

MINUTES
CITY OF CLEARWATER
SEDGWICK COUNTY, KANSAS
Planning Commission Meeting
August 6, 2013

The regular meeting of the City of Clearwater, Sedgwick County, Kansas, Planning Commission was held on Tuesday, August 6, 2013, at 7:00 p.m., in the Clearwater City Council Chamber, City Hall, 129 E. Ross Avenue, Clearwater, Kansas.

The following members were present: Dick Croft, Shawna Perry, Mike Machart, Mike Cass, Scott Howell and George Rudy.

The following members were absent: Ryan Shackelford.

The following City staff members were present: Barbara Salinas, City Clerk and Janet Amerine, City Attorney. City Administrator, Kent Brown was absent.

Approval of the Minutes of the Regular Meeting of June 4, 2013

Commissioner Croft noted the following corrections to the minutes:

Page 1: Clarification of correct address of the property for zoning variance. It is referenced as 201 in the Agenda Item caption and 210 in line three of the first paragraph of the public hearing minutes.

Page 1: Last paragraph, line one. The sentence needs the word “sit” inserted in the first sentence so that it reads, “The Commission discussed that the lot is larger than most and the shed will sit towards the back of the property.”

Page 2: Second paragraph; line four. Remove the word “support” at the end of the sentence/paragraph.

Page 3: Third paragraph; line one; Correct the designation from 118 “N” Byers to read, 118 “S” Byers.

Page 3: Motion to Adjourn; last line; Insert the word “and” so that it reads, “The motion was seconded by Mike Cass and passed unanimously.

A motion to approve the Planning Commission meeting minutes of June 4, 2013 was made, with the noted corrections, by Commissioner Croft and seconded by Commissioner Rudy. The motion passed unanimously.

Commissioner Mike Machart requested that the Commission move the Public Hearing item back on the agenda in order to recognize community members who wished to address the Commission. Commissioner Machart reminded those present that there would be no action taken as a result of the comments made during this address.

Other Matters and Concerns

The Commission recognized Glenda Baker, 137 South Second Street, Clearwater, Kansas.

Glenda Baker stated that she has been a resident of Clearwater since 1991 and voiced her objections to the manufactured home that will be located across the street. She quoted the intent and purpose from the zoning ordinance, Article IX, with regard to "R-L" Residential Low Density District. She cited low density and the prevention of uses which would devalue property.

Mrs. Baker then referenced from the same Article, Section 2; Use Regulations. She stated that although it does state that Manufactured Homes are acceptable, it is vague. She again re-stated her concerns for the devaluation of their property. She stated that according to Blue Book, these homes loses value when you take possession. She offered to share the information from the Blue Book with the Commission. She stated that she objected to the home going in based on devaluation of her property and that others residents have signed a statement declaring the same.

Mrs. Baker stated that she has visited with a realtor and was advised that their buying pool would be reduced due to the allowance of this home. She stated that when the lot was being cleared, a manufactured home was assured, but then she noticed stem wall going up. A letter was sent to the property owner voicing their objections and they were met with threats of a law suit if they continued their objections. Shortly thereafter, a No Trespassing sign was erected. Mrs. Baker stated that she felt this was done to conceal the fact that it was not a manufactured home.

Mrs. Baker stated that she spoke with Mayor Mike York and he was unaware of a manufactured home going in. She also stated that she spoke with City Administrator, Kent Brown regarding the same. She is requesting that the City not allow this.

Mrs. Baker expressed her concerns that if the property owner is not the pastor of the church anymore it could turn into a rental property.

Mr. Rick Baker, 137 South Second Street, Clearwater, then came forward to address the Commission on the same issue.

Mr. Baker stated that there is already an ordinance against mobile homes. This is going to be a trailer/mobile home. He stated that according to a former mayor, this ordinance is still on the books. He also stated that before the permit was pulled, it was against city ordinance to permit a mobile home/trailer.

Mrs. Baker stated that she had visited with city staff regarding the building permit and was not provided the information requested. They spoke to the County Inspector who confirmed that the permit was pulled as a Manufactured Home. Mrs. Baker was assured by city staff that a copy of said permit would be available for viewing or a copy provided if requested.

Mr. Baker stated that the residents of First, Second, and Third Streets do not want this in their neighborhood. He said 90% of the neighborhood does not want it. He said that the citizens of Clearwater pay city officials to look out for the community and he could not understand why they would allow this. Mr. Baker feels this action is tearing the neighborhood apart and no one wants it. He also re-stated Mrs. Baker's statement that he was threatened if his objections continued.

City Attorney, Janet Amerine quoted from the Kansas State Statutes the section that defines Residential Design Manufactured Homes. She stated that the people in this industry know this and build according to these standards. City Attorney Amerine quoted from the Kansas State Statute, Section 12-763, which states that a "... governing body shall not adopt or enforce zoning regulations which have the effect of excluding manufactured homes ...". She further clarified that the statute continues by stating that a "...governing body shall not adopt or enforce zoning regulations which have the effect of excluding residential-design manufactured homes from single family residential districts solely because they are manufactured homes."

Mrs. Baker asked if the city ordinance superseded Kansas Statutes, to which City Attorney Amerine replied that Kansas Statutes supersede city ordinance. She summarized that the Kansas legislature forbids us from disallowing manufactured homes.

Mr. Baker referenced a previous request by Randy Johnson for a manufactured home next door to Casey's. He stated that that request was denied and wanted to know why. There was some discussion regarding the history of this request, but no information was available without further research.

Mrs. Baker asked if they could object based on the devaluation of their property. City Attorney Amerine replied that we cannot discriminate against manufactured homes.

There was discussion regarding the interpretation of covenants within a homeowners association. Mrs. Baker asked about the possibility of covenants within their neighborhood. City Attorney Amerine clarified the difference between restrictive covenants, stating that it is a private entity that enforces the restrictions, agreed to by the property owners prior to purchase. She continued by stating that the property in question is under the jurisdiction of the city and is bound by Kansas legislature.

Mr. Baker re-stated that they do not want it and asked for clarification that they have no rights because they are not bound by homeowner's covenants. City Attorney Amerine re-stated that covenants are set forth by a private entity and the property in question is under city jurisdiction and bound by Kansas legislature.

Mrs. Baker asked that since the city's zoning ordinance was enacted prior, does it supersede Kansas Statute. City Attorney Amerine replied, no, State Statute always supersedes city ordinance. She stated that their remedy is with Topeka.

Mrs. Baker questioned the reference to the city zoning ordinance, Article IX, Residential Low Density District, Section 1, Intent and Purpose, which states, "...intent to minimize conflicts of incompatible uses of land ..". City Attorney Amerine stated that the city's zoning ordinance was a three year process that involved several public hearings before passage. The zoning ordinance can be amended in the future, but with regard to the property in question, the permit has been issued.

Mr. Baker stated that it is a trailer home regardless of how it is dressed up. He also wanted to know why the Planning Commission was not informed. City Attorney Amerine replied that there was nothing objectionable and that there was no reason to go before the Planning Commission.

Mrs. Baker stated asked if there was consideration because the area is a historic district. City Attorney Amerine stated that the area may be unofficially considered historic, but that an actual Historic Designation is difficult to obtain and that the Commission, in their work on the Zoning Ordinance, did not find districts within Clearwater that were obvious for special designation.

There was some discussion regarding the process of completing the existing zoning ordinance and how the public is made aware of each step in the process before it is passed by the governing body. Mrs. Baker stated that City Administrator advised the ordinance was passed in 1980, but Commissioner Machart stated it was adopted in 2005.

Mrs. Baker stated that she felt it was a decision to protect manufactured homes, or in her words, trailer trash. She asked City Attorney Amerine if she would live in an area without protective covenants. City Attorney Amerine stated that it is a personal choice to live in an area with covenants.

The Planning Commission stated that they cannot offer any assistance at this time as they are bound by the law. As a city appointed commission, they can only listen to the comments offered.

Commission Chair Machart asked if there was anyone else who wished to address the Commission.

Chris Griffin, 529 E. Ross, Clearwater, came forward to address the Commission.

Mr. Griffin offered his respect for the concerns of the Bakers. He stated that when he first stated this process in March or April of 2012, the word “modular” got the same response. He stated that he immediately came to the city and began doing some research. He referred to Article 27, of the zoning ordinance, which had not been mentioned, specifically Use Regulations. He assured that those regulations are being followed.

Mr. Griffin stated that the church has been a proud member of the Clearwater community since 1916. He stated that they love the community and will do what they can to serve the community. He stated he has researched the regulations and will follow them accordingly.

Mr. Griffin stated that no one has permission to be on his property and a No Trespassing sign was erected and will be enforced. He stated the sign would be lifted once they have moved in.

Mr. Griffin stated that he respected the Planning Commission, but did not find it necessary to come before them for special permissions. He re-stated that he is doing everything he can to follow the ordinance that is in place. Mr. Griffin did offer specs of the home and stated that Second Street is a beautiful street; diversified neighborhood with good people. He stated that the Church is excited and proud of this project and offered a personal invitation to come and see him with any questions or concerns. He concluded that as a people and church, they are proud to be a part of Second Street. Mr. Griffin was then available for any questions.

Commissioner Machart offered his thanks for the comments from both parties. He also extended his thanks to City Attorney Amerine for her insight and information regarding manufactured home statues.

Commissioner Machart then asked if there was anyone else who wished to address the Commission.

Beth Monroe, 129 South Third Street, Clearwater, came forward to address the Commission.

Mrs. Monroe stated there are no sides, but feels sympathy for the Bakers. She stated that she lives on the other side of the property and that what was there prior was a “meth house” before it burned down. She stated that she hates to see the community torn apart on this issue, but feels that homes will be devalued. She questioned the vision of the community and cited Dollar General with regard to its location next to a residential area. City Attorney Amerine stated that the city’s Comprehensive Plan is available at City Hall.

Commissioner Machart asked if there was anyone who wished to address the Commission. With no response, Commissioner Machart moved to the next item on the agenda.

Public Hearing For a Zoning Variance Request by Dustin Johnson to Build an Accessory Buildings Larger than 900 square feet at 118 N. Byers Avenue.

Commissioner Mike Machart opened the public hearing at 7:55 p.m.

Applicant, Dustin Johnson came forward to address the Commission. He stated his request for a zoning variance was to allow him to build an accessory building that would exceed the 900 square foot restriction by approximately 156 feet. He stated that he does currently have a garden shed on the property that is not adequate for storage of his mower and motorcycle. He is proposing a 24’ X 26’ storage building. He requests that the garden shed remain. Mr. Johnson did have a site plan and copies were provided for the Commission.

The Commission reviewed the zoning map and noticed that a portion, approximately 25’, of Lot 6 shows “I”, Industrial, zoning. The Commission determined that due to the zoning, a variance would not be required, as Industrial zoning would have no restrictions. Mr. Johnson stated that in light of this, he would prefer to construct a larger building, possibly 30’ X 40’.

It was decided by the Commission to move ahead with the zoning variance request as stated until the official zoning on Lot 6 could be determined.

Commissioner Mike Machart asked if there was anyone who wished to address the Commission regarding the proposed zoning variance. With no response, Commissioner Machart closed the public hearing at 8:05 p.m.

Address Zoning Variance Request.

The Commission went over the five statutory conditions of the property.

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 owner of the applicant”

All in consensus, the Commission approved in a 6-0 vote that the request is unique to the property in question.

Adjacent Property “That the granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents.”

The Commission discussed the current zoning of the surrounding property and it was determined they had no objections. There were no adjacent property owners present to voice objections to the zoning variance.

The Commission in a 6-0 vote, supported the statement that the granting of the permit for the variance would not adversely affect the rights of the adjacent property owners or residents.

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.”

The Commission discussed the hardship as applicable to the applicants needs. It was determined that he did not have adequate storage and that also that he did not wish to remove the existing garden shed, as it was in good condition and served a useful purpose.

After discussion, the Commission voted 5-1 to support the statement that the strict application of the provisions of the zoning regulations of which the variance is requested will constitute unnecessary hardship upon the property owner. Commissioner Croft, Machart, Cass, Howell and Rudy voted in favor. Commissioner Perry voted in opposition.

Public Interest “That the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare.”

After a brief definition of Public Interest by City Attorney Amerine, the consensus was that the new building would not have an adverse affect on the public interest. There were no adjacent property owners present to voice objections to the zoning variance.

The Commission voted 6-0 to support the statement regarding public interest.

General Spirit/Intent “That granting the variance desired will not be opposed to the general spirit and intent of the zoning regulations.”

The Commission determined that the variance was not opposed to the general spirit and intent of the zoning regulations.

The Commission voted 6-0 to support the statement regarding the general spirit/intent of the zoning regulations.

Commissioner Rudy made a motion to recommend approval of the Variance at 210 N. 4th Ave. The motion was seconded by Commissioner Croft. The motion carried.

ROLL CALL VOTE:

6 - Yea. 0 - Nea.

Commissioner Croft, yea; Commissioner Perry, yea; Commissioner Machart, yea; Commissioner Cass, yea; Commissioner Howell, yea; Commissioner Rudy, yea. The motion carried.

City Attorney Janet Amerine noted that zoning variance was granted due to board action.

Other Matters and Concerns

Commissioner Machart asked if there were any other matters or concerns. There were no additional matters for discussion.

Adjournment

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

The meeting adjourned at 8:30 p.m.

CERTIFICATE

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

I, Barbara Salinas, 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 August 6, 2013 Planning Commission meeting.

Given under my hand and official seal of the City of Clearwater, this ____ day of _____ 2013.

Barbara Salinas
City Clerk