



EL DORADO

THE FINE ART OF LIVING WELL

PLANNING COMMISSION MINUTES

February 27th, 2020

6:30 p.m.

1. CALL TO ORDER & ROLL CALL

Chairman Tetrick called the meeting to order at 6:30pm.

Members Present:

Scott Leason
Brad Long
Kyle McLaren
David Stewart
Kelly Tetrick
Gerald Watson

Staff Present:

Jay Shivers

Others Present:

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| David Crook | 1815 Quail Run |
| Tim Donges | 2873 SE Hwy 54 |
| Michael Payton | 1027 SE Conner Rd. |
| Amber Payton | 1027 SE Conner Rd. |
| Doug Pulliam | 1360 SW Hwy 77 |
| Nancy Pulliam | 1360 SW Hwy 77 |
| Darren Schwindt | 3515 W. Towanda Ave. |
| Karis Schwindt | 3515 W. Towanda Ave. |

2. APPROVAL OF MINUTES

Chairman Tetrick noted the adjourned time was before the meeting started. Jay Shivers said he would check the video and update that time. Commissioner Long moved to approve the minutes of the January 16th, 2020, Planning Commission meeting. The motion passed (6-0).

3. NEW BUSINESS

ITEM NO. 1 – CASE NO. 20-01-SUP: PUBLIC HEARING FOR THE CONSIDERATION OF A REQUEST FOR A SPECIAL USE PERMIT TO ALLOW AN ACCESSORY STRUCTURE AT 3515 W. TOWANDA AVENUE.

1. Presentation of Request

Mr. Shivers reviewed the staff memo and presented maps and plans for the property (attached to minutes). Mr. Shivers said the original site plan from the applicant provided in the agenda packet showed the proposed structure 13 feet from the west property line. The applicant has updated the plan to show 14 feet, the minimum setback for the property. Mr. Shivers said they worked to improve the accessory structure regulations in 2019 to help larger accessory structures fit in with dense urban neighborhoods. However, this rural neighborhood is different and large structures are to be expected.

Darren Schwindt, applicant, said they would also like to use the building for additional space for large family events.

Commissioner Stewart asked about the slope from the house to the pond. Mr. Schwindt said it's about a quarter inch per foot.

Commissioner Long asked if he had a color scheme for the building. Mr. Schwindt said it will be metal walls and roof and he plans to match the color to his house, as metal color options allow.

Commissioner Watson asked how close the water would get to the building when the pond is full. Mr. Schwindt said they have lived there for 14 years and have never seen water get anywhere close to that location. Commissioner Long asked if all the properties drain to the pond. Mr. Schwindt said they drain to the pond.

Mr. Schwindt said they originally planned to start construction as soon as possible, but now thinks it will be next year. He asked about time requirements. Mr. Shivers said under the regulations, the building would need to be under construction or completed within a year, but the Planning Commission could add a time extension to their motion.

Commissioner Watson asked if the applicant sells the property, will that nullify the Special Use Permit. Mr. Shivers said if the building was not built, the Special Use Permit would not carry over to the new owner.

2. Public Hearing

Commissioner Tetrick opened the public hearing. David Crook spoke briefly but meant to speak during the rezoning case.

There being no one else to speak, the public hearing was closed.

3. Discussion by Planning Commission

Commissioner Long he didn't see a problem, especially with the other large structures in the neighborhood. Chairman Tetrick said it would fit with the neighborhood.

4. Motion

Commissioner Leason moved to recommend approval of case number 20-01-SUP, a request by Darren Schwindt for a special use permit to allow a 1,800 square foot accessory structure on property located at 3515 W. Towanda Avenue, for reasons set forth in the staff report and heard at this public hearing, with the addition of a two year time limit. Commissioner Watson seconded the motion.

Roll Call Vote:

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| Commissioner Leason | Y |
| Commissioner Long | Y |
| Commissioner McLaren | Y |
| Commissioner Stewart | Y |
| Chairman Tetrick | Y |
| Commissioner Watson | Y |

The motion passed (6-0).

ITEM NO. 2 – CASE NO. 20-01-REZ: PUBLIC HEARING FOR THE CONSIDERATION OF A REQUEST TO REZONE 1.62 ACRES AT 2765 SE HIGHWAY 54 FROM R-1 LOW DENSITY RESIDENTIAL DISTRICT TO C-1 GENERAL BUSINESS DISTRICT.

1. Presentation of Request

Mr. Shivers reviewed the staff memo and present zoning maps of the area. He said the property is concurrently going through the lot split process.

Tim Donges, applicant, said the buildings have been used commercially for decades. Mr. Donges said he would like to expand the commercial area but must rezone the property in order to do so.

Commissioner Long asked about other buildings on the property, said he drove by and wasn't sure what else was there. Mr. Donges said the white roof building was an RV repair shop, the west building used to be a muffler repair shop. The old owner, Mr. Ramsay, lives just to the south on Kefir Road. The bigger property has a pond with a rental house to the west, and to the west of the proposed rezoning is an old motel that is apartments. Mr. Donges said Deer Grove RV Park is to the east that they own.

Commissioner Leason asked where they would add another building. Mr. Donges said between the two existing buildings. Commissioner Leason asked about drainage, something they talked about with the RV Park Special Use Permit. Mr. Donges said their drainage issue was on property further to the east where the RV park is located. Mr. Shivers said if the rezoning is approved, Butler County will do the site plan review and inspections. Mr. Shivers said the board's decision is to determine if the property should be commercial. The agreement with Butler County only gives the City land use authority.

Chairman Tetrick asked if Butler County Commission had any comments. Mr. Shivers said the discussion was brief and passed out a letter from David Alfaro regarding the Butler County Commission meeting.

Commissioner Watson asked if they would split the driveway. Mr. Donges said yes, it would be an easement. Commissioner Watson asked if it would affect the house to the south. Mr. Donges said it is a rental home and they own it.

2. Public Hearing

Chairman Tetrick opened the public hearing. David Crook, representing the church at 1113 Kafir Road, said there is no intention to do this but said he was concerned in the long-term about uses that would be inappropriate within 1,000 feet of a church, such as a bar, strip joint, or alcohol sales.

Michael Payton, 1027 SE Conner Road, said he has a few concerns and the Planning Commission already addressed some of them. Mr. Payton said Mr. Donges owns a vast amount of property around the subject property and is worried they may rezone more property around it. He said he takes great pride in his property and adds to the neighborhood. He said Mr. Donges purchased the property knowing it was residentially zoned. Mr. Payton is concerned expanding commercial zoning will strangle the surrounding residential property. Mr. Payton said the maps don't show all the residential property to the south. He said there is a new sign and possibly a new business that is a violation of zoning and should be considered.

Commissioner Stewart asked if it was grandfathered, an existing non-conforming use. Mr. Shivers said new land uses that are not allowed are a problem and need to be addressed by Butler County. He said someone introducing commercial on this property in the last year or five is a problem that should be addressed and not rezoned to help them. Mr. Shivers said the buildings have been used for decades are considered grandfathered and can continue to be used for commercial. Mr. Shivers said the reason they are at the meeting is the applicant wants to build additional buildings. He said the grandfathering regulations help address situations where buildings and uses were occurring before zoning regulations were adopted.

Mr. Shivers said he agreed that there is a lot of residential to the south not shown on the map, but best practices in planning focus commercial, multi-family, and high density uses with lots of noise and traffic should be located along arterials and highways, we don't want them in residential neighborhoods. If Mr. Donges asked to rezone the bigger tract to commercial, that wouldn't be a good idea.

Mr. Payton said it may not be the plan, but is concerned the applicant will want to rezone all of his surrounding property to commercial. He said is worried about his investment in his property and getting his investment back if he sells the property.

Chairman Tetrick said they review each property on a case-by-case basis. Even if the rezoning is denied, the two buildings can still be used for commercial. Mr. Payton said he doesn't have time to review the regulations, he went to law school and feels like there may be issues with the

grandfather clause. Mr. Payton said he was worried by rezoning a sliver of property, what's stopping them from coming back to rezone more of the property.

Commissioner Stewart said grandfathering is not a new concept or a new precedent, there isn't anything controversial to be pursued there. Commissioner Stewart said they are an advisory board holding a public hearing, the applicant was notified by mail, and they make a recommendation that goes to the City Commission, an elected body. They also review to make sure the best interests of the public and property owners are maintained. He said he advocates for the rights of private property owners to seek the highest and best use, it is their right when purchasing and owning property. Just because it was grandfathered, he doesn't find that compelling enough to say it shouldn't be rezoning commercial, especially along a major arterial such as a highway. Commissioner Stewart said it is a nice neighborhood that is more concentrated to the south. Any other thoughts on a domino effect will be examined case-by-case and if they are not compelling to this board, the Butler County Commission, or the City Commission, they will not be approved.

Mr. Payton said it has overall effect on residents in the area. Commissioner Stewart said the property owner has also invested in the property and has the right to pursue his highest and best use. Mr. Payton said the applicant could have seen it was zoned residential. Commissioner Stewart said he also can seek rezoning and a public hearing.

Mr. Payton said he is worried about diminution of his property even if it does cascade onto multiple properties or just this one. He said they'll never know the entire impact. He asked if the Planning Commission has been to the area. (Multiple Commissioners answered at once)

Chairman Tetrick said he did this time and for two previous cases in the area and walked around the area.

Commissioner Watson said he's been on the property.

Mr. Payton said he appreciated the Planning Commission's time.

Commissioner Watson said the only property that is going to be changed is to the east on the corner at Kefir Road. The person to the south of it sold the property and is not objecting to it. The property is practically C-1, considering the grandfathering, so the change is coming to the very corner.

Commissioner Stewart asked if the lot was separate and had its own legal description. Mr. Shivers said the applicant submitted a survey and legal description to split and create the commercial lot, a concurrent process to the rezoning.

Mr. Payton asked who would own the other lot. Mr. Shivers said the lots will be separate for their own zoning, and the applicant will still own both lots.

Mr. Payton said many of his neighbors said it wasn't a big deal. He also said other people have concerns but are not at the meeting.

There being no one else to speak, the hearing was closed.

3. Discussion by Planning Commission

Mr. Shivers said grandfathering is for uses that predate the ordinances. When people do things for a day or a few years, it is not grandfathered and it is a code enforcement issue. If something is occurring that is new and isn't right, it should be reported. Mr. Shivers said since this is outside city limits, the City is required to send notices to 1,000 feet. The intent is to cover a large swath of rural land with large lots and very low density residential. In Prospect area, it includes a number of homes. He received many phone calls asking for more information, no one shared objections, support, or other opinions.

Commissioner McLaren asked if an RV park can go in C-1 zoning. Mr. Shivers said it would need a Special Use Permit and said there probably isn't enough room for an RV park, with size and topography being the challenges.

4. Motion

Commissioner Stewart moved to recommend approval of Case No. 20-01-REZ, an application by Donges Properties, LLC, to rezone 2765 SE Highway 54, from R-1 Low Density Dwelling District to C-1 General Business District, for reasons stated in the staff recommendation and heard at this public hearing, seconded by Commissioner Watson.

Roll Call Vote:

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| Commissioner Leason | Y |
| Commissioner Long | Y |
| Commissioner McLaren | Y |
| Commissioner Stewart | Y |
| Chairman Tetrick | Y |
| Commissioner Watson | Y |

The motion passed (6-0).

ITEM NO. 3 – CASE NO. 20-02-SUP: PUBLIC HEARING FOR THE CONSIDERATION OF A REQUEST FOR A SPECIAL USE PERMIT TO ALLOW AN ACCESSORY APARTMENT AT 1360 SW HIGHWAY 77.

1. Presentation of Request

Mr. Shivers reviewed the staff memo. He said the biggest challenge is the floodplain covering a large portion of the property. Arthur Pulliam, applicant, asked if there were any questions for him.

Commissioner Leason asked if it would be a rental structure. Mr. Pulliam said it would be a mother-in-law house, for his mother and father-in-law. They have health problems and would like them close.

Chairman Tetrick asked if they would use the first entrance and if the business was still going. Mr. Pulliam replied they would use the first entrance and the business would be closed by then. He said the buildings have their own address and water and sewer, which they will disconnect and run to the house.

Commissioner Watson asked about the floodplain. Mr. Pulliam said he spoke with David Alfaro about that and said they would set it at a high place above the floodplain.

Commissioner Long asked if Butler County would oversee the project. Mr. Shivers said Butler County would handle it and said they hired a floodplain administrator in the last year or so.

2. Public Hearing

Chairman Tetrick opened the public hearing. There being no one to speak, the hearing was closed.

3. Discussion by Planning Commission

Mr. Shivers said many people called concerned about the term “accessory apartment” and thought it would be apartments. Chairman Tetrick confirmed it meant a single unit. Mr. Shivers said it is a single-family home and that he would add it to the list to change during the next ordinance update.

Chairman Tetrick said his only concern is the floodplain, but Butler County will address that. Mr. Shivers said it’s a big enough concern for the County that they hired an administrator just for that purpose.

4. Motion

Commissioner Stewart moved to recommend approval of Case No. 20-02-SUP, a request by Arthur Pulliam, for a Special Use Permit to allow an accessory apartment on the property located at 1360 SW Highway 77, for the reasons set forth in the staff recommendation and heard at this public hearing, seconded by Commissioner Leason.

Roll Call Vote:

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| Commissioner Leason | Y |
| Commissioner Long | Y |
| Commissioner McLaren | Y |
| Commissioner Stewart | Y |
| Chairman Tetrick | Y |
| Commissioner Watson | Y |

The motion passed (6-0).

4. OLD BUSINESS

5. STAFF ITEMS

- The Planning Commission appointed Commissioner Long to the Excess Sales Tax Committee.
- Mr. Shivers said the Flint Creek project was approved and the City is working on building permits and infrastructure for the project.
- Mr. Shivers said there will not be a March meeting, no applications have been received. However, they may have a meeting to discuss potential zoning ordinance updates.

Commissioner Stewart asked what positions are open. Mr. Shivers said David Lewis left the board and that he thought Commissioner McLaren's seat should be up for renewal in the spring. He also said the last couple renewals go through the end of December, where previously they expired at the end of April. He said the City Clerk will let him know what will be open and he will be contacting those members.

6. ADJOURNMENT

The meeting adjourned at 7:33pm.