MINUTES

Independence Planning Commission

Independence Board of Zoning Appeals

Tuesday, March 3, 2020

Veterans Room Memorial Hall 5:30 p.m.

Call to Order

The Planning Commission meeting was called to order by Chair Andy McLenon.

Planning Commissioners Present

Mary Jo Meier, Barb Emert, Tony Royse, Brent Littleton (outside), and Andy McLenon (outside), Lisa Richard (arrived after minutes were approved) and Kendall Neill (arrived after Planning Commission action, and during Board of Zoning Appeals discussion).

Planning Commissioners Absent

Steve McBride and Michelle Anderson.

Staff Present

Kelly Passauer, Assistant City Manager/Zoning Administrator, and Jeff Chubb, City Attorney

Visitors

Aubrey Carpenter, Tammy Carpenter, and Ryan Carpenter.

Minutes

a. Consider approving minutes of the February 4, 2020 meeting.

Barb Emert made a motion to approve the minutes of the February 4, 2020 meeting, Mary Jo Meier seconded the motion. The motion carried 5-0. Members Lisa Richards and Kendall Neill were not yet in attendance during this vote.

Planning Commission

b. Public hearing to consider a request for a conditional use permit for a daycare in an R-1, large lot single-family dwelling district at 609 Mulberry Street.

The following staff report was reviewed:

Summary

The Planning and Zoning Commission has received a request for a conditional use permit from Aubrey Carpenter for a daycare at 609 Mulberry Street.

City Zoning Code Section 403. 0 defines a day care facility as follows:

Day care facility. Anyplace, home or institution which receives four or more children under the age of 18 years for any part of the 24- hour day for compensation; provided, however, this definition shall not include public and private schools organized, operated or approved under the laws of the state, custody of children fixed by a court of competent jurisdiction, children related by blood or marriage, to the day care provider, caring for children within an institutional building while their parents or legal guardians are attending services, meetings or classes or engaged in church activities.

Appendix "A" of the Zoning Ordinance allows a day care facility as a permitted use in the C- 1 and C- 2 districts. Day care facilities are allowed as a conditional use in the A- 1, R- 1, R-2, R-3, R-4, R- 5, O/ P and C- 3 zones. Day care facilities are not permitted in the M- 1 and M-2 zones.

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

Article X of the Zoning Ordinance addresses special provisions applying to miscellaneous conditional uses:

1001. 0. Purpose.

1001.1. Purpose: In granting a conditional use, the city may impose such conditions, safeguards and restrictions upon the premises benefited by the conditional use as may be necessary to reduce or minimize any potentially injurious effect of such conditional uses upon other property in the neighborhood, and to carry out the general purpose and intent of these regulations. Any lessening or subverting of those limitations and requirements constitutes a variance and must be treated accordingly. The

following additional conditions shall be a requirement for the approval of the following conditional uses.

1003. 0. Day care facilities for more than four children.

1003. 1. Special conditions: Day care facilities for more than four children shall meet the following provisions when authorized as a conditional use in any residential district:

a. *City, county and state standards: All day care facilities shall be licensed by the state and shall meet all city, county and state health department requirements pertaining to facilities, equipment and other features*

b. *Loading zone: A loading zone capable of accommodating one car for every ten children shall be provided in addition to the required parking area in order to provide for easy pickup and discharge of passengers.*

c. *Operation: Any day care facility shall be operated in a manner that will not adversely affect other properties and uses in the area*

d. *Screening required: Any day care facility located in a building other than a residential dwelling or any residential dwelling used for a day care facility for seven or more children shall provide a visual screen along all property lines abutting any residential use*

Section 610 and 1003 address the minimum provisions the Planning Commission should consider when authorizing a day-care facility in a residential district:

610.0. Family day care homes.
610.1. Definition: A 'family day care home" shall be defined as any facility for the care of four or more children, but no more than ten children, including the homeowner's or resident's children, on a professional basis, and subject to state licensing, which is operated out of the residence in which the owner resides.
610.2. [Home occupation license.] Each family day care home must obtain a home occupation license and comply with the restrictions, limitations and requirements contained in 605.0 except as modified herein:

a. *Said facility shall be allowed one sign, not to exceed 18 inches by 36 inches in dimension, which shall be attached to the house.*
b. *Outdoor storage of materials shall be permitted insofar as such materials or equipment are utilized as part of the day care operation.*
c. *The primary resident of the dwelling must operate the facility, who need not be an owner of the dwelling.*

d. *Said facility shall be exempt from all off-street parking requirements included in 701.0*
e. *Children at play on the exterior of the house shall not be considered visible evidence of the business as provided by section 605.1.*

610.3. Special conditions

a. *No day care home may operate in an apartment or duplex*
b. *Each applicant for a home occupation license under this section shall be licensed or registered by the State of Kansas prior to receiving such home occupation license.*
c. *Any family day care home or facility shall be operated in a manner that will not adversely affect other properties and uses in the area.*

In addition to the above special conditions required by the zoning code, 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.

City staff has reviewed the sites regarding the above special conditions and wishes to provide the following:

a. *City, county and state standards: The applicant would be required to meet all City, county and state standards which includes receiving a State daycare license and a City occupation license.*
b. *Loading zone: One off-street loading zone for every ten children is required by code. However, if the daycare facility is only licensed for nine children or less an off-street loading zone is not required.*
c. *Operation: City staff is not aware of any issues in the operation of this day care that would adversely affect adjoining property owners.*
d. *Screening required: Screening is only required for seven or more children, if this facility is licensed for six children or less then no screening is required.*

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 or 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 district regulations. In determining whether the conditional use will so dominate the immediate neighborhood, consideration shall be given to:*
    1. *The location, nature and height of buildings, structures, walls and fences on the site, and*
    2. *The nature and extent 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 traffic hazards and to minimize traffic congestion in public streets and alleys.*

Action by the Planning Commission

Any recommendations regarding a conditional use permit for the subject properties shall be based on Section 902.2 previously outlined in this report. After considering any public comments the Planning Commission may either approve or deny the requests. If the requests are approved the applicants must be required to meet the special conditions required for a day care facility within a specified period of time in addition to any other conditions the Planning Commission wishes to require. 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

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

1. The applicant must meet all the "special conditions" set forth in Section 1003. 1 a, b, c, and d of the Zoning Code as follows:

a. *City, county and state standards: All day care facilities shall be licensed by the state and shall meet all city, county and state health department requirements pertaining to facilities, equipment and other features.*

b. *Loading zone: A "hard surfaced" loading zone capable of accommodating one car for every ten children shall be provided within one year in addition to the required parking area in order to provide for easy pickup and discharge of passengers.*

c. *Operation: Any day care facility shall be operated in a manner that will not adversely affect other properties and uses in the area.*

d. *Screening required: Any day care facility located to a building other than a residential dwelling or any residential dwelling used for a day care facility for seven or more children shall provide a visual screen along all property lines abutting any residential use. The applicant will have one year to meet this requirement.*

2. The conditional use permit is not transferable to another property owner or to another location.

3. The applicant must be in compliance with all City codes and must continue to be in compliance with all City codes. This would include the requirement to acquire a City occupation license which must be renewed annually.

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

The public hearing was opened by Chair Andy McLenon. The applicant Aubrey Carpenter explained her intention to open a daycare at her residence. Chair Andy asked how many children she would be watching, and she indicated she would be providing infant care, with a maximum of three ages 6 weeks to 24 months. The applicant was asked if she could run her daycare based on the conditions outlined by City staff. The applicant indicated that she could. Being no other comments were made, the public hearing was closed.

Tony Royse moved to approve the conditional use permit, Brent Littleton seconded the motion. The motion was carried 6-0. Member Kendall Neill was not yet in attendance during this vote.

c. Annual review of the Comprehensive Plan.

The following staff report was provided:

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.

Mary Jo Meier moved to direct staff to prepare a draft request in writing to be reviewed at their next meeting to ask the Commission to set aside $50,000 for 2021, and $50,000 for 2022, or consider funding a portion from the revised 2020 budget to update the Comprehensive Plan. The motion was carried 6-0. Member Kendall Neill was not yet in attendance during this vote.

d. Consider whether to initiate a conditional use permit for a church at 3176 W. Main.

The following information was reviewed by City staff:

The potential applicant advised that seating would potentially be up to 250. The applicant would be required to follow the off-street parking regulations which require one space per 4 seats or 8' of bench length in the main auditorium.

Does the Planning and Zoning Commission find the request to have a church at this location for an occupancy of up to 250 individuals have characteristics listed in clauses (1), (2), (3) and (4) of section 901.1 of this article?

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 upon the value of or potential development of other properties in the neighborhood, or
4. an extraordinary potential for accidents or danger to the public health or safety.

If so, the applicant would be required to obtain a conditional use permit.

Lisa Richard moved to let the owner know that the Planning Commission will require a conditional use permit, seconded by Mary Jo Meier. The motion carried 6-0. Member Kendall Neill was not yet in attendance during this vote.

Board of Zoning Appeals (Does not include outside City appointments)

e. 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:

> 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 6th and Myrtle. If that occurred, there was a possibility of moving the temporary apparatus bay to the sanitation yard at 21st and Maple, which was the original plan when it was constructed with sanitation funds, then the area would have been returned to its previous condition. If the temporary apparatus bay is not relocated, then the City will be required to hard surface the drive to comply with City code.
>
> On February 6, 2018 when this item was 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, and the location was still temporary at that time. A motion was made to review the status in one year, which passed 6-0.
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> On March 5, 2019 the Board of Zoning Appeals reviewed the status again and voted 6-0 with one member abstaining to review the status in one year.
>
> Currently Phase I which consists of interior demolition, window and roof replacement for 1916 City Hall is under construction with an anticipated completion date of Summer 2020. The design and programming have yet to be approved for Phase II. However, discussions have evolved to an alternative that would continue to utilize the existing apparatus bay for the Fire/EMS Department.
>
> The Board of Zoning Appeals may wish to request an additional update in one year as has been approved in the past.

As part of this discussion, the conditional use permit previously issued regarding hard surface requirements at the southeast corner of Wald Avenue and Myrtle Street that have not been met was brought up by the Board of Zoning Appeals. Staff indicated that they would check into the status.

Mary Jo Meier moved to deny the variance and require the hard surfacing based on three previous extensions and to be consistent with what other new businesses are required to do. Tony Royse seconded the motion. Motion carried 5-0.

Adjournment

Andy McLenon moved to adjourn the meeting, with Brent Littleton seconding the motion, which passed 7-0.

Andy McLenon, Chair

Michelle Anderson, Secretary