

PLANNING AND ZONING COMMISSION
October 20, 2003
MINUTES

A special meeting of the Planning and Zoning Commission was held on Monday, October 20, 2003, at 1:30 p.m., in the Basement Conference Room, Basement, City Hall, Abilene, Texas.

MEMBERS PRESENT Jack Harkins, Chairperson
 Ovelia Campos
 Eddie Boykin, Secretary
 Tim McClarty
 Neomia Banks
 Jeff Luther
 Floyd Miller

MEMBERS ABSENT:

CITY ATTORNEY: Dan Santee, Asst. City Attorney

STAFF PRESENT: Richard Gertson, Director of Community Development
 Elizabeth Grindstaff, Asst. Director of Community Dev.
 Jeff Armstrong, Development Services Manager
 Helen Clanahan, Senior Secretary

NEWS MEDIA: Melissa Borden, Abilene Reporter-News
 Karen Wilkison, KTXS-TV

VISITORS: Austin R. Keith
 Dan Ervin
 Joe Spano
 Lee Ann Ervin
 Bob Hammond
 Mike Morrison, Asst. City Manager
 Ben Finley, Transportation Planner
 and others

Invocation: The invocation was given by Tim McClarty

AGENDA ITEMS:

Case No.: Item 2.a.

Public hearing and possible vote to recommend approval or denial to City Council to consider Zoning Ordinance amendment of Section 23-332, Planned Development Districts and Section 23-356.1.H, Administration Procedure and Required Permits..

Richard Gertson said some of the thins on the agenda are ordinance amendments that we have been waiting to bring forward and others are issues that have come up more recently.

The first one is something the Commission is familiar with. He discussed the tract owned by Randy Billings. The total acreage is between 3-4 acres. Initially the application was for LC. It was discovered that exceeded the 2.5 acres maximum for LC districts. The item came back with the south tract of 2.5 acres. The Planning Commission recommended approval. It then went to the Council and there was a question about the conglomeration of zoning and the best way to plan this area. The Council tabled the item and asked staff to look at any methodical approach for all the land owned by Mr. Billings and perhaps[s] adjacent land that would make more sense. One solution brought before the Commission today is rather than proposing a change in ordinance to eliminate the maximum acreage for LC we are proposing the elimination of the minimum acreage requirement for commercial PDDs. In the PDD section there are several different PDDs. Most have some type acreage requirement. The other type of PDR has no acreage limitation.

He said what staff is proposing is to consolidate all the material and put it into one section that addresses PDDs generally and eliminate any acreage threshold for PDDs. PDDs are used for flexibility. They are also intended to give as much flexibility as the city would like. It does not mean that if a PDD proposal does not still make good planning principles it does not make it any more an obligation to comply. This would allow the applicant to seek as much flexibility as possible.

This would allow Mr. Billings' tabled case to go forward as a commercial PDD and uses would be very similar to any other things compatible with other commercial uses in this area.

He said one item in the ordinance on the first page in the second paragraph where it states ADD, there have been only 10 items and not 11. We would like to delete that number. The amendment we are proposing is take the types of PDDs and just say that our PDD reduces the ordinance from 11 pages to 4 pages.

Mr. Boykin said there seems to be two significant things. One is the size of PDD. We are also proposing to do away with the 11 pages.

Mr. Gertson said the only PDD not affected is the PDH.

Mr. Boykin said each PDD has varying requirements.

Mr. Gertson said each type of PDD district has different requirements but some are the same. There are certain requirements that would be required for the PDD. He discussed some of the general requirements.

Mr. Armstrong said it does not eliminate the provision of PDD for recreation. It just changes what we call it.

Mr. Harkins said in all these several pages in all the types of PDDs they have the purpose and requirements. Will there remain anything in the PDD in a general sense.

Mr. Gertson went over the proposed changes in the PDD and discussed the first four pages of the PDD section that is not affected.

He said we believe this section is written broadly enough that it would handle all the PDDs. The PDD is provided for flexibility to the developer. When a PDD is on the table, there is negotiations between the city and developer and basically everything that comes before the Commission will have trade-offs.

Mr. Harkins said one thing that he has heard about in the past is some developers would rather have conventional zoning. In the past with area limitations the city would not bring up PDD. If we eliminate

the acreage restriction and the developer wants to submit zoning, he does not think the developer should be made to go to PDD.

Mr. Boykin said he sees the City going away from standard zoning and going with all PDD.

Mr. Gertson said if a commercial developer comes in and meets the 4 acres, we are talking about wanting PDD. If this is changed and someone comes in with a 2 acre tract and wanted conventional zoning, he does not feel that staff would push for PDD if there is an alternative. We would evaluate a request and determine what we feel is the best.

Mr. Luther said if there is no minimum will it increase the number of small PDDs. He said in affect if PDD is a zoning district how will staff police each PDD to make sure they stay true.

Mr. Armstrong said some of the properties have had no options. This could open up some of the restrictions. The numbers might get big.

Mr. Luther said there is still the one zoning that is MX.

Mr. Armstrong said the MX overlay has a lot of problems and that is why we do not encourage it. As we look at things over the next few years we will look at that district.

Mr. Harkins said with the Comp. Plan encouraging MX we will have to accommodate it.

The public hearing was opened; then closed after no discussion.

Mr. McClarty said he believes taking the acreage off the PDD is a good idea. It is a design unique for the area provides a unique development.

Mr. Gertson said the PDR only required a submittal time of 20 days. It should have been 45 days like the other PDDs.

Vote: Tim McClarty moved to approve the item with the amendment to eliminate “eleven (11)” on the first page of the ordinance after ...each of the following... Floyd Miller seconded the motion.

- 7 approvals:
1. Tim McClarty
 2. Floyd Miller
 3. Eddie Boykin
 4. Ovelia Campos
 5. Jeff Luther
 6. Neomia Banks
 7. Jack Harkins

Decision: Case Item 2.a. was approved with the amendment to eliminate “eleven (11)” on the first page of the ordinance after ...each of the following...

Case No.: Item 2.b.

Public hearing and possible vote to recommend approval or denial to City Council to consider Zoning Ordinance amendment of Section 23-306.4, Permitted Uses, and Section 23-306.5.H(14), Conditional Use Provisions, Liquor Store Off-Premise Consumption Unrestricted, regarding package stores in Limited

Commercial (LC) zoning districts as a special exception or amendment of Section 23-328, Shopping Center Districts.

Jeff Armstrong said this item is before the Commission today because we have a proposed business that wants to open up a package store. The location is at the northwest corner of Chimney Rock and buffalo Gap Road. The applicant went through the proper procedure for obtaining a liquor license. It was approved in error. The store cannot go in LC under the current ordinance. If this was denied, that business would not be able to locate there. We looked at options. A number of discussions took place on how to handle the situation. If we were simply trying to help out a business owner, we would not bring it before the Commission today. If we did not think it was reasonable, we would not bring it forward.

The request is to allow this use in LC with a special exception. There are 111 LC districts in the city. We are also proposing the condition that the use must be located on an arterial street or freeway. This would eliminate the traffic into a neighborhood. Out of the 111 LC districts 69 are located on arterials or the freeway. We did not determine how many are 300' from a school or church. We are talking about 50-70 LC districts that this amendment could apply to.

In talking about land uses, beer and wine only are currently allowed in LC zoning. We are proposing the package type store through the special exception process. There are a lot of things that come into people's minds when one starts talking about liquor. We are talking about a business that will go into a retail store.

It is staff's opinion that we are not doing anything differently as to land use. A liquor store that sells everything has no distance restriction from houses.

Mr. Boykin said he understands why this cannot be zoned SC, what about rezoning the property to GC.

Mr. Armstrong said we feel that GC in that area would be very difficult. The area across the street was rezoned to SC in the 1980s and it was pretty difficult as to what the neighbors wanted. The GC would allow a lot of uses we would not want.

Mr. Miller said we all make mistakes. He believes this zoning as is was put there for a good reason and think it should stay as is. He does not know how to deal with the mistake that was made. He does not think the ordinance should be rewritten for that.

Mr. McClarty said in going from dry to wet he thinks we will have a problem from the public when the Council considers the item. He does not think we should be increasing the land allowed for package stores. If we make any changes, it will have a monetary advantage on the business. What is the advantage of doing this.

Mr. Armstrong said it provides options for certain property owners.

Mr. Luther said it was mentioned that this would allow 40-60 more locations but it is still pretty open.

Mr. Harkins said his thought is that LC is different than SC and there is a reason. With LC being a neighborhood type zoning and take care of that with arterial street requirements.

Mr. Armstrong said there are not as many uses in LC as SC. The LC is a buffer zone and has neighborhood type uses. From a staff prospective and the fact that a liquor store can be located across the alley, the issue is what is different from beer and wine as well as liquor.

Mrs. Banks asked about options.

Mr. Armstrong said that would be another option for property owners in LC

Mr. Boykin asked if staff had looked at other uses that could be added to the LC.

Mr. Armstrong said we have changed several uses and added to different districts.

Mr. Gertson said what we are looking at is not the alcohol. When we are called upon to look at land use, we will determine if there is an impact on the neighborhood. And surrounding. Does it increase traffic. In terms of impact a package store is not much different than other uses. On the issue of compatibility, if that had been a concern two years ago when the Commission revised the liquor section, no progress would have been made. The Commission made decision to increase the options for selling alcohol. The commission is here to make sense of land use.

Mr. McClarty said he believes there is plenty of space for liquor stores. We do not need more locations.

Mr. Boykin said he does not think that is something that we need to take into consideration. He believes that is getting into moral issues and he does not think we should consider that part.

Mr. Miller said the thing that keeps coming back to where laws are in place and there is zoning. He believes Mr. Armstrong stated that if a mistake had not been made we probably would not be discussing this issue today. He does not think we should take competition into play but do not think we should change this because of a mistake.

Mr. Armstrong said if the property owner came to us and stated he wanted this site, we might have come to the Commission a month ago.

Mr. Gertson said is there another option on the property. Currently under our zoning ordinance one can have a package store in SC by special exception. Looking at this parcel, there is 2-1/2 acres minimum on SC districts. This location does not quite meet that requirement. If it did all that would mean was the land owner could request SC zoning. If you look at that from a land use prospective ask what it is about SC districts and what makes it different from LC where a package store is allowed in one district. If the Commission wishes we can take a look at the minimum acreage requirement for SC.

Mr. McClarty asked about going PDD.

Mr. Harkins said since it is built out, it might be hard to have a PDD.

Mr. Armstrong said up until 4-5 years ago there was a 2-1/2 acre maximum for LC and 10 acres minimum for SC. It was decided to bring them together.

Mr. Gertson said the mistake has brought the issue to bear. We are looking at feasible ways to look at the land use issue.

Mr. Boykin asked if there was any way to compensate people when staff makes a mistake.

The public hearing was opened.

Dan Ervin, 230 Tempest, said we are the prospective owners. We signed a lease for 20 years. The city passed the liquor license on August 26. He has four licenses from TABC because the city said they were legal. We are here trying to do things the right way. We are asking for your help to fix the mistake.

Joe Spano, 2709 Arrowhead, said he owns a package store. As to having a monopoly, the other competitor have up his liquor license. He understands about the monetary exchange has been made. His investment was made on current zoning. When he bought the liquor store, he looked at the area. He believes it is unfair to change the rules in the middle of the game. We are talking about one type of business. A liquor store cannot be put everywhere. We played by those rules and believe it should stay the same. We are a restricted business. More restrictions are coming through the legislation. He had the same arguments about restaurants when the ordinance was changed.

Austin Keith, 4246 Kirkwood, Odessa, said we are a very highly regulated business. A person has to be 21 years old before they can go into a package store. The hours are highly regulated. Pinkies went to a location and did not check the regulations and they lost an investment. He said he is a businessman and bought the competitors. He did this for economic reasons.

The public hearing was closed.

Mrs. Campos said she appreciated the fact that staff made an error. She wished there was some magic way to make it SC.

Mr. McClarty said the option is to come back with PDD.

Mr. Armstrong said that is only if the Council approves the previous item.

Vote: Jeff Luther moved to vote for denial. Floyd Miller seconded the motion.

- 5 approvals:
1. Jeff Luther
 2. Floyd Miller
 3. Neomia Banks
 4. Tim McClarty
 5. Jack Harkins

- 2 denials:
1. Ovelia Campos
 2. Eddie Boykin

Decision: Case Item 2.B. was denied.

Mr. Gertson said we will get with the businesses and talk about this and determine where we want to go.

Mrs. Banks asked if staff would bring the change to PDD back.\

Mr. Gertson said that would come from the property owners.

Case No.: Item 2.c.

Public hearing and possible vote to recommend approval or denial to City Council to consider Zoning Ordinance amendment of Section 23-356.3(J), Site Plan Committee, Compliance, regarding compliance with approved site plan.

Richard Gertson said as the staff memo indicated, we already have provisions that require the applicant, except for residential, to submit a site plan. The site plan is reviewed by the Site Plan Committee. The provisions on the site plan have to be complied with. The ordinance does not have strong language to make them comply with the requirements. This is additional language to make it clear that they will

comply. If after a certificate of occupancy and repeated attempts for compliance, we can have a hearing and if they refuse to come into compliance, we can revoke their certificate of occupancy.

Mr. Harkins asked in the particular case, what did they do or allow to happen.

Mr. Gertson said this was some commercial development that abuts residential and a fence is required to screen and the fence fell into disrepair and they did not want to replace it.

Mr. Harkins asked where an existing business adds additional parking, would that not trigger a site plan.

Mr. Gertson said our ordinance states if one adds over a certain point a site plan is required to be submitted.

Mr. Boykin asked if there is no provision for a timeframe that they could come into compliance.

Mr. Gertson said, yes, as a matter of course we give notice for the property owner to come back into compliance.

Mr. Boykin asked about the process.

Mr. Gertson said staff goes out and asked for voluntary compliance.

There was discussion about compliance.

Mr. McClarty said if the certificate of occupancy is removed, it will shut down the business.

Mr. Harkins said this is pretty heavy handed but they had to comply with the site plan to obtain a certificate of occupancy. There is a reason to expect compliance from now on.

Mr. Gertson said it is rare for people to not comply. This provides a remedy for people who refuse to comply. There are reasons to have certain requirements on site plans. Once someone has a certificate of occupancy there has to be some process from the owner to be heard. The ultimate check is the exercise of good judgment.

Mr. McClarty said if a business does a site plan and gets it approved and makes a good faith effort to comply with the site plan, they can obtain a certificate of occupancy. If several years in the future the city found something they did not comply with on the site plan, he believes it would be wrong to pull the certificate of occupancy.

Mr. Gertson said this kind of remedy is reserved for a few cases.

Mr. Harkins said maybe the language should be changed. It could say this is a remedy as a last resort.

Mr. Gertson said in going to Municipal Court, it would be 2-3 months to get on the docket. He said he asked legal if there was something comparable in other courts. There needs to be a mechanism to be heard.

Mr. Harkins said he believes that should be a last resort.

Mr. Gertson said we can strike the last sentence.

Mrs. Banks asked if staff felt they could not make the business owner comply.

Mr. McClarty said this concerns him. If the city approved the site plan based on what it had, the structure is built. If they find something wrong at a later date, he does not believe the city should pull the certificate of occupancy. However, when do not have a major compliance, he could see that.

The public hearing was opened; then closed after no discussion.

Vote: Tim McClarty moved to vote for approval subject to deleting the wording after code in the second sentence. Eddie Boykin seconded the motion.

- 7 approvals:
1. Tim McClarty
 2. Eddie Boykin
 3. Ovelia Campos
 4. Jeff Luther
 5. Floyd Miller
 6. Neomia Banks
 7. Jack Harkins

Decision: Case Item 2.c. was approved subject to deleting the wording after code in the second sentence.

Case No.: Item 2.d.

Public hearing and possible vote to recommend approval or denial to City Council to consider Zoning Ordinance amendment of Section 23-315.2(J), Off-Street Parking Spaces and Areas, Nature of Use, regarding commercial parking in residential districts.

Richard Gertson said we have two provisions, one in the traffic code and one in the parking code. Neither provision expressly regulates commercial equipment to allow us to go after problems. Often times there is commercial trailers to hold equipment or supplies that are parked in yards or in the street. The ordinance talks about parking of commercial vehicles over a certain tonnage. The amendment reduces the tonnage from 1-1/2 ton to one ton and add prohibition on commercial equipment. We would have Police to change the section of the City Code that is similar in the traffic code. The language is being worked out in conjunction with Thad Carey in Police. What we are proposing is to add a prohibition on commercial equipment. In the very last paragraph there is already an exemption that allows church and school buses in residential areas.

Mr. McClarty said right now we have roofing companies with equipment in neighborhoods. How would that be affected.

Mr. Gertson said it would not be affected.

Mr. Harkins asked about the Snap-on or Frito Lay trucks. He is not sure how he would feel if one of these was parked next to his house.

Mr. Boykin asked what the city needs to enforce commercial. The problem he has with this is it is good but why can we not enforce what we presently have.

Mr. Gertson said we have to new areas of code enforcement that we deal with. The problem with a lot of the truck tractors is they are parked in residential areas on the weekends and gone Monday morning.

Mr. Harkins said he has a problem with dropping it down to one ton.

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Mr. Gertson said we had two ordinances, one stated one tone and one was 1-1/2 tone. He aside if the Commission would like staff to check on one ton versus 1-1/2 tone vehicles and types.

Mr. Harkins said we should probably keep them off the streets.

The public hearing was opened; then closed after no discussion.

Vote: Tim McClarty moved to table the item. Neomia Banks seconded the motion.

- 7 approvals;
1. Tim McClarty
 2. Neomia Banks
 3. Eddie Boykin
 4. Ovelia Campos
 5. Jeff Luther
 6. Floyd Miller
 7. Jack Harkins

Decision: Case Item 2.d. was tabled.

There being no further business, the Planning and Zoning Commission meeting was adjourned at 3:50 p.m.

Jack Harkins, Chairperson

Eddie Boykin, Secretary