

CITY OF CLEARWATER, SEDGWICK COUNTY, KANSAS

PLANNING COMMISSION MINUTES

FEBRUARY 2, 2010

The regular meeting of the City of Clearwater, Sedgwick County, Kansas, Planning Commission was held on Tuesday, February 2, 2010 at 7:00 p.m., in the Clearwater City Council Chamber, City Hall at 129 E. Ross Avenue, Clearwater, Kansas.

The following members were present: Lonnie Stieben, George Rudy, Mike Machart, and Ryan Shackelford. Les Langston was absent. The following City staff members were present: Kent Brown, City Administrator and Cheryl Wright, City Clerk. Hank Pate, citizen also attended the meeting.

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1. Approval of Minutes of the Meeting of December 1, 2009

Mike Machart questioned why when it only takes a vote against one statutory condition why in the minutes there is a reason by all five of the statutory conditions. City Administrator Brown stated that the Planning Commission is acting like a judicial body and if the decision is appealed to District Court if one of the items gets thrown out there are the other four to consider.

MOTION: The motion to approve the minutes was made by Mike Machart seconded by George Rudy and passed unanimously.

The Planning Commission meeting for January 5, 2010 was cancelled due to lack of a quorum.

City Administrator Brown stated that the Mayor accepted with regrets the resignation of Don Berntsen from the Planning Commission at the January 12, 2010 Council meeting.

2. Public Hearing Variance 301 S. Second

At 7:08 p.m. Lonnie Stieben opened the Public Hearing for a variance to the 900 square feet of accessory structures at 301 S. Second. City Administrator Brown reviewed that the request is to demolish a small shed in the backyard and build a 24' X 22' garage. The problem is that also in the backyard is a 36' X 18' swimming pool. The total amount of all detached accessory structures allowed in R-1 is 900 square feet and the request is for 1,176 square feet. The other requirement is that there can only be 30 percent lot coverage of accessory structures and that is not a problem. Brown stated that even though a pool is built

down it is still considered an accessory structure. Brown stated that the setback in the rear for an accessory structure is six feet. Hank Pate distributed a copy of plans for the garage with an overhead door on the north side of the garage or to the side yard facing Park Ave. Pate stated that he plans to make the garage look similar to the house. With no other comments by the members of the Commission or Hank Pate, Lonnie Stieben closed the Public Hearing at 7:26 p.m.

Lonnie Stieben stated that the Planning Commission has to show finding on each of the five statutory conditions and all have to be supported in order to approve the variance.

(1) Uniqueness (“that the variance requested arises from such condition which is unique to the property in question and which is not ordinarily found in the same zone or district; and is not created by an action or actions of the property owners or residents”)

By consensus the Commission supported the variance. The applicant is staying within the 900 square feet of above ground accessory structures. The in ground pool is making it necessary to request the variance.

(2) Adjacent Property (“that the granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents”)

By consensus, the Commission supported the variance. Only one person in the 200 foot areas around the property called and they were for the variance.

(3) Hardship (“that the strict application of the provisions of the zoning regulations of which variance is requested will constitute unnecessary hardship upon the property owner represented in the application”)

By consensus, the Commission supported the variance.

(4) Public Interest (“that the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare”)

By consensus, the Commission supported the variance.

(5) General spirit/Intent (“that the granting the variance desired will not be opposed to the general spirit and intent of the zoning regulations”)

By consensus, the Commission supported the variance

MOTION: Mike Machart made a motion to support all 5 statutory conditions and approve the variance. Ryan Shackelford seconded the motion and it passed on a roll call vote of 4 to 0.

3. Public Hearing Variance 604 E. Ross

At 7:36 p.m. Lonnie Stieben opened the Public Hearing for a variance to the 25 foot front yard setback at 604 E. Ross. City Administrator Brown explained that the City Park is zoned R-1 (residential single family), and parks are allowed in R-1. Brown continued to state that Ross Ave. has a 50 foot right-of-way, therefore; any building would have to be 75 foot from the center line of Ross Ave. The City of Clearwater is requesting a variance to the 25 foot front yard setback; otherwise the restroom/concession stand would have to be built in the outfield of the ball diamond. Brown explained that the current concession stand that will be demolished and the request is to put the new building in the same location. Brown explained the location of the water and sewer lines.

Lonnie Stieben stated that he has a huge concern and would like to know what happened during the Council meeting with Don Mertens and his request to overrule the Planning Commission. City Administrator Brown reported that Mertens received letters from the utility providers and was trying to get the Council to approve building in the utility easement. Brown stated that there are two issues. Mertens was told that the variance is first and foremost before any utility easement and the variance was not supported by the Planning Commission and the only recourse is District Court. Stieben stated his personal concern is that is there a precedent of being inconsistent in the decisions. Brown stated that it is a completely different set of issues. Another residential structure is more the same type of issue as Mertens. The issue regarding the concession stand is within the setback, but it is on an arterial street not on a residential street and in a front yard not in a back yard. George Rudy stated that he is bothered with the fact that it should have been figured out prior to the demolition of the current building. Brown stated that a building can be demolished without requesting a building permit, they are separate permits. George Rudy stated isn't this situation the reason Don Berntsen resigned from the Planning Commission. Brown stated that he resigned because the City went through the bid process and did not accept any of the bids. The Public Works Director convinced the Council that he could build the building cheaper doing it in coordination with a general contractor. Brown stated that Berntsen does not like that Ernie Misak is going to manage the building process and believes any construction should be done by a contractor. Brown stated that the resignation was before the City knew that a variance would be required. Stieben questioned if the Council could overrule the Planning Commission's decision on a variance. Brown stated that the only recourse after the Planning Commission is District Court. George Rudy stated that he has been asked to bid on the construction of the building and questioned if he should abstain from voting on the issue. Brown stated that this decision is for the location and the bids have not been let so there is no direct benefit. The Commission briefly discussed the location of the new construction and the reasons for choosing the current location.

At 8:10 P.M. Lonnie Stieben closed the Public Hearing. The Commission now has to consider the five statutory conditions.

(1) Uniqueness (“that the variance requested arises from such condition which is unique to the property in question and which is not ordinarily found in the same zone or district; and is not created by an action or actions of the property owners or residents”)

only By consensus, the Commission supported the variance. This tract of land was donated by a family to the City for the particular use as a multi-purpose park. This is the park in the City that is for a gathering place for families. Amerine stated that the park is small for a City the size of Clearwater.

(2) Adjacent Property (“that the granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents”)

By consensus, the Commission supported the variance. There were only 2 inquires about the letter they received and their only concern was how it would affect their property.

(3) Hardship (“that the strict application of the provisions of the zoning regulations of which variance is requested will constitute unnecessary hardship upon the property owner represented in the application”)

By consensus, the Commission supported the variance as it would cost the City additional if the building was built in a different location.

(4) Public Interest (“that the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare”)

By consensus, the Commission supported the variance. The new building will be placed in the same location as the previous concession stand. The restroom is a replacement for a restroom that burnt previously.

(5) General Spirit/Intent (“that the granting the variance desired will not be opposed to the general spirit and intent of the zoning regulations”)

By consensus, the Commission supported the variance. A City can ignore the variance process, but it was decided by the Council to bring the variance request before the Planning Commission the same way and person would have to present a variance request.

Lonnie Stieben stated he has a real problem voting on the issue until he can hear the opinions of the City Attorney. Brown stated that Janet Amerine is out of state, but she can be reached by telephone. George Rudy suggested calling Amerine. Brown phoned Amerine and after a brief discussion it was decided to recess the meeting and resume the meeting on Thursday, February 18, 2010 at 7:00 p.m.

At 7:06 p.m. February 18th Lonnie Stieben opened the recessed meeting of February

2nd. City Attorney Amerine stated that she understands that the Commission is concerned that they have been consistent in their actions especially concerning one of the last decisions in Chisholm Ridge. Amerine explained that District Court would not be looking at the last decision by the Planning Commission. Each decision is viewed individually and they would be looking to see if it was a completely arbitrary decision, or corruption, or undue influence was involved. Amerine gave an example from Harper County. Amerine stated that she is careful that each statutory condition is explained and she will not let the Commission make a decision that can be challenged.

MOTION: Mike Machart made a motion to approve the variance finding that all five statutory conditions have been met. Ryan Shackelford seconded the motion and it passed on a roll call vote of 4 – 0.

3. Adjournment

With there being no further business to come before the Commission, Ryan Shackelford made a motion to adjourn the meeting. The motion was seconded by George Rudy and passed unanimously.

CERTIFICATE

State of Kansas }
County of Sedgwick }
City of Clearwater }

I, Cheryl Wright, City Clerk of the City of Clearwater, Sedgwick County, Kansas, hereby certify that the foregoing is a true and correct copy of the approved minutes of the February 2nd Planning Commission meeting.

Given under my hand and official seal of the City of Clearwater, this 2nd day of March 2010.

Cheryl Wright, City Clerk