

**JUNCTION CITY/GEARY COUNTY, KANSAS
METROPOLITAN PLANNING COMMISSION
BOARD OF ZONING APPEALS**

MINUTES

**July 14, 2011
7:00 P.M.**

**Members
(Present)**

Brandon Dibben
Ken Mortensen
John Moyer
Mike Ryan
Mike Steinfort

**Members
(Absent)**

Maureen Gustafson
Rick Ziegler

Staff

David Yearout
Shari Lenhart

1. CALL TO ORDER AND ROLL CALL

Chairman Steinfort called the meeting to order at 7:00 p.m. and noted a quorum present.

2. APPROVAL OF MINUTES

Commissioner Moyer moved to approve the minutes of the June 9th meeting as presented. Commissioner Dibben seconded the motion and it passed unanimously.

3. OLD BUSINESS – None.

4. NEW BUSINESS

Item No. 1 – Case No. SUP-07-01-11 – Public Hearing on Special Use Permit application at 2201 Prospect Circle, Junction City, Kansas.

Chairman Steinfort opened the public hearing on the application of Trinidad and Margaret Maldonado, owners, requesting a Special Use Permit to allow a residential use in a portion of an existing commercial building in the “CG” General Commercial District on property at 2210 Prospect Circle, Junction City, Kansas.

Commissioner Mortensen disclosed that his employer had a business relationship with the applicants but he felt there was no real conflict of interest and would participate in this case.

Mr. Yearout stated this case originated from a request from the owner to allow the conversion of a portion of the existing building to a residential use. The owners also own and operate the mobile home park immediately adjacent to the property and had been contacted by a potential tenant for a home but did not have one that met the needs of the large family's request. The idea of converting a portion of the empty commercial building to this use was then proposed.

Mr. Yearout stated the Zoning Regulations would normally require the property to be rezoned to allow the residential use, which would have made all the other commercial uses in the building nonconforming if approved. However, the recent amendment that opened the Special Use Permit process as a means to accommodate this type of operation means the uses, if approved, can coexist in the same building. Staff believes this should be one of the objectives of the Zoning Regulations by allowing the greatest flexibility to accommodate these types of issues, rather than presume an individual zoning district can dictate uses and control all other operations associated with those uses. Staff supports the Special Use Permit and its use in this case, subject only to assurances the owners understand the building codes may impose some construction standards beyond what would normally exist for commercial uses only.

Mrs. Margaret Maldonado addressed the Commission and stated she was aware of the need to meet the building code standards. She stated she and her husband felt the demand for residential use was better suited for the building. The area to be converted had been used as a day care center, but has been unused for almost 5 years. She requested support of the Commission on this request.

There being no further comments from the public, Chairman Steinfort closed the public hearing and called for questions or direction from the Commission.

Commissioner Moyer moved to recommend approval of the Special Use Permit as requested, subject to compliance with all building code requirements. Commissioner Mortensen seconded the motion and it passed unanimously.

Item No. 2 – Case No. SUP-07-02-11 – Public Hearing on Special Use Permit application for a communications tower at 703 West Ash, Junction City, Kansas.

Chairman Steinfort opened the public hearing on the application of Mike Douchant, Dolan Realty Advisors, agent for Verizon Wireless, lessee, on behalf of Highland Cemetery, owner, requesting a Special Use Permit to install a communications tower in the southeast corner of Highland Cemetery on Ash Street, Junction City, Kansas.

Mr. Yearout noted this was a request for a tower at the same location that was denied last winter and spring. The biggest difference is this request is for a 150-foot monopole communications tower, where the one previously denied was for a 120-foot tower. Mr. Yearout stated some of the documentation for the first application stated the intent was for a 150-foot tower, but the application submitted and original publication for the first request identified it as only 120 feet in height.

Mr. Yearout reviewed the staff report and also noted the standards and requirements of the existing Zoning Regulations. The most significant standard is that the applicant must show that no other existing structure is capable of providing a location for the service to be provided by the new tower. Mr. Yearout provided information received from Verizon officials that had been received during the spring and early summer of the ability of the existing water tower at Spruce and Bunker Hill to provide space for the expansion proposed by Verizon. All indications provided by Verizon stated this location would work and meet the needs of Verizon for this portion of the city.

Mr. Yearout stated that all other aspects of the request for the communications tower is identical to the one previously denied. He stated that staff is still opposed to the request to place a tower at this location for the same reasons stated in the previous application. Further, Mr. Yearout stated he felt the acknowledgement by Verizon of the ability of the water tower at Spruce and Bunker Hill to provide a location for the proposed antennas meant the standard in the Zoning Regulations had not been met, further justifying a denial of this request.

Mr. Yearout also stated he had spoken with the Director of Operations and Chief Pilot for Life Star of Kansas regarding this request. Life Star of Kansas provide helicopter ambulance service to Geary County and previous community concerns had noted this location could be a problem with that service. The official from Life Star stated verbally his company was opposed to this location because it is in the direct path normally taken when transfers are made from Geary Community Hospital, especially when those transfers are to Topeka or Kansas City. A written objection will be submitted according to the Director of Operations.

There being no questions from the Commission of staff, Chairman Steinfort opened the hearing for comments from the audience.

Mike Douchant, the applicant and agent for Verizon, stated the reason this site was being requested again was because Verizon engineers still believed this was the best location for the placement of the new service. Mr. Douchant presented a lengthy overview of the changing needs of the telecommunications operations due to increases in usage and changes to the amount of data being provided through this type of service. All these changes continue to place demand on the system that can only be accommodated by the placement of "infill" locations to maintain quality service. Mr. Douchant stated this was a primary infill site for Verizon in order to maintain quality. He noted several other locations in other communities in Kansas that had been recently approved.

Eileen Small, a neighbor to the south on Sunshine Court, stated she was still opposed to this location because it was in her back yard. She stated that no amount of screening or planting of trees would hide the overall tower, especially since it was now being proposed to be increase to 150 feet in height. She felt the tower would be detrimental to her enjoyment of her property and would have a negative impact on the value of her home. She stated she was opposed to the tower under any circumstance.

Casey Gorham, manager of Highland Cemetery, stated the Board for Highland Cemetery had authorized the resubmission of the request because they did not believe the tower would be a conflict within the cemetery. He stated the challenges to the Board continued to be providing income to cover expenses for the operation of the cemetery and the belief this was a good deal for the cemetery and the community. Mr. Gorham stated the Board supported the request and was seeking approval.

There being no further comments from the public, Chairman Steinfort closed the public hearing and called for comments or direction from the Commission.

Commissioner Mortensen stated he did not agree with staff on the first request and did not agree with staff on this one either. He stated he still felt the tower would cause no problems for anyone and believed this location was acceptable.

Commissioner Mortensen moved to recommend approval of this Special Use Permit as requested, subject to the requirement that lighting consistent with the standards outlined in the Zoning Regulations be placed on the tower even though FAA did not require lighting. The motion died for a lack of a second.

Chairman Steinfort commented he could not support this application. He stressed this constituted a land use issue only and, in his opinion, had nothing to do with assuring a level of service by the applicant. Additionally, he felt the land use issue was best addressed by the placement of the service on the existing water tower, which the applicant had acknowledged would work.

Commissioner Moyer and Commissioner Dibben both stated they agreed with the comments by Chairman Steinfort and that they did not believe anything had changed from the time of consideration of the original application that would warrant a change in their position.

Commissioner Moyer moved to recommend denial of this Special Use Permit based on the findings in the staff report and as noted at this public hearing. Commissioner Ryan seconded the motion and it passed 4 to 1, with Commissioner Mortensen voting no.

Item No. 3 - Case No. VC-07-01-11 – Public hearing on the application for vacation of building setback line.

Chairman Steinfort opened the public hearing on the application of Jeffery L. and Cynthia A. Wells, owners, for the vacation of a platted building setback line on property located at 2822 K-18 Highway, Junction City, Kansas.

Mr. Yearout stated this request is connected to the variance issue to be considered later in the meeting. Mr. Wells requested a permit to reconstruct the porch/deck on his home. His plans were to extend the porch/deck further to the south and also put a roof over the structure. Staff advised this violated the platted building setbacks for the subdivision and also would encroach into the setback area of the Zoning

Regulations. He is requesting the variance, but will also need to vacate the platted building setback to have the variance considered.

Mr. Yearout noted the platted building setback was excessive on the original plat with respect to the setback from K-18 Highway, presumptively in anticipation of further expansions to the highway. Those changes have been made and when K-18 improvements were recently made, additional right-of-way was obtained for the improvements. It is not anticipated any more right-of-way will be taken in the future, so removing the excessive setback appears to establish no burden to the landowner or the highway system. As such, staff supports the vacation of the building setback and let the requirements of the Zoning Regulations control construction.

Cynthia Wells spoke on behalf of her husband and indicated staff had explained the situation. She said the plans were to make the new deck and porch with a roof so the family could use it more often. Since this would be on the south side of the home, the roof would provide some shade. The small expansion beyond the original size of the deck is to provide adequate space so the deck/porch can be used.

There being no further questions from the public, Chairman Steinfort closed the public hearing and opened the discussion to the Board.

Commissioner Mortensen moved to recommend approval of the petition to vacate the platted building setback line to the City Commission of Junction City as requested. Commissioner Dibben seconded the motion and it passed unanimously.

5. RECESS AS METROPOLITAN PLANNING COMMISSION AND CONVENE AS BOARD OF ZONING APPEALS

Commissioner Dibben moved to recess as the Metropolitan Planning Commission and convene as the Board of Zoning Appeals. Commissioner Moyer seconded the motion and it passed unanimously.

1. OLD BUSINESS – None.

2. NEW BUSINESS

Item No. 1 - Case No. BZAV-07-01-11 – Public hearing on the application for a variance to decrease required building setback.

Chairman Steinfort opened the public hearing on the application of Jeffery and Cynthia Wells, owners, requesting a variance to decrease the yard setback along K-18 Highway frontage for property at 2822 K-18 Highway, Junction City, Kansas.

Mr. Yearout noted this was the request for the variance associated with the last case on the vacation of the platted building setback line. The plans are to expand the deck/porch from the original 6 feet in width to 9 feet in width. Based on the survey details provided by the applicant that were prepared for the highway improvements, the existing

home appears to be approximately 31 feet from the new property line to the south, but the existing home is virtually on the platted setback line as shown on the original plat. If the vacation is approved, the Zoning Regulations require a 25-foot setback, which would provide enough room to rebuild to the former size. However that is not enough room to rebuild based on the plans of the owner. The variance request is to reduce the setback from 25 feet to not less than 22 feet.

Mr. Yearout reviewed the staff report and noted that the standards that must be met to approve a variance are very high. The most egregious is that any hardship can not be "self-imposed", meaning it can not be caused by an action of the applicant. Under normal circumstance, staff would state this would be a self-imposed hardship; however this is an unusual location and staff believes it is unique enough to warrant the granting of the variance. As such, staff is recommending approval subject to the granting of the vacation by the City Commission.

Mrs. Wells acknowledged again the reasoning for the request and had no further comments to make.

There being no further comments from the public, Chairman Steinfort closed the public hearing and called for action by the Board.

Commissioner Mortensen moved to approve the variance as requested, subject to the approval only be finalized if the City Commission approves the vacation of the platted building setback line. Commissioner Moyer seconded the motion and it passed unanimously.

Item No. 2 - Case No. BZACU-07-01-11 – Public hearing on the application for a Conditional Use Permit to expand a mini storage facility.

Chairman Steinfort opened the public hearing on the application of Triangle Self Storage, LLC, owner, requesting a Conditional Use Permit to expand a mini storage facility in the "CG" General Commercial District located at 2711 Gateway Court, Junction City, Kansas.

Mr. Yearout noted this is the expansion of the storage complex that was approved last year. The applicant's had stated they intended to expand to the north onto this lot, but were not prepared to have their site plans approved at that time and wanted to get the first phase completed in order to confirm demand. The applicant's indicate the demand has been great and the firm feels the time to expand is now. Staff reviewed the plans, which show this to be a natural expansion of the same operation to the south that already exists. In fact, no new access points to Gateway Court are shown since the existing entrance to the complex will serve this expansion. Staff recommends approval.

Charlie Woodard, one of the owners of Triangle Self Storage, LLC, confirmed the staff comments and said the plans are to begin construction as soon as possible. The existing operation is doing fine and this expansion will complete the plans for this location.

There being no further comments from the public, Chairman Steinfort closed the public hearing and called for action by the Board.

Commissioner Moyer moved to approve the Conditional Use Permit for Triangle Self Storage, LLC, for the expansion of the storage facility on Gateway Circle as presented. Commissioner Ryan seconded the motion and it passed unanimously.

Item No. 3 - Case No. BZACU-07-02-11 – Public hearing on the application for a Conditional Use Permit to expand the mining of sand.

Chairman Steinfort opened the public hearing on the application of John Musser, agent, for Konza Construction Company, Inc., owner, requesting a Conditional Use Permit to expand the mining of sand and aggregate products in the Agricultural District on property located at 3109 North K-57 Highway, Junction City, Kansas.

Mr. Yearout reviewed the staff report, which noted that some of the information that was to be provided was not present. Given the scope of this request, staff is recommended that case be continued so the information can be provided in time for a staff review and a more informed decision can be made by the Board of Zoning Appeals. Of particular concern of staff is the extent of excavation on the site in relation to K-57 Highway and US 77 Highway, as well as whether any additional access drives intend to be established onto those highways, which would require approval from KDOT. Preliminary conversations with state officials indicate no changes from the existing operations, but the plans filed with this application would provide local clarification on those issues, as well as all other matters outlined in the Zoning Regulations.

Mr. Yearout stated staff generally was supportive of this application because it is simply an expansion of an existing operation that provides valuable materials to the community. But the record should reflect the information in the file before it moves forward. Staff believes time is not that critical to this action and a delay of one month will cause no harm.

Vic Davis, the attorney for the applicant, apologized for not having all the information filed before the meeting, but stated that this was a simple expansion and that all the documentation had to be filed with State officials as well. As such, a copy of those documents can be filed in the local Planning and Zoning office as well.

Mr. Davis stated that Konza was in the process of acquiring the land from Poland Farms and the intent of this request is to finalize the zoning approval to allow the sand and gravel operation to be able to continue unabated through all of the resources on this property. The operations will continue with no indication of changing to the new property on the ground because the long term plans have always been to expand into this property. The only change is the ownership and the completion of the zoning approval to confirm these plans.

Mr. John Musser addressed the Board concerning the extent of the proposed operations and also addressed some of the staff concerns. Mr. Musser also apologized

for not having the information to staff before the hearing, but believed all the data had been prepared. He stated copies of everything, including the development plans can be filed of record with the staff. He further stated that the company knew the existing field entrances would not be used once the excavation operations reached that area, but the intent was to continue to use the field entrances as long as the land is being farmed. After that, the extraction operations will use a frontage road back to the existing office area and the field entrances will be closed. This is true for both the K-57 entrance and the US 77 entrance.

Mr. Musser also addressed the extent of excavation and said that KDOT requirements meant they had to maintain a 150-foot buffer along K-57. The buffer along US 77 is 300 feet, plus there is a 150-foot easement for Kansas Gas Service, who has a high-pressure gas line in the easement; so the setback from US 77 will be at least 300 feet. These will be shown on the development plan.

Mr. Musser stated it was not possible to project when the excavation would begin to move into this land area because there was still a fair amount of area to be excavated from the existing pit to the northwest before it reached this area. However, as Mr. Davis indicated, the plan is to continue unabated into the area with no break in the pit area.

The reclamation plan of record with the State indicates a lake area for recreation and that plan has been accepted by the State. All required bonds for the reclamation are maintained with the State and documentation of that will be filed with the Planning and Zoning office.

Mr. Dave Walker, also of Konza, gave a brief history of the use of this area for sand and gravel extraction and said the approval of this expansion will provide an area that will serve the community for many decades to come. He urged approval of the request.

Ms. Linda Murphy stated she was representing the family that owned the convenience store on the northwest corner of US 77 and K-57/K-244. The concerns she expressed dealt with potential dust from the activity and the impact it may have on their business. Mr. Musser stated that very little dust is permitted in this activity because of the Air Quality laws they must follow. Also, KDHE and EPA will inspect the operations on a regular basis to assure these laws are met.

There being no further comments from the public, Chairman Steinfort closed the public hearing and called for action from the Board.

Commissioner Moyer moved to approve the Conditional Use Permit for the expansion of the sand and gravel extraction operation by Konza Construction Company, Inc., as outlined in the application, subject to the filing of the required documents with the Planning and Zoning office as stated at this hearing. Commissioner Dibben seconded the motion and it passed unanimously.

6. ADJOURN AS BOARD OF ZONING APPEALS AND RECONVENE AS METROPOLITAN PLANNING COMMISSION

Commissioner Moyer moved to adjourn as the Board of Zoning Appeals and reconvene as the Metropolitan Planning Commission. Commissioner Ryan seconded the motion and it passed unanimously.

7. GENERAL DISCUSSION

Several members noted vacation plans that would conflict with the regularly scheduled August meeting. Following discussion, Commissioner Moyer moved to reschedule the August meeting to August 18. Commissioner Mortensen seconded the motion and it passed unanimously.

8. ADJOURNMENT

There being no further business, Commissioner Moyer moved the meeting be adjourned. Commissioner Ryan seconded the motion and it carried unanimously. Chairman Steinfort declared the meeting adjourned at 9:07 p.m.

PASSED AND APPROVED this _____ day of August, 2011.

Mike Steinfort, Chairman

ATTEST:

David L. Yearout, AICP, CFM, Secretary