

**Date:** March 29, 2019  
**To:** Planning Commission/Board of Zoning Appeals  
**From:** Kelly Passauer, Assistant City Manager/Zoning Administrator  
**Subject:** April 2, 2019 Planning Commission/Board of Zoning Appeals Meeting

**Minutes**

- a. Consider approving minutes of the March 5, 2019 meeting.**  
City staff recommends approving the attached minutes.

## MINUTES

Independence Planning Commission  
Independence Board of Zoning Appeals

Tuesday, March 5, 2019

Veterans Room

Memorial Hall

5:30 p.m.

### Call to Order

### Planning Commissioner Present

Mary Jo Meier, Barb Emert, Steve McBride, Jim Hardy, Philipp Umlauf, Brian Beecham, Michelle Anderson, Andy McLendon (outside), and Brent Littleton (outside)

### Planning Commissioners Absent

None

### Staff Present

Kelly Passauer, Assistant City Manager/Zoning Administrator

### Visitors

Rusty Arnold, Beth Kelley, Robert Box, and Norman Chambers.

### Minutes

- a. Consider approving minutes from the December 4, 2018 and January 15, 2019 meetings.

Philipp Umlauf made a motion to approve the minutes of the December 4, 2018 meeting, Steve McBride seconded the motion. The motion carried 9-0.

Brent Littleton made a motion to approve the minutes of the January 15, 2019 meeting, Philip Umlauf seconded the motion. The motion carried 9-0.

### Planning Commission

- b. Welcome new member Brent Littleton.

New member Brent Littleton was welcomed. Vice Chair Mary Jo Meier asked all the members to introduce themselves, which they did.

- c. Reorganization

- a. Election of Chair

Philip Umlauf nominated Mary Jo Meier, seconded by Steve McBride. Barb Emert moved the nominations cease by acclamation, Philip Umlauf seconded.

- b. Election of Vice Chair

Mary Jo Meier nominated Steve McBride as Vice Chair, seconded by Barb Emert. The motion carried 9-0.

c. Election of Secretary

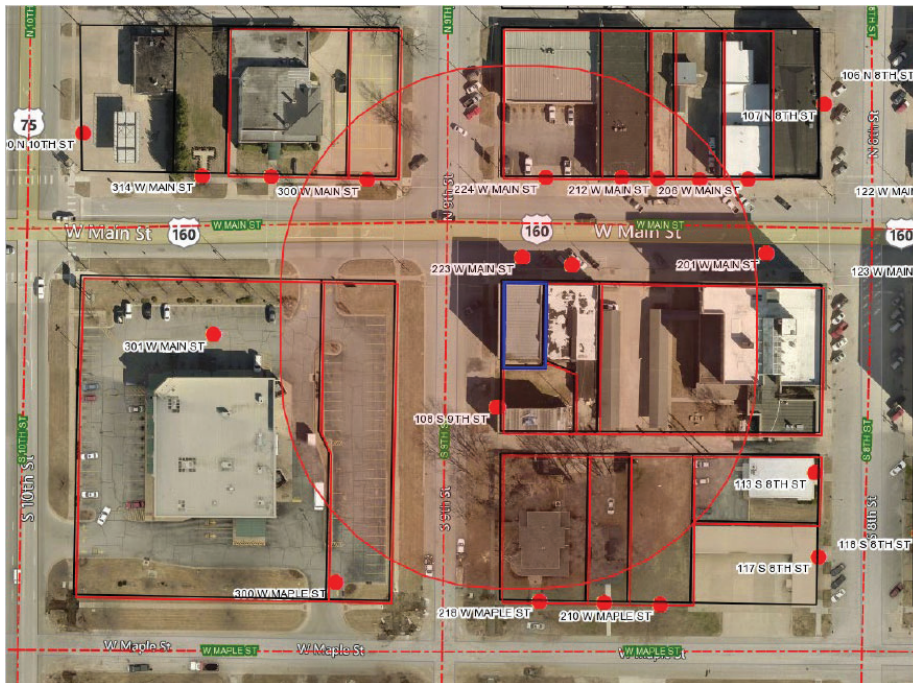
Mary Jo Meier nominated Andy McLennon as Secretary. Barb Emert seconded the nomination and moved the nominations cease by acclamation.

- d. Consider a request for conditional use permits for Microbreweries; Bottling and canning soft drinks and carbonated waters; and Beer, wine and alcoholic beverages – wholesale establishment in a C-3 district at 223-225 West Main Street.

The following staff report was read by Chair Mary Jo Meier:

**Summary**

The Planning and Zoning Commission has received the attached request for a conditional use permit for Microbreweries; Bottling and canning soft drinks and carbonated waters; and Beer, wine and alcoholic beverages – wholesale establishment in a C-3 district from Robert Box representing Morrison Builders, Inc. for property located at 223-225 West Main Street.



Appendix “A” of the Zoning Ordinances was recently amended and allows Microbreweries; Bottling and canning soft drinks and carbonated waters; and Beer, wine and alcoholic beverages – wholesale establishment as conditional uses in a C-3 district.

**Conditional Use Permit**

The zoning ordinance in section 901.1 describes the purpose of a conditional use as:

*“...those types of uses which are considered by the City to be essentially desirable, necessary or convenient to the community but which by their nature or in their operation have:*

- 1) a tendency to generate excessive traffic,*
- 2) a potential for attracting a large number of persons to the area of the use thus creating noise or other pollutants,*
- 3) a detrimental effect on the value of potential development of other properties in the neighborhood, or*
- 4) an extraordinary potential for accidents or danger to the public health or safety.*

*Such conditional uses cannot be allowed to locate as a ‘right’ on any parcel of land within certain districts without consideration of existing conditions at the proposed locations and of properties neighboring the specific site considered, nor without adequate and sufficient safeguards, when necessary, to lessen the impact of adverse effects.”*

#### ***Staff Report***

The Planning Commission has the authority to place additional conditions on the site that they deem necessary to protect the best interests of the City, the surrounding property and to achieve the objectives of the ordinance. In considering those types of uses which may be desirable, necessary or convenient to the community, the Commission should review and make recommendations based in part on 901.1

Additionally. The decision of the Planning Commission to recommend approval or denial of the proposed conditional use shall be based on the following criteria (902.2):

- a. The proposed conditional use complies with all applicable provisions of these regulations, including intensity of use regulations, yard regulations and use limitation.*
- b. The proposed conditional use at the specified location will contribute to and promote the welfare and convenience of the public.*
- c. The proposed conditional use will not cause substantial injury to the value of other property in the neighborhood in which it is to be located.*
- d. The location and size of the conditional 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 conditional use will not dominate the immediate use of the neighboring property in accordance with the applicable zoning regulations. In*

*determining whether the conditional use will so dominate the immediate neighborhood, consideration shall be given to:*

- i. The location, nature and height of buildings, structures, walls and fences on the site, and*
  - ii. The nature and context of landscaping and screening on the site.*
- e. Off-street parking and loading areas will be provided in accordance with the standards set forth in these regulations (article VII).*
  - f. Adequate utility, drainage, and other such necessary facilities have been or will be provided.*
  - g. Adequate access roads or entrance and exit drives will be provided and shall be so designed to prevent hazards and to minimize traffic congestion in public streets and alleys.*

### ***Action by the Planning Commission***

Recommendations regarding the conditional use permit for the given subject properties shall be based on Section 902.2, previously outlined in this report. After consideration of all factors, the Planning Commission may either approve or deny the conditional use permit. Following your action, the application and your recommendation will be forwarded to the City Commission at which time they will have 30 days to adopt, modify or deny the Planning Commission's recommendation.

### ***Staff Recommendation***

Microbreweries; Bottling and canning soft drinks and carbonated waters; and Beer, wine and alcoholic beverages – wholesale establishment are permitted as conditional uses in a C-3 district, such as this proposed property. The existing structure will also be modified to accommodate multi-family loft apartments and an existing barber shop in addition to the new requested uses.

City staff recommend granting the conditional use permit with the following conditions:

1. The conditional use permit is not transferable to another location.
2. The applicant must follow all City codes.

If any of the above conditions are not met, the conditional use permit will no longer be valid. The basis of the staff's recommendation is that granting the conditional use permit is consistent within the criteria of "a through g" of Section 902.2 of the zoning code.

The applicant, Robert Box, was present at the hearing. Steve McBride asked Mr. Box about the fencing, to which Mr. Box indicated that belonged to the neighbor. Steve McBride asked about a beer garden, and Mr. Box stated that they were exploring that. Brent Littleton stated that he was familiar with the building and what they were doing

with it will be a tremendous asset to the community which also included apartments in addition to the brewery. Brian Beecham said the breweries in Kansas City were a definite asset when he lived there. Steve McBride said based on land usage he did not see any problems with this at all. Brent Littleton asked what days they would be open, and Mr. Box indicated that they would brew on Mondays and Tuesdays, and be open Thursday through possibly Sunday afternoon. He further stated that their goal was to produce a product that represented the community that they will also distribute in other communities. Chair Mary Jo Meier asked if there were any further comments, to which there were none. She then reread the staff recommendation.

Brent Littleton moved to accept staff's recommendation to approve the conditional use permit with the recommended conditions. The motion was seconded by Philipp Umlauf. The motion carried 9-0.

- e. Consider a request from Norman Chambers representing Gran Villas to initiate a public hearing to consider a text amendment to the zoning code regarding signs.

Norman Chambers was present. Mary Jo read the email from Norman Chambers which stated:

*"Kelly, as you suggested this email will summarize the conversations you and I have been having regarding a directional sign for Gran Villas on south 2nd street. About 5 years ago Medical Lodges purchased Bradford Place, an assisted living facility, and re-named it Gran Villas. This facility is in the midst of a residential neighborhood on south 2nd street and is not well known by the general community as Gran Villas. Our discussions have centered around the possibility of installing a directional sign on East Main street near the corner of Main and 2nd streets. The proposal is the sign would be similar to the Humane Society directional sign on West Main (see attached). The current sign ordinance does not address signage of this nature for private business. There are many similar signs around the City providing direction to City owned facilities. It would seem that a variance to the current ordinance would not be in order because the ordinance does not address this specific situation. The method for addressing this would be a text amendment to the current ordinance that would address this situation.*

*Please use this email as a formal request for the Planning and Zoning Commission to consider creating a text amendment to allow Gran Villas to appropriately install a directional sign near the corner of East & Main and 2<sup>nd</sup> Street. The attached example for the Humane Society has the Humane Society name on both sides of the sign. That would be the choice of Gran Villas."*

Norman Chambers stated that he would answer any questions and that this was an issue brought up from Gran Villas, further stating that his experience has been in the last 90 days that 5-6 people out of 10 do not know where Gran Villas is, but they know where Bradford Place is. He stated that it is in a residential district in the 600 block of South 2<sup>nd</sup> and that is the reason they would like to have a sign and announce where they are.



Andy McLenon asked if Gran Villas was a private business, and Norman said it was. Norman Chambers said he toured the town and there were no similar situations. The only other one he mentioned was the industrial park by Hackney with a large sign with the businesses listed in the industrial park. He stated that was a City owned park and he understood the purpose of placing there. Further stating that the example on West Laurel is the only one that would be close. Kelly Passauer stated that the City obtained an easement from Matcor to place the sign at that location. Barb Emert asked for the capacity of residents, and Norman said 36 and that it was an assisted living facility and they are trying to get the word out.

Brian Beecham was concerned about opening up the flood gates. He stated the he likes signage that lets people know where gas and food is located on interstates, however, the company should educate the public about their location. He felt it was a gray area. He was further concerned that once you have several signs nobody pays attention to them. Steve McBride said that Montgomery Place will want one on 8th Street and Medical Lodges will want one on 10th Street. Barb Emert said Eagle Estates will want one too. Steve McBride said he applauds Norman Chambers for bringing this to the Planning Commission, but we should consider it, and look at the sign ordinance before making a rash judgement.

Norman Chambers stated that he was on the Planning Commission for 9 years and his recommendation was to proceed with a text amendment. He further stated that it could be worded broadly and narrowly, and if they wanted to look at every case they could make the language as such.

Philipp Umlauf asked how this would relate to signage similar to letting people know where hospitals are, hospitals are not City owned. He felt it was a gray area because it is health related.

Mary Jo Meier asked for a motion and there was a long pause of silence. Then, Steve McBride moved to initiate a public hearing to consider a text amendment to the zoning code regarding signs. Philipp Umlauf seconded. The motion carried 5-4, with Andy McLenon, Jim Hardy, Barb Emert and Michelle Anderson voting against the motion.

f. Additional Item: Request from Rusty Arnold to address the Planning Commission.

Superintendent Rusty Arnold was present and provided the Planning Commission an overview regarding the bus barn project. He stated that he appreciated that they voted earlier to rezone the property to allow them to place their transportation facility south of Pheasant Point, but dismayed that the City Commission motion to approve died due to a lack of a second. He stated they went to Plan B, which was the soccer fields, and gave the Recreation Commission \$25,000 for the rights to water and sewer. He stated that the Westar property there is commercial, so they thought it would go well there. However, the County Planning Commission denied their request to allow the area to be rezoned west of the power station, on a 3-2 vote. He stated that last night at their board meeting they discussed their options. He stated that the sad thing was that their board president suggested moving it to Wilson county as their next option. He further stated that the City Planning Commission supported

it, but yet the City commission could not get a second to move forward, and there was no petition against it. He stated that there was a man that described water would flow on his property, but that was shown as inaccurate and not true as it would go down to Whiskey Creek. He stated that they were going to dig a pond, but it didn't get anywhere. He stated that they are now trying to figure out what to do. He further stated that that was an off the cuff comment, they are not going to Wilson County, they need to do it as close to possible to the schools. He said if they had to evacuate kids they cannot be in Wilson county, the cost to drive 16 busses, 5 miles, every day in and out, is a lot of fuel, over 174 school days times 16 busses. The cost to the taxpayer is money they do not have. He said one of their options is to sue the City. Stating that the Planning Commission recommended it, and the only rational reason the school was given was they did not want it to be there. He stated that is not consistent and that they don't want to sue the school or county, but they need a bus barn, they send \$225,000 to California every year for bus services. They wish to recoup that money and save \$225,000 to \$300,000 per year and have a place to service their vehicles. However, they do not have a place to go and they really need a place to go. He stated that they would love to go back to the Biller property which is near Jefferson school, which if they ever open that road up we would be very close to that school.

Rusty Arnold stated that they would like to request the Planning Commission initiate a text amendment that would allow a bus garage as a conditional use in an R-4 zone. He further stated that they have another option they are looking at, but if it fails then it would be one no one likes, but it would put them near the schools and have a bus barn. He further stated that the property they own on North 21<sup>st</sup> Street is 6 acres now as Pheasant Point obtain a portion of the property as part of their office building was on their property. He stated that they would not use all of the 6 acres. He stated that he certainly hoped the Planning Commission would allow them to go through this process again and come out with a better result in the end as it would be close to the schools to save tax dollars. He stated that they do not need to drive busses empty to get to the school.

Brent Littleton asked about the bus barn that currently exists, and Rusty Arnold said that that facility is available, but they will not sell it unless it is "as is". He stated that they want an environmental study, but the owners will not allow them to do that as they are concerned about environmental issues. Rusty said he was not saying it is contaminated, but he was not going to be the one that buys it and has to clean it up. He further stated that Durham is in California, David Crabtree Trust owns it. Durham would have to clean up any contamination, but they will not allow them to have it looked at so they are not interested in buying it. Brent Littleton said considering the Verdigris River and farm land is close, they should take care of it before they leave town.

Andy McLenon asked if it was going to be hard surfaced. Rusty Arnold said since the vehicles are under one ownership that portion does not have to be paved, but the employee parking would be.

Jim Hardy asked about the soccer fields. Rusty Arnold said they will be moved in between the Soccer Fields and Baseball Fields. He stated that the problem with having them by the Ash Youth Center is the band practices and football practices. Andy McLenon asked why



the soccer fields are moving. Rusty Arnold said they owned it in title only and they bought their sewer and water rights and got \$25,000 out of us. Brian Beecham asked how much they are investing in this project. Rusty Arnold said \$500,000 for the facility, and that they borrowed \$2 million for the facility and busses. Brian Beecham said he took a look, and there are not a lot of options in town. Rusty Arnold said he looked at 18 locations. Brian Beecham asked how many GC's bid, and Rusty Arnold said 6. Brian Beecham said people were trying to come here to go to work and it was frustrating having a unanimous vote of the Planning Commission, and in the work session believing that everyone was working together.

Rusty Arnold stated that he did not know why they could not get a second. He said the County Planning Commission asked eight questions, six they answered positive, the only two that were negative were a 3-2 split. They were concerned about traffic, the other was very positive, and they were told everyone was against it. There were three households, then one other person spoke that lives in Liberty, works in Coffeyville, but his father was a County Commissioner and he spoke against it. We do not know that going to the County Commission is going to be any better. We cannot go outside the County zoning, and if you think how far that is, that is not fair to taxpayers.

Rusty Arnold said he looked at five acres by Fed Ex, there is one way in and one way out which is a problem because of the railroad tracks. If it had two entrances or exits it would work. He stated that he knows it is in the City's plans to extend Hackney to Oak Street, but they are not ready to do it right now. He stated Matco had two big yellow things that pull train cars off there was out there on Monday morning there were two of them out there working. He said he cannot allow the busses to get stuck back there. He did speak about obtaining five acres along Peter Pan, but the City wanted to keep that 40 acres together future economic development purposes.

Rusty Arnold stated that they intended to have this built by June 1 when our busses arrive. Jim Hardy asked if they had a contract with Harmon, and Rusty said no. He said the busses have already been ordered. The State reimburses them when they buy a new bus for \$84,000 they get 87.5% reimbursement, the district cost is 12 ½% for that bus. He stated that they purchased new busses and are getting the bulk of the money back. He stated he would rather have a new one if his cost is within \$2,000. He said he plans to park the busses until a permanent location is determined.

Philipp Umlauf moved to approve a request from USD 446 to initiate a public hearing to consider a text amendment that would allow "Bus garaging and equipment maintenance" as a conditional use in an R-4, medium density multifamily dwelling district. The motion was seconded by Andy McLenon. The motion carried 9-0.

g. Annual review of the Comprehensive Plan.

Staff provided a review which stated that by State statute the Planning Commission is required to review the Comprehensive Plan annually. In previous years the Planning Commission has recommended to the City Commission that the Comprehensive Plan be

updated. Due to budget constraints funding has not been allocated for this purpose. The estimated cost to update the plan would be approximately \$100,000.

Barb Emert moved that the Planning Commission would like to request the City Commission consider funding an update to the Comprehensive Plan, Brent Littleton seconded the motion. The motion carried 8-0 (Philip Umlauf had stepped outside and was absent for this vote).

### **Board of Zoning Appeals**

- h. Consider status update for 2016/VAR/09 relating to a variance from the hard surface requirement in an O & P zoned district at 900 W. Myrtle.

The following staff report was provided and read by Chair Mary Jo Meier:

On December 6, 2016 the Board of Zoning Appeals approved a variance from the hard surface requirement in an O & P district at 900 W. Myrtle. This variance was requested due to the cost of up to \$56,000 to hard surface a driveway for a building that was intended to be temporary. As part of the approval, the Board of Zoning Appeals requested a status update in 12 months.

Since the initial approval in 2016 the Steering Committee appointed by the City Commission recommended rehabilitating the 1916 City Hall and building a new Public Safety facility across the street in the existing municipal parking lot located on the northeast corner of 6<sup>th</sup> and Myrtle. On February 6, 2018 when this item was last reviewed by the Board of Zoning Appeals it was reported that the City Commission had indicated they wish to move forward with the Steering Committee's recommendation. However, discussions are evolving to an alternative that may utilize the existing apparatus bay. Currently bids have been received on Phase I for 1916 City Hall. Therefore, it is still unknown at this time when and if the temporary apparatus bay will be needed by the Fire/EMS Department.

If the temporary apparatus bay is moved to the sanitation yard at 21<sup>st</sup> and Maple, which was the original plan when it was constructed with sanitation funds, then the area will be returned to its previous condition. If the temporary apparatus bay is not relocated, then the City would be required to hard surface the drive to comply with City code.

The Board of Zoning Appeals may wish to request an additional update in a specific period of time.

Jim Hardy stated that we need to review it in another year. Philipp Umlaff said he is inclined to not continue the variance as they had already been given a 12 month extension and are now on year 3. Brent Littleton said at the end of the day it cost the taxpayers. Philipp Umlauf said he agreed. Brian Beecham said the \$25,000 the school district spent is costing the taxpayers too, and it is going no where. Steve McBride said it is costing money, but until they are verified I am inclined to go with the temporary parking lot then throw \$56,000 in there and then move it to sanitation. He stated they need to keep it

temporary and extend their variance one more year. Brian Beecham said he is frustrated that the City gets it one way, and businesses get a different standard. He stated that the taxpayers should not bear this, but at the some point it is frustrating, to see the environment. Steve McBride said it has been frustrating for nine years. Brian Beecham said their recommendation was rejected, and he would like to see it as a two way street. He stated one of the members of their board had to build a parking area, and we have a school district that cannot build a bus barn to serve our kids. Steve McBride said we are an advisory board. Mary Jo Meier said what impressed her at the work session was that they were clear as a group, and it reiterated to her, that the City Commission understood what the Planning Commission meant. She further stated it was unfortunate that the City Commission does not value their recommendations. Philipp Umlauf stated that it is not a lack of value, it is a lack of respect. Steve McBride said we need to move forward, and he is not going to judge somebody sitting on a Commission; “We need to take a stand and do what is best for us right now, as we do not have the authority, on this particular issue, as we see things always evolving, and no solid decisions have been made, we do the best thing, extend for one more year, but tell them that this is it. One more year only, and put hard surface in”. Mary Jo Meier stated that we could word that motion similar to brewery and limit the variance to one year only. Philip Umlauf said one year is almost the second quarter of 2020, and wanted it hard dated to December 31<sup>st</sup>, 2019. Brent Littleton it did not think that they would have it hard surfaced by that time. Philipp Umlauf stated that the only caveat would be if they have a firm date when the new apparatus date will be complete and in service, at which time they can request an extension by that date. Further stating that; “We finally made a decision, we moved forward with this, this is the date we expect it be completed”. Steve McBride said he didn’t know if we can set a date. Philipp Umlauf said this is the date we project. Jim Hardy said regarding the Comprehensive Plan that he didn’t see the City spending \$100,000, but they could put back \$10,000 a year for ten years. He said with the water treatment plant, City Hall and road conditions they have had a plan for five years and asked what the benefit of that was.

Steve McBride suggested reviewing the status in one year. Philipp Umlauf wanted the applicant to follow City codes or have a projected construction date at that time. Steve McBride said next year they could just deny the request.

Jim Hardy made the motion to review the status in one year, seconded by Michelle Anderson. The motion passed 6-0, with Philipp Umlauf abstaining.

### **Adjournment**

The meeting was adjourned with a motion by Barb Emert, seconded by Philipp Umlauf. The motion carried unanimously.

---

Mary Jo Meier, Chair

---

Andy McLenon, Secretary