

## **PLANNING AND ZONING COMMISSION**

December 11, 2017

The Planning and Zoning Commission, City of Kearney, Missouri, met in regular session at 6:30 P.M., December 11, 2017 at Kearney City Hall with Darren Hiley presiding. Other members present were Jason Hoyt, Eric Shumate, Kent Porter, Kyle Creden and Chuck Davis. Kathy Barger was absent. Staff members present were David Pavlich and Shirley Zimmerman.

Darren Hiley opened the meeting with the Pledge of Allegiance.

### **CONSENT AGENDA**

The following items were presented for the Planning and Zoning Commission to approve:

- Minutes of the November 13, 2017 meeting

A motion was made by Chuck Davis and seconded by Jason Hoyt to approve the Consent Agenda as presented. The motion carried unanimously.

### **NEW BUSINESS/PUBLIC HEARINGS**

#### **CONDITIONAL USE PERMIT-ATLAS CONTRACTING 115 W WASHINGTON**

Staff presented an application from Brent Hollis, Atlas Contracting, proposing to locate a contractor's shop/yard at 115 West Washington Street. The vacant tract East of the building, at 111 West Washington, is also included as part of the project. The site was previously the Rock & Run Brewery and a minor automotive repair business. This is located in the Central Business District(CBD).

The building will be used as the company office, with storage of some equipment and material within the building. The business has a couple of trailers that would be stored on the driveway to the rear of the building, which has access to a public alley.

Proposed exterior improvements include new windows, garage door paint, roof shingles, driveway replacement and signage. They also plan to install decorative fencing around the yard area and landscape with trees and shrubs.

Potential concerns about locating a contractor's shop in the downtown neighborhood, include exterior storage of materials and/or equipment. The downtown area includes a mixture of residential and non-residential uses. In addition, revitalization efforts in the downtown area have resulted in the creation of community education and other programs at the Firehouse Center, new businesses and investment in Old Church Plaza and special events.

## **CONDITIONAL USE PERMIT-ATLAS CONTRACTING 115 W WASHINGTON**

Staff presented a letter from the applicant describing the business and proposed use of the property. Atlas Contracting proposes to store any materials and equipment inside the building and will park trailers on the rear driveway. Materials and equipment will not be stored outside the building.

Staff recommends a conditional use permit be approved for a contractor's shop/yard with the following conditions:

1. The conditional use permit applies to 111 & 115 West Washington Street;
2. Storage of materials and equipment to be located only within the building and not in a yard area;
3. Storage of trailers to be located within the building, or on the driveway to the rear of the building and at least five (5) feet from the property line;
4. Sign permit prior to installation/reface of signs;
5. Development of the project in compliance with all city codes, conditions, requirements, plans, and payments of fees and taxes.

The floor was opened to the public.

Lissi Staab, 20813 Jesse James Farm Road, said she owns the business across the street from this property. She said she was a part of downtown revitalization and a part of the Master Plan Committee. She said this is not a business that falls into those goals and spirit of the Master Plan.

Ms. Staab said page 35 of the Master Plan says we are to promote revitalization of the downtown. She said page 39 of the land use section 11.4.1 talks about priorities for downtown and the landscape of the area. She said section 12.3 of the land use says downtown is to be primary a mix use. It is to strengthen, grow and preserve the downtown as a place to gather.

Bob Pence, owner of 105 West Washington, said we need to maintain the integrity of the downtown area. He said he paid to have a mural painted on the East side of his building depicting the old days.

Mr. Pence said the City has put a lot of money into lighting, etc. downtown to help preserve downtown Kearney. He said right now we have a good cross section of businesses downtown. He said he would hate to see something that doesn't enhance the downtown and this isn't a fix for downtown. He said this would be asking a lot to have a person follow the restrictions and someone to try and enforce them.

Jenny Hayes said she is part of KEC and the Downtown Revitalization Group, lives near downtown and owns property along the alley. She said she invested in property to make the vision happen. She said she intends to have a guest house and a theater for the local theater groups.

## **CONDITIONAL USE PERMIT-ATLAS CONTRACTING 115 W WASHINGTON**

Ms. Hayes said there will be a 20 year mistake if there is no investment in downtown. She said you have to have the right people and right businesses to make this happen. She said she had been working to try and get a buyer for the property with the right vision.

Ms. Hayes said Mr. Hollis only directed his comments about his business to 115 West Washington. She said she is worried about 111 West Washington.

Ms. Hayes said with the Master Plan in place, in 2014 the City partnered with the Missouri Main Street Downtown Revitalization to help the area. She said the City has paid funds to support an Executive Director for KEC, an Executive Director for the Chamber and an Executive Director for KADC to help promote the area.

Ms. Hayes said there have been several businesses that have come to downtown and been very successful. She said it will be a huge betrayal to downtown if we allow this 20 year mistake and she requests a denial of the conditional use permit.

Dan Hatcher, owner of Rock and Run, said when he bought the building he didn't have this problem but he didn't have the community behind his business. He said after the first three weeks he only had about twenty people on weekends.

Mr. Hatcher said he had issues with his Liberty location so he decided to close his Kearney location. He said he has only had one offer on his building so he dropped the price to just get out from under the property. He said he didn't see how the City can dictate what type of business goes into his building as long as they meet the City ordinances.

Brent Hollis, owner of Atlas Contracting, said he just uses the term contractor as part of his name but actually he is a general contractor. He said 90 percent of his use would be office space. He said he doesn't have a plan for 111 West Washington at this time and didn't intentionally leave it out of his letter. He said he has been operating out of his home with materials in storage.

Mr. Hollis said he doesn't intend to have a shop and yard storage. He said there is 2400 square feet of concrete on the back side and he would like to park his trailers there. He said he has one enclosed trailer that he uses for events.

Mr. Hollis said he intends to participate in events and activities being held downtown. He said he was insulted about some of the comments made. He said he will have a front desk and two offices in the building. There will also be a bathroom and a small kitchenette area.

Bob Buhlig, owner of 117 West Washington, said he appreciates Mr. Hollis business but doesn't think this is the place for a storage and repair shop. He said there are other areas better suited for this type of business.

**CONDITIONAL USE PERMIT-ATLAS CONTRACTING 115 W WASHINGTON**

Linda Shilt, 204 West Washington, said most of her comments have already been expressed. She said this isn't promoting revitalization of downtown Kearney. She said it is a shame not to follow along with the land use plan in the Master Plan.

Ms. Shilt said they enjoy walking around the neighborhood and stopping in the small businesses. She said changing now will set precedence for future business coming to the area.

Kristine Klarin, 107 N. Clark, said she agrees with Linda Shilt. She said she has enjoyed the downtown growth but this won't bring people to the area to shop and walk around. She said it will look nice but not help promote downtown.

Jason Davey, attorney for Rock and Run, said the Real Estate agent couldn't be here tonight so she asked him to attend. He said previously this was a small auto repair shop. He said Mr. Hatcher put half a million dollars into this property as well as hired employees. He said the business didn't work here so now he needs to get rid of the building. He said they didn't show up here to be held hostage.

Mr. Davey said they are just trying to get the building in the right hands and he didn't feel it was the City's place to interfere if they met code. He said J E Dunn is a general contractor and his building in the City isn't ugly.

Mr. Davey said he will be bringing office employees to the downtown area. He said Mr. Hollis description says office and instead everyone is focusing on storage outside. He said you need to let this business thrive and not restrict it.

Jenny Hayes said the letter from Mr. Hollis states he will store inside but her concern is that after a few years he outgrows his building and it will become a burden for the neighbors to police it.

Ms. Hayes said the uncertainty of his intentions for 111 West Washington concern her. She said we need more density and mixed use in the downtown. This place is not appropriate for him but there are other places in town that would be a better fit.

Mr. Hollis said to show how little his storage is, he currently has a 10 foot by 20 foot area for storage. He said he is not a hoarder and uses left over materials on another project. He said presently he only has one office employee and he subcontracts out most of the work. He said he will put up decorative fence around 111 West Washington and do landscaping.

There being no further comments from the public, the floor was closed.

Darren Hiley said for clarification he wanted to make sure that letter referenced in comments was the one in the packet. Staff said that is correct.

## **CONDITIONAL USE PERMIT-ATLAS CONTRACTING 115 W WASHINGTON**

Kyle Creeden said he has problem with trailers on the concrete area. He said we have issues with Nuts and Bolts growing into the parking lot and La Fuente extending parking onto adjoining lot.

Mr. Hollis said he won't be putting items outside and he is going to enclose the area with decorative fencing.

Darren Hiley asked if there are any changes to the site, won't it have to come back to the Commission. Staff said that is true and they changed Staff comments to say all materials be stored inside and only trailers on the back concrete area.

Chuck Davis asked if the trailers are enclosed. He said he had no problem with enclosed trailers. Mr. Hollis said one is enclosed and the other is a fourteen foot Lamar trailer.

Jason Hoyt said four or five years ago he worked on the Revitalization Program and we got Missouri Mainstreet Program Grant. He said the purpose was to bring business to downtown, be family friendly and have it where you could walk around downtown and shop and eat. He said it was convenient when the garage sold and Rock and Run Brewery came to town because it would also bring people downtown. He said he feels it is a step backwards to allow this CUP on this property.

Chuck Davis said a flat bed trailer concerns him some but if materials are stored inside that is fine. He said if the business meets the ordinances than we really can't tell someone they can't bring their business to the location.

Chuck Davis said the CUP should help to hold the tenant to the conditions and they would have to come back if they do anything on 111 West Washington. He asked Staff if they were confident they could control the conditions. Staff said with the CUP and CBD it is pretty easy to control.

Eric Shumate said that the zoning code contemplates the possibility of this use in commercial areas because it is listed as a conditional use.

Kent Porter said he is working out of his home now and we haven't had any complaints. He said this is possibly not what everybody wanted but if Atlas Contracting does what they say they are going to do it is better than an empty building with nothing in it for years.

Darren Hiley asked how far West the CBD goes. Staff said it goes West to the creek and then includes this property. Across the street isn't in the CBD. He said the CUP restricts use to what is already in the ordinance. He said this is a legal use and is a viable business. He said it is better than an eye sore.

Kyle Creeden said this doesn't fit into the downtown revitalization.

**CONDITIONAL USE PERMIT-ATLAS CONTRACTING 115 W WASHINGTON**

A motion was made by Eric Shumate and seconded by Chuck Davis to recommend to the Board of Aldermen to approve the application from Brent Hollis, Atlas Contracting, proposing to locate a contractor's shop/yard at 115 West Washington Street including the vacant tract East of the building, at 111 West Washington, contingent upon meeting all Staff comments presented. The motion carried by a vote of four to two with Kyle Creden and Jason Hoyt voting nay.

**FALCON HILL VILLAS-REZONING TO R-P-1 WITH CONCEPT**

**PLAN/PRELIMINARY PLAT** Staff presented an application from Travis Hedrick, Travis Hedrick Construction for rezoning approximately 3.56 acres to R-P-1 – low density residential planned district with concept plan and preliminary plat of Falcon Hill Villas.

They are proposing a ten lot single-family residential development located along the North side of West 19<sup>th</sup> Street, on the East side of the railroad tracks.

The proposed R-P- 1 zoning will allow the developer to have lots 70 feet wide, rather than the 75 feet wide minimum. Lots range in size between 9,800 to 17,550 square feet, well in excess of the minimum 8,250 square feet. Overall density is less than allowed in the district.

The Plan also proposed a 20 foot building line along 19<sup>th</sup> Street, while restricting driveway access only to the internal street. No driveways will be located along 19<sup>th</sup> Street. Proposed fencing along 19<sup>th</sup> Street will be black decorative fence.

The subdivision is proposed as a maintenance-free community, with yard maintenance addressed by the HOA. The applicant has also discussed making this a more exclusive neighborhood with decorative fencing, berms and gated entrance.

If gated, the proposed gate will be located 20 feet North of the 19<sup>th</sup> Street right-of-way line or 30 feet from the back of 19<sup>th</sup> Street, allowing room for a vehicle to wait for the gate to open. The fire district requested the gate be located at least 25 feet from the back of 19<sup>th</sup> Street and a key box for emergency operation.

The property owner to the North has talked to the applicant and also submitted an email letter to the City. They commented that they would like the houses to have basements, that outbuildings not be allowed and have decorative fencing to match Mirabella. The draft covenants and restrictions that were submitted do restrict out-buildings and the fence requirements match those of Mirabella.

A homeowners association will be created to address maintenance of yard areas, any stormwater detention and/or any privacy gate. Covenants and restrictions will be reviewed as part of the final plat.

The floor was opened to the public. There being no comments from the public, the floor was closed.

**FALCON HILL VILLAS-REZONING TO R-P-1 WITH CONCEPT PLAN/PRELIMINARY PLAT**

Kyle Creden asked what the sideyard setbacks were. Staff said they are 7.5 feet and there is 20 foot setback along 19<sup>th</sup> Street.

Jason Hoyt asked if these homes would have basements. Travis Hedrick said yes they would.

Eric Shumate asked if this would get sewer from the North. Travis Hedrick said yes and he said they might have to put in grinder pumps in the very Southwest corner.

Kent Porter asked if these were maintenance free. Travis Hedrick said the HOA will be in charge of the mowing and snow removal. The front and side yards will have sprinkler system.

A motion was made by Jason Hoyt and seconded by Kent Porter to recommend to the Board of Aldermen to approve the application from Travis Hedrick, Travis Hedrick Construction for rezoning approximately 3.56 acres to R-P-1 – low density residential planned district with concept plan and preliminary plat of Falcon Hill Villas. The motion carried unanimously.

**SHOPPES AT KEARNEY, LOT 4 DAIRY QUEEN SITE PLAN** Staff presented an application from Frank Lombardo, Red Spoon LLC to construct a 2,612 square foot Dairy Queen drive-thru restaurant on Lot 4 in the Shoppes at Kearney. The site is on two acres at the Southeast corner of I-35 and 92 Highway.

Staff said a final plat application has also been submitted proposing to subdivide Lot 4 into two lots. Some site improvements, including extra parking, shared drive aisle and trash enclosure, would be located off the lot to be retained by Dairy Queen. An agreement between the two property owners will be executed to address cross-access, ownership improvements and maintenance.

Access to the site is located at the Southeast corner of the property as driveway access to 92 Highway is restricted.

Stormwater from the building and parking lot will be directed to a sediment basin located at the West end of the property. The City engineer has reviewed and approved the plan for stormwater.

The project proposes 52 parking spaces, including two ADA parking spaces. The code requires 26 spaces, based on 1 space per 100 square feet of floor area. They do have additional seating inside the store, so more spaces are needed.

**SHOPPES AT KEARNEY, LOT 4 DAIRY QUEEN SITE PLAN** Several of the overflow parking spaces are proposed to be located within an area marked as a 45 foot access easement on the proposed final plat. Ownership, use and maintenance of this area will be addressed by a private agreement between the two property owners.

A trash enclosure is proposed at the Southwest corner of the building. The enclosure will be located within the proposed 45 foot wide access easement along the East side of Lot 4B.

A sidewalk will be installed along Star Drive, with a sidewalk connection being made to access the site.

Wall signs are proposed on the North and East elevations. Free-standing signs are not proposed at this time.

Eric Shumate said he was glad to see no pedestrian crossing of the entrance road. He said he liked the lay out but wondered about visibility coming out of the drive thru by the trash corral. John Odem said they have this at their other store and there is no problem.

A motion was made by Jason Hoyt and seconded by Kent Porter to recommend to the Board of Aldermen to approve the application from Frank Lombardo, Red Spoon LLC to construct a 2,612 square foot Dairy Queen drive-thru restaurant on Lot 4 in the Shoppes at Kearney at I-35 and 92 Highway contingents upon meeting all Staff comments. The motion carried unanimously.

**SHOPPES AT KEARNEY-FINAL PLAT REPLAT LOT 4** Staff presented an application from Commercial Equity, Inc for Shoppes at Kearney First Plat Replat of Lot 4 final plat, proposing to subdivide Lot 4 into two separate lots. Lot 4A is the proposed location for Dairy Queen. An associated site plan application has been submitted. Lot 4B would be available for future construction of another commercial site.

The final plat proposed a 45 foot wide “parking and access easement” on the East side of proposed Lot 4B. Per the Dairy Queen site plan, this 45 foot wide area will allow several of the extra parking spaces, shared access drive and Dairy Queen trash enclosure to be located on Lot 4B. Ownership, use and maintenance of this area will be addressed by a private agreement between the two property owners.

Star Drive provides access to both proposed lots, as access to 92 Highway is restricted. An access easement will be provided for access to Lot 4B.

Storm water from the Dairy Queen site will be piped to a sediment basin on the West side of Lot 4B. A utility easement is shown on the plat.

A motion was made by Jason Hoyt and seconded by Kent Porter to recommend to the Board of Aldermen to approve the application from Commercial Equity, Inc for Shoppes at Kearney First Plat Replat of Lot 4 final plat, proposing to subdivide Lot 4 into two



separate lots, contingent upon meeting all Staff comments. The motion carried unanimously.

Due to conflict of interest on next item on the agenda, Kent Porter left the meeting.

**OLD BUSINESS**

**WINDGATE RANCH – REZONING/PRELIMINARY PLAT** Staff said because of the error in the posting of the rezoning notice in the paper we need to simply open the meeting to public comment and then table the application until complete plans have been submitted.

The floor was open to the public.

There being no comments from the public, the floor was closed.

A motion was made by Jason Hoyt and seconded by Eric Shumate to table the rezoning/preliminary plat for Windgate Ranch until a future meeting. The motion carried unanimously.

**ENCLOSURES/DISCUSSION**

**LA FUENTE** Staff said they should be closing on the additional land very soon. They were advised by their attorney to not do the work until the real estate deal was closed.

**NUTS AND BOLTS** Staff said a letter had been sent to Nuts and Bolts about outside storage and they were given a date in January to become compliant.

**PEDESTRIAN BRIDGE** Staff said everyone should go out and see the pedestrian bridge that is connecting Mack Porter Park and Jesse James Park.

**EAST 92 HIGHWAY SIDEWALK** Staff said we are doing a cost share with MoDOT on the sidewalk project from 33 Highway to Porters. Hopefully we will be able to start working on that soon.

**ADJOURNMENT** There being no further business on the agenda, a motion was made by Chuck Davis and seconded by Kyle Creden to adjourn. The motion carried unanimously.

Approved: \_\_\_\_\_ Attest: \_\_\_\_\_  
Darren Hiley, Acting Chairperson