

CITY OF LEAVENWORTH PLANNING COMMISSION

COMMISSION CHAMBERS, CITY HALL
100 N 5th Street, Leavenworth, Kansas 66048
REGULAR SESSION
Monday, July 10, 2023
6:00 PM

CALL TO ORDER:

Commissioners Present

Bill Waugh
Brian Stephens
Kathy Kem
James Diggs
Sherry Hines Whitson

Commissioners Absent

City Staff Present

Julie Hurley
Michelle Baragary

Commissioner Kem directed the meeting until a Vice Chairperson was voted on.

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

APPROVAL OF MINUTES: April 3, 2023

Commissioner Kem asked for comments or a motion on the minutes presented for approval: April 3, 2023. Commissioner Waugh moved to approve the minutes as presented, seconded by Commissioner Stephens and approved by a vote of 5-0.

OLD BUSINESS:

None

NEW BUSINESS:

1. ELECTION OF VICE CHAIRPERSON

Commissioner Stephens volunteered for Vice Chairperson, seconded by Commissioner Whitson, and approved by a vote of 5-0.

2. 2023-15 SUP – 500 & 502 PAWNEE

Conduct a public hearing for Case No. 2023-15 SUP – 500 & 502 Pawnee. 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 500 & 502 Pawnee. Two-family dwellings are allowed in the R1-6 zoning district with the approval of a Special Use Permit.

Vice Chairman Stephens called for the staff report.

Planning Director Julie Hurley stated the applicant, Clim Curry, is requesting a Special Use Permit to allow a two-family dwelling in the R1-6 zoning district, located at 500 & 502 Pawnee. Two-family dwellings are allowed in the R1-6 zoning district with the approval of a Special Use Permit.

There is an existing two-family structure on the property that is considered a nonconforming structure, as there is no existing Special Use Permit. Per section 1.05 of the adopted Development Regulations:

Any structure which is devoted to a use which is permitted in the zoning district in which it is located, but which is located on a lot which does not comply with the applicable property development standards on the effective date of these Development Regulations, may be continued, so long as it remains otherwise lawful.

Section 1.05 of the Development Regulations also states in regards to Nonconforming Structures:

If a nonconforming structure is damaged by more than fifty percent (50%) of its fair market value, such building shall not be restored if such building is not in conformance with the regulations for the zoning district in which it is located, or an exception is granted by the Board of Zoning Appeals.

Recent changes in lending practices have made it increasingly difficult for borrowers to secure financing for properties which are considered nonconforming and that would not be permitted to be rebuilt as-is. The applicant is seeking the Special Use Permit in order for the property to becoming conforming to prepare for potential sale.

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.

This property has always functioned as a two-family dwelling, and contributes to the diversity of housing stock available to Leavenworth residents.

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 use will cause any substantial injury to the value of other property in the neighborhood, as there are no changes proposed.

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 structures or building modifications are proposed as part of this special use permit. The property will continue to function as it always has.

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.

There is one additional Special Use Permit request of a similar nature on this agenda, submitted by the same owner for another property.

The letter from the property owner that is included in the packet identified five different properties. After further review, staff noticed that three of those properties are located in the North Neighborhood Overlay District, which allows two-family dwellings by right. Therefore, those three properties are conforming and do not require a Special Use Permit.

Ms. Hurley stated the next item on the agenda is a request for the same type of Special Use Permit but for a different property owned by Mr. Curry. Questions and discussion will apply for both agenda items.

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

Vice Chairman Stephens asked for questions from commissioners about the staff report.

With no questions about the staff report, Vice Chairman Stephens opened the public hearing. With no one wishing to speak, Vice Chairman Stephens closed the public hearing and called for discussion among the commissioners.

Commissioner Diggs asked staff why this process is required since the subject duplexes have been duplexes for a very long time.

Property owner Clim Curry stated the properties have been duplexes for 30 years.

Ms. Hurley responded she could not find in our records when the properties were built, and is not sure what zoning might have been allowed at that time. Nonconformities such as this is all over town, especially in the northern part of town.

Vice Chairman Stephens asked staff if there is a proactive approach the city could take to find properties with this specific nonconformity, and move forward with this process if the owners of the properties so choose.

Ms. Hurley responded there is really no easy way to do that. Staff has had some internal discussions about that but to do a blanket zoning change it is not something the city wants to do. The property is zoned single-family, and the intent is for single-family homes. With the existing nonconforming duplexes, the more feasible option would be to look at something like a no fee structure for the property owners to bring the duplexes into compliance. In just the past couple years, staff has starting seeing more of these come through since banks have changed their lending practices.

Vice Chairman Stephens asked who is the appropriate person to get start this discussion with.

Ms. Hurley stated at a staff level we can see which properties are two-family properties through the stormwater fees. This could give staff an idea of how many of these types of nonconformities there

are. The next step would be to speak with the City Manager, who would discuss this with the City Commission. It would need to come to the Planning Commission since it is a land use and zoning issue. Ms. Hurley further stated she would bring this discussion up with the City Manager.

Mr. Curry stated he was blindsided by this issue when the sale of 500 & 502 Pawnee fell through because the property could not be rebuilt as a duplex since it is existing nonconforming. Mr. Curry further stated he cannot put the properties back on the market until he goes through this process of getting a special use permit.

Ms. Hurley stated for the record, the city is not requiring the issuance of a special use permit in order for the property to be sold. Any of these nonconforming properties are allowed to continue to exist, can be remodeled, renovated, etc. Property owners are running into issue with the banks changing their practices.

Referring to the two agenda items presented tonight, Vice Chairman Stephens asked if voting on the two Special Use Permit requests can be done together or if each request must be voted on individually.

Ms. Hurley responded that each item needs to be voted on separately.

Vice Chairman Stephens called for a motion on Case No. 2023-15 SUP. Commissioner Whitson moved that based upon the findings as stated and conditions as presented to recommend approval to the City Commission the issuance of a Special Use Permit to allow a two-family dwelling in the R1-6 zoning district located at 500 & 502 Pawnee, seconded by Commissioner Diggs, and passed by a vote of 5-0.

3. 2023-19 SUP – 507 & 509 PAWNEE

Conduct a public hearing for Case No. 2023-19 SUP – 507 & 509 Pawnee. 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 507 & 509 Pawnee. Two-family dwellings are allowed in the R1-6 zoning district with the approval of a Special Use Permit.

Vice Chairman Stephens called for the staff report.

Planning Director Julie Hurley stated the applicant, Clim Curry, is requesting a Special Use Permit to allow a two-family dwelling in the R1-6 zoning district, located at 500 & 502 Pawnee. Two-family dwellings are allowed in the R1-6 zoning district with the approval of a Special Use Permit.

There is an existing two-family structure on the property that is considered a nonconforming structure, as there is no existing Special Use Permit. Per section 1.05 of the adopted Development Regulations:

Any structure which is devoted to a use which is permitted in the zoning district in which it is located, but which is located on a lot which does not comply with the applicable property development standards on the effective date of these Development Regulations, may be continued, so long as it remains otherwise lawful.

Section 1.05 of the Development Regulations also states in regards to Nonconforming Structures:

If a nonconforming structure is damaged by more than fifty percent (50%) of its fair market value, such building shall not be restored if such building is not in conformance with the regulations for the zoning district in which it is located, or an exception is granted by the Board of Zoning Appeals.

Recent changes in lending practices have made it increasingly difficult for borrowers to secure financing for properties which are considered nonconforming and that would not be permitted to be rebuilt as-is. The applicant is seeking the Special Use Permit in order for the property to becoming conforming to prepare for potential sale.

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.

This property has always functioned as a two-family dwelling, and contributes to the diversity of housing stock available to Leavenworth residents.

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 use will cause any substantial injury to the value of other property in the neighborhood, as there are no changes proposed.

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

(Discussion for this case ran concurrently with Case No. 2023-15 SUP).

Vice Chairman Stephens called for a motion on Case No. 2023-15 SUP. Commissioner Waugh moved that based upon the findings as stated and conditions as presented to recommend approval to the City Commission the issuance of a Special Use Permit to allow a two-family dwelling in the R1-6 zoning

district located at 507 & 509 Pawnee, seconded by Commissioner Whtison, and passed by a vote of 5-0.

OTHER BUSINESS:

With no other business, Ms. Hurley stated there are no items on the agenda for August.

Vice Chairman Stephens adjourned the meeting at 6:17 p.m.

Minutes taken by Planning Assistant Michelle Baragary.