

MINUTES OF THE PLANNING COMMISSION MEETING

December 17, 2018

The regular meeting of the Mission Planning Commission was called to order by Chairman Mike Lee at 7:00 PM Monday, December 17, 2018. Members also present: Pete Christiansen, Robin Dukelow, Burton Taylor, Brad Davidson, Charlie Troppito and Frank Bruce. Also in attendance: Brian Scott, Assistant City Administrator, and Martha Sumrall, City Clerk.

Approval of Minutes from the October 22, 2018 Meeting

Comm. Dukelow moved and Comm. Bruce seconded a motion to approve the minutes of the October 22, 2018, Planning Commission meeting.

The vote was taken (7-0). The motion carried.

Public Hearing - Case # 18-12 Lot Split 5529 Maple Street

Chair Lee: This will be a public hearing. We'll start with staff.

Mr. Scott: Thank you, Mr. Chair. As stated, this is a lot split, Lot 58 of Missionhill Acres, more commonly known as 5529 Maple Street here in Mission. The applicant is Clayton House, LLC. Mr. Clayton is a home builder in the area. He's built quite a few homes in northeast Johnson County over the years. He purchased the lot. His intention and desire is to split the lot, demolish the house, and build two new houses, one on each lot. If this sounds kind of familiar, it is familiar because we had a lot split about six months ago, literally right across the street at the corner of 55th Street and Maple. It's kind of the same story, different chapter. Our zoning regulations require a minimum lot width of not less than 70 feet and average depth of 110 feet. However, there is an exception to this. The lot may be split to a minimum width of 60 feet and depth of 110 feet if it complements the overall character of the adjacent neighborhood. In considering applications for a lot split to a width of less than 70 feet, the lot width of any newly-created lot may not be less than seventy-five percent (75%) of the average front lot width of lots within the subject property's block. So, we did an analysis of this. The block is defined by 55th Street to the north and Maple Street to the west, 56th Street to the south and Nall Avenue to the east. Homes along Nall are actually in the city of Roeland Park and not the city of Mission. Just about every one of the lots is 60 feet wide, with the exception of the lot that we're looking at, at 5529 Maple, which is 125 feet. If we were to split this in half, it would be 62.5 feet wide for each lot, which is above the minimum threshold of 47 feet, which would meet the average of 75 percent. There are no plans currently for the two homes, but, of course, they would have to comply with the zoning regulations for R-1 in terms of setbacks, rear yard, back yard, and all that.

That's the staff report. I believe there is a gentleman here in the audience that wanted to speak at this public hearing. So, if you want to take comments, or if you have any questions.

Chair Lee: Is the applicant here this evening?

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Steve Clayton, Applicant, appeared before the Planning Commission and made the following comments:

Mr. Clayton: Yes, I am.

Chair Lee: Is there anything you'd like to say?

Mr. Clayton: Really, I think he nipped it in the bud right there. Told what it is. I think I can improve the area, putting in two very nice, new homes. Not something I haven't done. I've built four or five here in Mission already. I'm accustomed to knowing what it is you are looking for. I'm not looking to put in mansions, which some cities are balking over. I don't like building them. So, that's about all I can say on this. I'd like the opportunity to split the lot and build two homes. Any questions of me? [None] Thank you.

Chair Lee: Thank you. Any questions for staff? [None] Okay, at this time we will open the public hearing.

Dane Miller, 56th and Maple, appeared before the Planning Commission and made the following comments:

Mr. Miller: I live at the corner of 56th and Maple. I actually live adjacent to the property you guys were talking about earlier that got torn down and rebuilt. I have nothing but good things to say about how that went. I got a flyer in the mail and I wanted to come and say I think you guys should allow the split because it can do nothing but improve the value of homes in the neighborhood. The home is an eyesore. It will never get re-sold again. It will just sit there until somebody decides they want to try and do this again. This is a perfect opportunity to spruce up the neighborhood. So, as a citizen and resident of the community living down the street, I would love to see that house get demolished and have something, whether it's two houses or one house, be built there. Go for it.

Chair Lee: Thank you. Anyone else like to speak? [None] Seeing no one, we will close the public hearing. Discussion?

Comm. Troppito: I used to live in that neighborhood. My first home was in that neighborhood, very close to this property. It's something I'm familiar with for quite a while. I think this would do nothing but improve the neighborhood. It would turn a liability into an asset for the City.

Chair Lee: Other comments or discussion? [None] I would entertain a motion.

Comm. Dukelow: I will make a motion. That the Planning Commission recommend approval of Case No. 18-12, Lot Split, 58 Missionhill Acres at 5529 Maple Street.

Comm. Christiansen: Second.

The vote was taken (7-0). The motion carried.

Case # 18-13 Permit of Non-Conforming Improvements - 6767 Johnson Drive

Mr. Scott: This is the McDonald's located on Johnson Drive. We're all familiar with that property. It was originally built in the late 1980's. A typical look of a McDonald's for that time period is sort of a brick with a mansard roof, a very corporate look. Around 2001, the

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owners reskinned the building to get a more 1950's diner look, which I think was a look that the restaurant corporation was going with a lot of restaurants across the nation. It has an off-white EIFS with a red tile, wainscoting base, with a jutting roof with two yellow arches on either end of the jutting roof.

Stantec Architecture, the applicant, an architectural firm in Chicago representing McDonald's, submitted an application late this summer for essentially a refresh of the building to yet another kind of corporate look. You can see in the elevations that were provided they're wanting to give it a modern look, which is in keeping with a lot of the restaurants that McDonald's is now designing and refurbishing. It would have earth tone colors, repaint the EIFS to more earth tone colors, kind of a taupe, if you will. They would replace the red tile, wainscoting, with black tile. Place the McDonald's in the middle there, on the side of the building. The arches would remain, as well as the jutting roof. It would also place a metal trim on the fascia to accent the roofline a little bit. They are also proposing some minor site improvements, in particular providing better ADA parking on the west side of the lot, with an actual access to the sidewalk on Barkley. And then, enhanced landscaping on site and the drive-through. We did request that they provide some landscaping along Barkley to hide the parking, if you will. That is one of the requirements of our zoning code.

What makes this awkward is that, when I look at these things, I start with a base plan, a base zoning, if you will. It is zoned CP-1 and the restaurant as it currently stands is a permitted use with in the CP-1. But it also falls within the Form Based Code district, which is pretty much everything on Johnson Drive from Lamar to Metcalf. What do you do with the Form Based Code? I began looking at that and discussing this with Pete Heaven, our land use attorney. He pointed me to a particular section of the zoning code that pertains to non-conforming site improvements, Section 420.190 of our zoning code, which pertains to: When an addition to or repairs or renovation of any structure or site improvement proposed on a lot with any non-conforming site improvements, the Board of Zoning appeals, in the case of conventional zoning, or the Planning Commission, in the case of a planned zoning district - which is what this is - may approve a non-confirming situation permit, allowing such addition, repair or renovation it defines under its three findings of fact.

So, we did a staff analysis of the street findings of fact. Number 1: The non-conforming site improvements is the only non-conforming situation pertaining to the property. The structure itself is the primary non-conforming situation on the property. The Form Based Code stipulates a mid-rise structure with a minimum height of two stories and a setback of no more than 10 feet. The current structure is only one story and sits further back on the property. The proposed improvements to the structure are cosmetic in nature and will not add to or increase the non-conformity of the structure.

Number 2: Compliance with the site improvement requirements applicable to the zoning district in which the property is located is not reasonably possible. The Form Based Code stipulates a mid-rise structure with a minimum height of two stories and a setback of no more than ten feet. The current structure is only one story and sits further back from the

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property than 10 feet. To comply with the Form Based Code would mean that the structure needs to be substantially renovated or demolished and rebuilt altogether, which would not be reasonable.

Finding Number 3: The property can be developed as proposed without any significant adverse impact on surrounding properties or the public health or safety. The property has existed as is for over 25 years without an adverse impact to surrounding properties. The proposed improvements are cosmetic in nature and will not substantially change the structure, and thus will not have any impact on the surrounding properties. In fact, as presented, the improvements will provide a fresh look to the structure that is more in keeping with other recent developments and facade improvements along the Johnson Drive corridor. Elements of the proposed design including landscaping to comply with the Form Based Code where feasible.

So, staff's recommendation would be to approve a permit of non-conforming improvements for the site. We're certainly open for questions. There is a gentleman here with the civil engineering firm representing McDonald's, so if you have questions about site improvements or the project, he's certainly available to answer those questions.

Chair Lee: Thank you. Questions for staff?

Comm. Troppito: I was wondering if you could comment on something. In looking at the proposal here, it's pretty obvious that this is going to add property value to the city. Certainly improve the assessed value of the property. Did you come up with any numbers of what the benefit to the City would be?

Mr. Scott: I did not. That's a good point. I didn't really think about it from that perspective.

Comm. Troppito: I don't see how it could not. The site in question is, nothing is mentioned about tax abatements, so I would presume that there is no plans on the part of the owners to receive that, that would offset any tax benefit. Is that...? Did you say no?

Mr. Scott: Yes, correct. There is no application for tax abatement associated with this.

Comm. Troppito: Thank you.

Chair Lee: Questions for the applicant?

Mr. Scott: The value of the building as it currently sits is \$418,160. The value of the land is actually \$500,000. So, Commissioner Troppito is correct. It's safe to assume that any improvements would be an enhanced value on the building at the time of reappraisal. I would add why I wanted to bring this to you tonight. I have talked with other owners of property along Johnson Drive, like Burger King. They are wanting to do a similar refacing of their building. There are also two vacant restaurants immediately to the east that are wanting to do something with those two buildings, as well, similar to this. So, we want to be consistent with what we do along Johnson Drive as all those properties are under the Form Based Code.

Chair Lee: Discussion?

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Comm. Dukelow: I have a question with regard to Mr. Scott's last comment regarding multiple properties and looking at consistency. The thing that stands out to me is that two of the aforementioned properties have been non-operational for some time. One certainly longer than the other. So, when I start to think about consistency, I guess I wonder, what is our...? If it has not been occupied and not been operational for a period of time, are they really the same? And what's the trigger in terms of time or...? Is there a threshold?

Mr. Scott: That's a good question. I wondered about that myself. I would say typically six months or longer. Both of those properties closed this summer, so we're coming up on that six month mark. The city clerk and I were discussing beforehand, the old Taco Bell, that was vacant for quite a while before it was renovated into the Starbucks that's there now.

Comm. Dukelow: If I may interject. Not to be rude, but that was under the Form Based Code also at the time that Starbucks...

Mr. Scott: Correct.

Comm. Davidson: What about the Applebee's was it...?

Mr. Scott: It's Form Based Code as well, yeah.

Comm. Dukelow: They were built before the Form Based Code.

(inaudible)

Mr. Scott: Yeah. I was thinking about that, as well. They made application about a year ago for, again, some cosmetic improvements. I don't think as extensive as what McDonald's is wanting to do. Essentially replacing awnings, etc. Again, kind of a stylized, modern metal screen on the face of the building to provide some texture to the front of the building, if you will. I don't think those improvements would have been greater than 10 percent of the value of the building. We're probably okay to do an administrative review on that. But certainly, with the Burger King and the other two properties, any improvement would be greater than 10 percent.

Comm. Dukelow: So, do we have any idea, or is there anything that you can think of off the top of your head...? And getting maybe blindsided by this at the last minute as a question, but is there anything that you know of offhand in the zoning ordinances or Form Based Code that would require those properties that have been vacant to follow the Form Based Code, whereas a property that's a continued use maybe not?

Mr. Scott: I can't think of anything specifically off the top of my head that I can point to, other than that standard six-month rule. A good example of that would be the old JC Penney call center. We've had a lot of folks come to us, wanting to know what they can do with that property. We tell them that it falls under the Form Based Code, and as it exists today, there's nothing you can really do with the building. Any kind of improvement would have to comply with the Form Based Code.

The other challenge - and I need to do a little more investigation with the two properties to the east - is that they are actually a part of the larger shopping center. So, there is

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some different treatment of that under the Form Based Code given the size of the entire property as a whole. So, to say that those would have to comply literally with the Form Based Code, they would have to be two-story and built up next to the sidewalk. The Form Based Code does allow for some leniency in larger properties. We saw that with the Cornerstone property to the west. The applicant was able to make some adjustments to the size of the buildings based on that.

Chair Lee: Would you have the same thing with the Burger King? Isn't that part of a larger...?

Mr. Scott: No, the Burger King is a standalone parcel of property. Separate ownership.

Chair Lee: Additional comments? [None] Okay, I would entertain a motion.

Comm. Troppito: I move that the Planning Commission adopt the findings of fact contained in the staff report, page 5 - I won't read them individually - and grant a non-conforming use situation in Case No. 18-13, 6767 Johnson Drive.

Comm. Dukelow: Second

The vote was taken (7-0). The **motion carried**.

Old Business

Chair Lee: Anything to discuss, Brian?

Comm. Troppito: Mr. Chairman. I think something that should be part of what we do is the memo with the attached, that was attached to the email regarding Pete Heaven's opinion concerning technical studies.

Mr. Scott: Yes. Sidebar conversations with Commissioner Troppito led to a question regarding whether the Planning Commission as a whole or, or a member, can request - even staff, for that matter - can request additional reports or studies of an applicant.

Comm. Troppito: Well, it was broader than that. The Planning Commission or City Council can require an applicant to meet certain standards. (inaudible). I would request that those be placed into the record and made part of the minutes (Attached). Just be sure that there's no confusion about it in the future.

Mr. Scott: Yeah, we can do that.

Comm. Troppito: Thank you. Sorry to interrupt you.

Mr. Scott: No, that's... I placed the memo in my file, as well. Anyway, that memo simply states that the Planning Commission can, if they like, request additional studies, and certain standards provide for those studies. That's the only item of old business.

Staff Updates

Mr. Scott said there will be no meeting in January. Also, there are five Planning Commission reappointments up for approval on Wednesday's City Council agenda. Also, there is a plan for Pete Heaven to provide general training and information to the Planning Commission sometime this winter.


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Commissioner Troppito provided a general update regarding historic markers. He is asking fellow commissioners to assist in identifying locations that should be labeled as a historic marker. Part of this effort is to formulate a specific definition of what constitutes a historic marker. Mr. Scott said there is no formal list of historical markers.

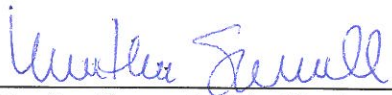
ADJOURNMENT

With no other agenda items, **Comm. Dukelow moved and Comm. Bruce seconded a motion to adjourn.** (Vote was unanimous). The **motion carried.** The meeting adjourned at 7:40 P.M.



Mike Lee, Chair

ATTEST:



Martha Sumrall, City Clerk



SpencerFane

To: Laura Smith, City Administrator
From: Pete Heaven, Land Use Attorney
Date: November 27, 2018
Re: Technical Studies/Zoning

You have asked my opinion on whether or not the Planning Commission can require technical studies in connection with zoning and other land use applications, and if so, whether standards can be required for such studies. The qualified answer is yes.

Section 440.040 (A), Submission of Technical Studies, of the Municipal Code provides in part:

The ... Planning Commission may require applicants for rezoning, special use permits, preliminary development plans or preliminary plats to submit such technical studies as may be necessary to enable the Planning Commission or Governing Body to evaluate the application. Examples of such technical studies that may be required shall include, but not be limited to, traffic studies, engineering studies, geologic or hydrogeologic studies, flood studies, environmental impact assessments, noise studies, market studies or economic impact reports. The persons or firms preparing the studies shall be subject to the approval of the Public Works Director and/or Planning Commission... Any decision of the Public Works Director or Planning Commission to require any such study or to disapprove of the person or firm selected by the applicant to perform the study may be appealed to the Planning Commission...

Thus, the Staff or Planning Commission may require technical studies to assist in evaluating zoning and planning matters, and has the power to approve the technician performing the studies. Obviously, the technical study required must be germane to issues in the zoning matter, however if the applicant objects to the study, he or she may appeal the requirement to the Planning Commission. In my opinion it is inherent in the ability to require studies and approve technicians that the Planning Commission be able to prescribe minimum, reasonable standards for the required studies.

The test in Kansas as to actions or requirements of a City in a zoning or planning matter is whether the action or requirement is "reasonable". The courts give cities wide latitude in their actions and requirements [see, *Combined Investment Co. v. Board of Butler County Comm'rs*, 227 Kan. 17, 28, 605 P.2d 533 (1980)] however no requirement may be objectively unreasonable.

Although the Planning Commission may require a study that may otherwise seem reasonable, the totality of the requirements may be viewed by a court to test reasonableness. For example, factors that would weaken the reasonableness of the required study could include:

- The lack of technical expertise of the City Staff to review and understand the study;
- Specifying the technician to perform the study (as opposed to merely approving the applicant's selected technician);
- The study does not have relevance to an issue in the zoning or planning matter; or
- The standards required for the study are onerous or unnecessary.

In conclusion, the Planning Commission has the power to require pertinent technical studies in connection with zoning and planning matters, including approval of the technicians performing the studies and the standards used for the studies. That power must be exercised in a reasonable fashion to withstand a challenge in court.

Please let me know if you have questions. Best regards.