing Article for better flow.

- Changes from a 7 member board to a 5 member board, and clarify the suggested background of the commissioners to make it as suggested and not required. Due to the size of Leavenworth, sometimes it is hard to find board members with backgrounds that were listed in the Development Regulations.
- Removes references to the Environs portion of the Kansas State Preservation Law, which has been removed from the law.
- Removes inconsistent language, and corrects language throughout to match current practices.
- Adds clarification and language to differentiate between review processes.
- Combines the section regarding “Alteration, Expansion or Demolition – Major” with Section 9.16 “Procedure for Demolition, Alteration or Expansion”.

The proposed text amendments will also go to the Preservation Commission before going to the City Commission.

ACTION/OPTIONS:

Recommend approval or denial of proposed text amendments to Article 9 for final action by the City Commission.

Chairman Burks called for questions about the staff report.

Commissioner Homan stated the membership requirements in section 9.04 was very confusing. The proposed text has requirements for three board members and then requires four other members to be of a certain profession, which is still seven members.

Ms. Falvey stated staff would reword this paragraph. The intent is to capture the professions listed to every extent possible. The professions are highly suggested options, not requirements.

Commissioner Kem asked what the significance is between the red and blue in the proposed text amendments.

Ms. Falvey replied the wording of the blue text already exists, and was moved to another section of Article 9.

Under section 9.16.A, Commissioner Stephens asked what the difference is between a certificate of appropriateness and a state law review.

Ms. Falvey responded a certificate of appropriateness would only be issued if the Leavenworth Preservation Commission (LPC) were doing a review of a locally listed landmark. Most of the reviews

done by the LPC are state law reviews. The process is the same kind of review, however, when the Preservation Commissioners are approving they delineate if it is a certificate of appropriateness they are approving or a state law review.

Commissioner Stephens asked if state law reviews are new for the LPC.

Ms. Falvey responded in the negative stating the LPC was doing state law reviews but the information pertaining to state law reviews was not listed in the Development Regulations, and it should have been. The City of Leavenworth has been a Certified Local Government (CLG) since 2006, when the city entered into an agreement with the State Historic Preservation Office to do the state law reviews at the local level.

Commissioner Homan asked if this helps individuals who are restoring historical buildings with financing the renovations.

Ms. Falvey responded in the negative.

Commissioner Stephens asked about section 9.17.H.1.

Ms. Falvey stated this section is referring to the environs, which was removed from the statute in 2017. Environs dealt with properties outside a historic district but within 300 feet of a historic district, and these are no longer reviewed. However, anything within a historic district are still reviewed.

Commissioner Stephens asked if there is a process for a property that is currently on a historic list and decides they no longer want to be on that list.

Ms. Falvey responded if the property is on a local list it would need to go before the City Commission to be removed from the local list. If the property is on the national or state register, that appeal is done at the state and national level. Ms. Falvey further stated if an applicant wants to appeal the decision made by the LPC that appeal also goes to the City Commission.

Commissioner Stephens asked if this process includes the historic tax credits.

Ms. Falvey responded in the negative, saying that goes through the state, which is why historic tax credits are not included in the Development Regulations.

Commissioner Stephens asked if this circumvents the city processes, such as getting permits, since tax credits go through the state.

Ms. Falvey responded the applicant would still need to go through the city for permits.

Commissioner Kem said that most properties on the state or national register are on there by choice, with the property owners submitting the application to be on the national and/or state register.

With no further questions/discussion, Chairman Burks called for a motion. Commissioner Homan moved to recommend approval of the text amendments to Article 9 of the Development Regulations to the City Commission with the recommended changes discussed, seconded by Commissioner Diggs and passed by a vote of 5-0.

OTHER BUSINESS:

Ms. Falvey stated this is Chairman Burks last meeting on the Planning Commission, and provided him with a certificate thanking him for his civic service to the community.

Ms. Falvey stated there are no items for May.

The meeting adjourned at 6:51 p.m.

Minutes taken by Planning Assistant Michelle Baragary.