

## MINUTES

The **Rogers Planning Commission** met for a *regular session* in the Council Chambers of the Maurice H. Kolman Building on February 7, 2017 at 4:30 P.M. The meeting was called to order by Chair Don Spann. Those in attendance were led in the Pledge of Allegiance.

### **MEMBERS PRESENT:**

Commissioners Dennis Ferguson, Barney Hayes, Kevin Jensen, Myra Moran, Mark Myers, Tony Noblin, Mike Shupe, Don Spann and Eriks Zvers.

### **OTHER OFFICIALS PRESENT:**

City Clerk Peggy David, Community Development Director John McCurdy, Senior Staff Attorney Jennifer Waymack, Project Engineers Nathan Becknell and Lance Jobe, City Planners Lori Ericson, Ethan Hunter, and Kara King, Fire Marshal Bill Rumsey, Water Utilities Engineer Stephen Ponder, and Councilmembers Mark Kruger and Marge Wolf.

### **ACTION ON MINUTES:**

(January 17, 2017)

**Approved.**

Motion by Hayes, second by Jensen to approve the minutes of the January 17, 2017 meeting as submitted.

Voice vote: Yes - Unanimous. ***Motion carried.***

### **REPORTS OF BOARDS AND STANDING COMMITTEES:**

City Planner Lori Ericson announced that beginning with this meeting, commissioners are receiving a new version of staff reports for each agenda item. For future meetings this information will be provided in a notebook that each commissioner will receive in the committee meetings prior to the commission meeting.

Ericson asked commissioners to give suggestions or comments if there were something additional that they wanted included in the staff reports.

There was no report from Lot Split Committee and Subdivision Commission reported there is nothing to report for this meeting.

Commissioner Noblin reported the Large Scale Development Committee met and recommended approval for New Business Agenda Item #3 First Baptist Church *with the Waiver to allow 16 parking spaces between tree islands rather than 15*; Agenda Item #4 Mercy Bed Tower; Agenda Item #5 Woodland Park; and Agenda Item #6 Daisy Outdoor Products *with the approval of the four waivers as follows*:

- a. *Waiver of fee-in-lieu for detention reduced to \$30,000*
- b. *Providing a minimum 2-foot cover over storm drainage pipes in traffic areas*
- c. *Minimum pipe slope of 0.4%*
- d. *2-foot freeboard over Hydraulic Grade Line*

Motion by Noblin, second by Myers to move Agenda Items #3, #4, #5 & #6 to the consent agenda with the conditions as listed.

Voice vote: Unanimous – Yes. **Motion carried.**

**CONSENT AGENDA:**

Motion by Noblin, second by Jensen to approve the Consent Agenda.

Roll call: Unanimous – Yes. **Motion carried.**

**OLD BUSINESS:**

None.

**PUBLIC HEARINGS:**

(Agenda Item #1)

A request by Alexandra Galleur for a Conditional Use to allow daycare (limited) at 1303 S C Court in the R-AH (Residential Affordable Housing) zoning district

Galleur requested a Conditional Use Permit for a daycare at her residential home which would be licensed by DHS for 10 children and monitored through the state. The hours of operations would be Monday thru Friday from 7 a.m. to 5:30 p.m. and closed on the weekends. Traffic would be generated from 7 a.m. to 8 a.m. and 5 p.m. to 5:30 p.m. This is located in a cul-de-sac which makes it easier for traffic to go through. There is an area where there is no home so parking could be on the street without blocking any

driveway. Her car will be parked in the driveway and it is estimated that there will only be 5 cars on a regular basis because she and her children will be there. No signage will be placed in the yard and additional noise will be generated for one hour a day while the children are playing outside. An inspection by the Fire Marshal is expected and fire extinguisher is on site at all times. There is a ten ft. high fence.

Commissioner Hayes asked, “Do you live at this property?”

Galleur responded, “No, it was originally a rental property that my husband and I own. We just decided to use it for this instead.”

Hayes said, “So you’re using this as a commercial operation.”

Galleur responded, “Yes”.

There were no comments from anyone in the audience either for or against the conditional use permit.

The Public Hearing was declared closed.

Commissioner Hayes said he is concerned about setting up a commercial business in a residential area.

Chair Spann said he agrees that this appears to be a commercial business with no one living there.

Galleur responded, “There will be someone living there because her full-time employee and child will live there as part of her pay.”

Commissioner Jensen said, “Residency is an issue, but considering the way those houses are packed in I’m not sure that I can approve this because the residency is not permanent.

Commissioner Noblin asked, “The displayed map shows the adjacent lots as vacant, is that still the case?”

Galleur responded, “No, all have been built out. My house is not shown and is the one with the biggest front and back yard in the neighborhood.”

Commissioner Hayes said, “In consideration of to the density and residency I cannot support this.”

**Denied.**

Motion by Hayes, second by Noblin to approve the Conditional Use Permit as requested.

Voice vote: Unanimous – No. ***Motion fails.***

(Agenda Item #2)

A request by Hillary Gould for a Conditional Use to allow child care at 500 N Dixieland Road, Suite 1 in the C-3 (Neighborhood Commercial) zoning district

Bill Watkins, representing Hillary Gould, requested the Conditional Use Permit for a child care facility in a C-3 zone.

Watkins said this has previously been operating as a day care, but due to a change in ownership, the conditional use permit cannot be transferred and is required by the new owner. Nothing will change at the location, just the owner. The state license allows for up to 18 children, but there are currently nine children.

Commissioners asked about adjacent operations in the complex which include a dog grooming business, insurance agent and owner of the building who has an office there. Traffic concerns would be prior to the other businesses opening and after closing in the evening.

The public hearing was opened.

There were no comments from anyone in the audience either for or against the conditional use permit.

The public hearing was declared closed.

Watkins said that due to a recent conditional use permit that was overturned by the City Council certain findings as mentioned in City Code Sec. 14-723 were not found and asked that findings be addressed.

Staff Attorney Jennifer Waymack read 14-723(a)(3) & (b) as follows:

*(3) Consideration by the Planning Commission of the following factors:*

*(A) Whether the use is a conditional use in the district requested and that the property under application is zoned correctly;*

*(B) Whether the use would be compatible with the adjacent property and uses would not set a precedent contrary to the City land use plan;*

*(C) Whether all other zoning requirements such as yards, off-street parking, lot width and screening and buffering can be met; and*

*(D) Whether ingress and egress for the proposed use will create a traffic hazard.*

*(b) The Planning Commission may deny a conditional use if in its opinion any of the above conditions cannot be met.*

Commissioner Jensen noted that these things have been considered, but do not have to be read into the motion.

Waymack agreed.

Jensen said in reading of the requirements, the use requires a permit, the zoning is correct and traffic has been considered.

**Approved.**

Motion by Jensen, second by Myers to approve the conditional use permit as submitted.

Voice vote: Unanimous – Yes. ***Motion carried.***

(Agenda Item #3)

A request by Stewart's Automotive for a Conditional Use to allow vehicle service at 702 N 2<sup>nd</sup> Street in the C-2 (Highway Commercial) zoning district

Leonard Stewart requested the conditional use permit for light-duty maintenance and tune-ups at this location.

Stewart said he has worked as manager at Bob Maloney Ford and Kent Riley Chevrolet for the last twenty years and has moved out on his own. Most of his business is from other used car dealers/shops that need diagnostics done before the vehicles are taken to the dealership. Very little business is done for the public. Working on eight to ten vehicles a day is typical.

Stewart said he has one other part-time employee and this location has been a shop for the last fifty years. A lot of maintenance work has been done to the building to get it up to standards. The fleet companies bring their cars and pays for the diagnostic service.

Jensen asked, "Is the front paved, but the back is not?"

Stewart responded, "Yes".

Hayes asked, "Do you anticipate that more paving improvements will be done?"

Stewart responded, "Yes, hopefully, in the future, if everything goes right."

Spann asked, "Are you aware of the issues that have occurred at this location in the past?"

Stewart responded, "Yes, I have heard a lot of stories. I have cleaned up a lot of things

that needed attention. I've re-graveled the back parking lot."

The public hearing was opened.

Mark Kruger, 1409 Hilltop Farms Lane, spoke in favor of the conditional use permit for this location that was a former service station, knows about the issues with the previous tenant and said that he has known Stewart for many years and trusts him to do the right thing.

There were no other comments either for or against the conditional use permit from anyone in the audience.

The Public Hearing was declared closed.

City Planner Ericson asked Mr. Stewart if he had graveled more space between the buildings.

Stewart answered that he had added gravel to the existing gravel area and the grass area is still grass.

Ericson suggested that the commission should consider a waiver to allow the gravel parking. Typically a waiver for parking of stored vehicles on gravel is allowed if screened.

Myers asked, "How many vehicles can park on the paved area?"

Stewart responded, "The majority of the parking would be on the side to leave the front clear."

Commissioner Jensen noting the list of considerations previously read indicates that the use of the building is compatible with the area; the zoning is correct for this use and if any future gravel is required that you contact the Planning Office before that happens; and that the traffic would not be a factor.

**Approved.**

Motion by Jensen, second by Myers to approve the Conditional Use Permit subject to the following conditions:

- No vehicle sales or rentals.
- No outdoor vehicle maintenance.
- No outdoor storage of tires or other equipment.
- Limit of 8 vehicles on-site.
- Must adhere to all city codes including sign code.

Commissioner Shupe asked, “Can you abide by the eight vehicles that would include your own vehicle?”

Stewart responded, “Ten would be better”.

Myers commented, “You could always come back at a later date, if you need more. You will have one inside most all of the time.”

Voice vote: Unanimous – Yes. **Motion carried.**

(Agenda Item #4)

A request by Camp War Eagle, Inc. for a Conditional Use to allow commercial assembly, recreation, and entertainment at a 9.78-acre tract of land north of Hudson Road in the C-2 (Highway Commercial) zoning district

Pete Day, representing Camp War Eagle, requested the Conditional Use Permit for a location that will be built for children activities. The building will be used for the children’s day-camp activities during 10 weeks in summer and after-school programing and will include a gymnasium with two basketball courts, office space and programing space.

Camp War Eagle has been providing these after-school programs at First Baptist Church and Grace Hill Elementary and would like to add this location. The hours for after-school programing would be 3 p.m. to 7 p.m. and during the summer 9 a.m. to 5 p.m. The staffing would include 4 to 5 at the site and for the after-school program transportation is provided by bus. During the summer for the day-camp programing, parents will drop-off and pick-up the children.

Day said the only access is the entrance behind the Tire Tracks location and another access to the west is being acquired that will connect from W. Storage Parkway Road.

Jensen asked planning staff “Is there a zone that this would fit in so that if this goes away there would be a building only usable for certain uses.

Day said the planning staff determined the zoning is appropriate and the conditional use is needed.

The public hearing was opened.

Tim Sorey, 812 Stratton Road, said his residence is in Little Flock just north of this and spoke in favor of the conditional use permit and supportive of the use as long as there is no night-time events. The conditional use permit would be preferable than a rezoning.

The Public Hearing was declared closed.

Jensen asked Mr. Day, “What would be the times when events would be at night?”

Day responded, there will not be any lights on the outside fields and there might be some activities at night that would finish up by 9:00 p.m.

Commissioner Myers noted that considering this property is zoned C-2, this type of use is a lot better than a typical C-2 commercial use and complies with the 14-723(a)(3) & (b).

**Approved.**

Motion by Hayes, second by Shupe to approve the conditional use permit as requested subject to the condition that the applicant must adhere to all city codes, including the sign code, and understands that the project will proceed through the large scale development process.

Voice vote: Unanimous – Yes. **Motion carried.**

(Agenda Item #5)

A request by BCCSO, LLC, Arkansas Arts Academy, to rezone 506 W. Poplar Street from a N-R (Neighborhood Residential) to COM (Commercial Mixed Use)

Bill Watkins, representing Arkansas Arts Academy, requested the rezoning from N-R to COM which has nothing to do with the change of use. The rezoning is simply to make the current use fit the zoning and ensure that the new buildings that are being planned can have the proper setbacks which would eliminating multiple variance requests with the N-R zone. The proposed COM zone fits in with the downtown plan.

The public hearing was opened.

Holt Holyfield, 312 S. 4<sup>th</sup> Street, spoke in regard to parking or lack thereof.

Holyfield said he isn't against the project, but is concerned that parking will be an issue that will result in parking in the streets and traffic waiting to pickup children.

The Public Hearing was declared closed.

Watkins addressed Mr. Holyfield's concern saying that the parking plan will be submitted with the large scale development plan. There will be on-site parking as well as off-site parking and there is an on-going discussion with a nearby church to utilize their parking for special events. The parking requirements are part of the large scale that will have to be met.

Commissioner Myers said this is the appropriate request that fits in with the downtown plan.

**Approved.**

Motion by Myers, second by Ferguson to recommended approval to the City Council the rezoning from N-R to COM as requested. Roll call: Unanimous- Yes. **Motion carried.**

RPCM – 2/7/17

(Agenda Item #6)

A request by Kerri Elder to rezone a 1.53 acres on the north side of the intersection of W. Maple Street and N. 23rd Street from C-2 (Highway Commercial) to RMF-15B (Residential Multifamily, 15 units per acre with ownership)

**Withdrawn**

City Planner Ericson reported that an email request was received prior to coming to this meeting asking that this item be withdrawn.

Motion by Noblin, second by Jensen to withdrawn this item.

Voice vote: Unanimous – Yes. ***Motion carried.***

**NEW BUSINESS:**

(Agenda Item #1)

WAIVER, Torino Estates, a five-lot subdivision for a private drive that doesn't meet city street requirements at the northwest corner of W. Capps Road and S. 26<sup>th</sup> Street in the city's A-1 (Agricultural) zoning district

A representative (name not provided) for the developer, said the request is to waive curb and gutter for the private drive of this six-lot subdivision. The road has been there for almost two years, has been material tested, there have been no drainage issues and will allow for a more natural effect. The houses will face the private street rather than Capps and Perry. The road was previously named and approved by the Fire Chief but was not approved by the Planning Dept.

Ericson said the required width for a minor street is 30-ft. This street is 16-ft. wide; the material testing that was done but does not give details on the base so we don't know what is there. When this came in the street improvements were waived because it was such a small development. Now they want to have a private street which should meet city standards.

Commissioners agreed that the city standards for streets should be met and that private streets should support the weight of fire equipment.

Myers reminded the commissioners that when private drives are development eventually they want the city to accept them and if they are not built to city standards in the beginning then it becomes a tax burden for all citizens of Rogers to fix these streets.

Jensen said he could support waiving the curb and gutter, street trees and sidewalks, but the street needs to be built to the correct width and be able to support the weight of a fire truck.

**Denied.**

Motion by Jensen, second by Noblin to approve the waiver as requested.

Roll call: Jensen, Moran, Myers, Noblin, Shupe, Zvers and Hayes – No; Spann – abstains. ***Motion fails.***

Commissioner Myers as a point of personal privilege recognized a citizen who wanted to ask a question.

Tammy Terry, 15600 Bumblebee Lane, said she has bought of lot in this subdivision and asked what the developer needs to do so that she can get a building permit to build her house.

Planning Staff agreed that they would provide Terry with options to proceed.

(Agenda Item #2)

WAIVER, American Legion, a request to waive the streetlight requirement for a large-scale project for an addition at 711 W. Persimmon Street in the city’s R-DP (Residential Duplex Patio) zoning district

Dave Cook and Bob Clinard, representing American Legion Post #100, requested a waiver for a streetlight.

Clinard said the cost to install the decorative pole and light that is required by the city for the American Legion would be around \$8,000 and said that SWEPCO could put up a pole with light for the cost of \$30 a month.

Clinard said there is plenty of light elsewhere on the property and lighting from the Post Office across the street.

Commissioners discussed the requirement of placement of street lights every 200-ft. and the specific pole and light which will be standardized throughout the city.

Clinard said the improvements to the existing building will add needed space but the requirement for the street light is cost prohibitive.

Cook explained that because the American Legion is a non-profit, every dollar not needed for the expense of the building is used for local veterans and their families in need. This could be in form of paying for hotel for a week for a veteran who has been evicted, for utility bills, for car payment or any other needs to help them get back on their feet.

Commissioners discussed the request and considered whether this requirement could be deferred for a certain amount of time or if there were other hardships that need to be considered.

Jensen asked the Staff Attorney if there were any provisions that would allow for a deferment of requirements and if they didn't comply, how long would they have before some actions was taken.

Staff Attorney Waymack said there is not an outright provision that prohibit the deferment. The new part of the building could not be used until the requirements of the Large Scale Development have been met and a Certificate of Occupancy is issued.

Commissioner Myers said eventually something is going to develop on the corner and that street light will be needed.

Cook said that \$8,000 could be used for a lot of veteran services.

Jensen asked what the need for a light is if there is sufficient light in the area and it is less than 200-ft. of the nearest light. I'm more comfortable with saying no light is needed than rather half measures with a SWEPCO light.

Myers said when considering the need you have to consider all of the Legion property which is over 250-ft. away from the nearest street light.

Waymack advised that a decision on approving or denying the waiver is the best option. All of the discussion of the non-profit groups and need is relevant, but there are legal provisions that prevent the city from subsidizing non-profits. In your deliberations if what you are saying is we want to grant a waiver because they can't afford this, that is an appropriate finding. If what you are saying is we like this non-profit and want to help them, you cannot make that consideration. We have to treat everyone in the community the same. Whatever precedent is set it should be administered the same across the board and not just for non-profits. If you want to waive the requirement, then a recommendation should be made from the Community Development Director, then you can make the motion and move forward.

Community Development Director McCurdy said he would prefer to make the recommendation based on the light as being unnecessary rather than cost prohibitive.

Commissioner Hayes said, "Setting a precedent makes me very nervous."

Clinard asked if there was a specification for the lumens that are required and could have an engineer come out and determine the need for a light.

McCurdy said that is a concern, but this is just one of the street design requirements.

Myers said also a consideration is the appearance of the street and how we would like for the city to develop with uniform lights and spacing.

Myers said he supports a time requirement but think that they need to comply when they can.

Jensen asked is there a legal vessel to do that?

Waymack said there is nothing clearly stated in the city code. You have the authority to waive or not the request.

Clinard said he has checked for the availability of the specific pole and light and it cannot be delivered for four to five months and the project will be completed in two months. We can prove to you that the items have been ordered and are waiting for the delivery.

**Approved.**

Motion by Ferguson, second by Shupe to approve the waiver for a 24-month period to bring the lighting requirements in compliance.

Discussion followed with Mr. McCurdy saying he supports what the commission is trying to do and as a veteran supports the American Legion but asked the commission, is this what they are proposing something that they would do for anyone else?

Roll call: Moran, Myers, Shupe, Spann, Ferguson – Yes; Noblin, Zvers, Hayes and Jensen – No. ***Motion approved.***

Commissioner Noblin asked the commission to consider what Mr. Watkins was saying about stating the findings for a conditional use permit,

McCurdy said he doesn't see the need to address those considerations and thinks that if we document the four elements either by requiring the applicant to fill out the questionnaire or having the staff address

them, but the applicant would be more appropriate.

(Agenda Item #3)

LSDP First Baptist Church a small building addition and 188-space parking lot for an existing church at 3364 W. Pleasant Grove Road in the city’s A-1 (Agricultural) zoning district

**Approved** on the Consent Agenda

(Agenda Item #4)

LSDP Mercy Bed Tower, a 125-foot tall and 125,629-square-foot addition to the existing hospital at 2710 S. Rife Medical Lane in the city’s C-2 (Highway Commercial) zoning district

**Approved** on the Consent Agenda

(Agenda Item #5)

LSDP Woodland Park, a 426-unit multifamily development at 4000 S. Dixieland Road, a 19.89-acre lot in The Grove PUD and in the city’s RMF-22B/PUD (Residential Multifamily, 22 units per acre, rentals, Planned Unit Development) zoning district

**Approved** on the Consent Agenda

(Agenda Item #6)

LSDP Daisy Outdoor Products, a 114,620-square-foot addition to a manufacturing building at 308 W. Stribling Drive in the city’s I-1 (Light Industrial) zoning district

**Approved** on the Consent Agenda

There being no further business, the meeting adjourned at 6:17 P.M.

**ATTEST:**

**APPROVED:**

\_\_\_\_\_  
Barney Hayes, Secretary

\_\_\_\_\_  
Don Spann, Chair