MINUTES
PLANNING COMMISSION
September 26, 2019
7:00 P.M. – COUNCIL CHAMBER

<table>
<thead>
<tr>
<th>Name</th>
<th>Members’ Term Attendance (mtgs attended-mtgs absent)</th>
<th>End of Current Term of Office</th>
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<tbody>
<tr>
<td>MEMBERS PRESENT:</td>
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<tr>
<td>Reba Hebert</td>
<td>(42-06)</td>
<td>01/29/22</td>
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<tr>
<td>Donna Jean Boyer</td>
<td>(18-01)</td>
<td>07/22/23</td>
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<tr>
<td>Karen Quintana Planalp</td>
<td>(02-00)</td>
<td>08/04/24</td>
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<td>Allison Tschannen</td>
<td>(03-00)</td>
<td>07/15/24</td>
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<tr>
<td>Ben Burtnett</td>
<td>(15-03)</td>
<td>02/12/23</td>
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<tr>
<td>Phillip Vaughn</td>
<td>(19-09)</td>
<td>08/05/23</td>
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<tr>
<td>Ted Hauser</td>
<td>(39-14)</td>
<td>12/14/19</td>
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<tr>
<td>MEMBERS ABSENT:</td>
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<tr>
<td>Bob Bucher</td>
<td>(16-04)</td>
<td>06/15/23</td>
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<tr>
<td>Lauren Catron</td>
<td>(18-08)</td>
<td>07/17/22</td>
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<td>STAFF PRESENT:</td>
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<tr>
<td>Ted Elo, Assistant City Attorney</td>
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<td>Nic Hutchison, City Planner</td>
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<td>Reed Schwartzkopf, City Engineer</td>
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<td>Rebecca Shipp, Executive Administrative Assistant</td>
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Call to Order – Hebert called the meeting to order at 6:59 pm.


Quorum is present. Five members constitute a quorum.

Hebert admitted certified copies of Chapters 11, 26 and 31 of the Code of Ordinances into evidence.

Hebert read the rules of conduct.

Postponements/adjustments to the agenda –

Hutchison stated Item #3 on the Agenda is a residential subdivision. Minor subdivisions are approved or denied by the Planning Commission.

Hutchison stated a certified comment form for item #2 was received after the agenda packet had been sent out. A copy of the comment form has been placed at each commissioner’s chair.
Hutchison stated an amended zoning request had been received from the applicant and would be discussed during Item #3.

Unfinished business –

None

Minutes of the Meeting, July 25, 2019 –

Boyer made a motion to approve the minutes. Quintana Planalp seconded.

Ayes – 6, Nays – 0, Abstain – 1 Minutes approved.

New Business-

ITEM #1 Zoning District Change – A request for approval of a change of zoning from C-3, Commercial District to R-1A, Single Family Residential District for the property located at 225 S 36th Street as requested by Kibrom Araya.
Zoning District Changes move on to City Council
Staff recommendation: approval

Hutchison gave the staff report.

Hebert asked if the East-West Street was Charles Street.

Hutchison responded correct. The property fronts 36th Street but does have access off of Charles.

Quintana Planalp asked if the shed on the property was included.

Hutchison responded correct.

Kibrom Araya-1407 N 36th Apt 5, St Joseph -spoke in favor of the item.

Quintana Planalp asked Araya if he was familiar with the area and if he was aware it was situated on a busy road with only two other homes nearby, with a massage business to the left and a gun store to the right. Quintana Planalp asked Araya if he was comfortable placing his family in that area.

Araya responded yes.
Hutchison stated the applicant wishes to use the property for single family purposes. The rezoning needs to occur before the real estate transaction can be completed.

No one spoke in opposition.

Boyer asked if the property had been a group home in the past.

Heather Hayes-3 Blue Bird Drive, Agency-spoke on behalf of the item. Hayes stated she is Araya’s Real Estate Agent, he is in the process of purchasing the home and it had been a group home in the past.

Boyer stated it had been used as residential in the past but had to be zoned as commercial because it was a group home.

Hayes responded correct.

Boyer made a motion to approve the request. Vaughn seconded.

Ayes – 7, Nays – 0, Abstain – 0  Motion approved.

ITEM #2  Zoning District Change – A request for approval of a change of zoning from C-3, Commercial District to M-1, Light Manufacturing District for the property located at 3734 Pear Street as requested by Christopher Johnson.
Zoning District Changes move on to City Council
Staff recommendation: denial

Hutchison gave the staff report. Hutchison stated the applicant has proposed an amendment to the request that would carve out the front portion of the property. The portion that faces Pear Street would remain C-3 Commercial and only rezone the back portion where the existing structure is located to M-1 Light Manufacturing.

Boyer asked if the proposed amendment would change Staff’s recommendation.

Hutchison responded the portion remaining C-3 would support the future land use plan and would be a conforming use but the portion proposed to change to M-1 would be non-conforming and not be a best use practice in land use. If the property were to change to M-1 the currently operating commercial classed businesses would then be non-conforming. The existing C-3 uses would have to be terminated so they would not end up being non-conforming.

Boyer asked if the carve out would change staff’s recommendation.
Hutchison responded staff would need clarification to ensure existing commercial uses would be terminating if the property is rezoned to M-1.

Boyer asked if the Pharmacy was currently operating in the building.

Hutchison responded correct.

Boyer asked if the Pharmacy would have to shut down

Hutchison responded in theory the medical marijuana would take possession of the building and the Pharmacy use would have to relocate.

Vaughn asked if a new business was coming in to buy the property.

Burtnett asked if the building in question is the Compton furniture business with the Pharmacy located on the west side.

Hutchison responded correct.

Tschannen asked if three are parcels adjacent to this property that are M-1.

Hutchison responded correct however the majority are vacant.

Quintana Planalp asked if the property across the street on the map was a home.

Hutchison responded the properties along Easton Road are Residential uses.

Quintana Planalp asked if the home across the street was within a 100 yard radius of from the facility.

Hutchison responded no because the measurement is from the main entrance of the facility.

Quintana Planalp stated there is a Federal Post Office Box on the corner of the property.

Hutchison stated it would be the responsibility of the property owner.

Chris Johnson-708 NW Eagle Dr, Grain Valley-spoke on behalf of the item. Johnson stated he is the applicant. Originally, they requested to rezone the entire property. They have made a request to amend the request to carve out the front 200' for Commercial use and only rezone the remaining back portion. The front portion would be commercial use where either they or a future tenant could build a free-standing building.

Burtnett asked if the Pharmacy is planning on staying at its current location.
Johnson responded the Pharmacy cannot co-habitate because the State of Missouri does not allow it. The pharmacy would have to relocate. There have been initial talks about the Pharmacy relocating to a future building in the front area of the property.

Burtnett asked if they had a commitment from the Pharmacy saying they would relocate to a building in the front area.

Johnson responded they have not made a commitment to do that and the State will not grant any licenses to them and won’t make a decision until January 16, 2020.

Quintana Planalp stated there is currently a sno-cone business there and asked if they had a contract with the current business owner to remain.

Johnson responded he believes there is a contract. Johnson clarified although he is wishing to buy the property he is not the official owner. Johnson stated he is only requesting the change of zoning to fulfill is due diligence with the State of Missouri.

Quintana Planalp stated there is a sno-cone business, pharmacy, an ATM, farmer’s market and an objection from UPCO. Quintana Planalp asked if the non-conforming users would be displaced.

Johnson responded most of the non-conforming users, with the exception of the farmer’s market, would fall within the 200’ corridor and should not have to move. The part they are interested in will be fenced off so they will not have access to their parking lot. That is required by law. There would be 24/7/365 security on site.

Hebert clarified to Quintana Planalp if an applicant did not meet code, rather than taking existing properties’ conforming or non-conforming status away, they would be grandfathered in. The properties that are residential but are zoned C-3 are a non-issue. What the Commission looks at is would this applicant coming in violate the code that they are required to follow. We wouldn’t make anyone surrounding the property meet the codes, the applicant would have to meet the codes. The answer to displacement of existing neighboring properties is absolutely never.

Quintana Planalp asked if Apple Market would be displaced.

Hebert responded we don’t do that. The only thing existing at this time is the Pharmacy and she believes their lease is up. The lease is something to be negotiated with the business owner. The Commission does not get involved in that.

Hebert stated what the Planning Commission is being asked to decide is would M-1 Light Manufacturing on the back side of the property be appropriate or not.

Boyer asked where the access points would be if the property was fenced off.
Johnson responded the fencing would be around the access point. The fence does not have to be around the entire property.

Jerome Wheeler-3606 Beck Road-spoke in opposition to the item. Wheeler stated he is the Pharmacist and owner of Apple Market Pharmacy. After the closing of Benders, Kmart and the Apothecary; his is the only full service pharmacy on that side of town. Because of his DEA license he cannot be in the same building as the medical marijuana business and does not wish to relocate.

Wheeler stated he employs seven people. Relocation would impact their jobs, their families, would upset loyal patients/customers. Wheeler estimated relocation of the pharmacy could cost around $100,000.

Burtnett asked Wheeler if his business was expanding/growing.

Wheeler responded yes.

Burtnett asked Wheeler if he had been offered the opportunity to buy the building or to build in the front area.

Wheeler responded had not been offered to buy the building.

Quintana Planalp stated she had stopped by to observe earlier in the say.

Wheeler stated someone had asked him if he was open until midnight. Wheeler stated he is not and asked if he were would that alter the request.

Quintana Planalp stated she did not know.

Vaughn stated the Pharmacy doesn’t want to move.

Boyer asked if the building was for sale.

Wheeler responded yes, there was a contract on it with the applicant but rumor has it the contract expired.

Boyer asked what guarantee would Wheeler have of the Pharmacy staying at the same location if the building sold to somebody else.

Wheeler responded if it sold to the other present occupant of the building, he would be able to stay.

Vaughn stated it seemed like something to be worked out between all parties involved.
Hebert stated the structure 45,000 square feet. Hebert asked how much area the Pharmacy occupied.

Wheeler responded approximately 900 square feet.

Quintana Planalp stated she observed a drive thru pharmacy window and asked if that would go away if the property was rezoned.

Wheeler responded yes, it would be too close.

Hutchison reminded the Commission the question before the them is the rezoning to M-1 Light Manufacturing, what is the highest/best use rezoning to M-1 or keeping the property C-3 Commercial.

Hebert asked if any conditions could be placed on the rezoning.

Elo responded no. It is either yes or no. No conditions can be placed on the rezoning.

James Holliway-5649 Highway 33, Holt, MO-spoke in opposition to the item. Holliway stated he is the owner of Compton’s Furniture Store. Holliway state he has 7 employees and is in talks to buy the building. His business is expanding and he would like to expand to the old Orschlen’s location as well. Holliway stated he believes the property should remain zoned C-3 Commercial. Holliway stated he recently purchased 11 semis full of goods and is installing new shelving in the building to accommodate the growth.

Wheeler stated Holliway has the talent to really grow the current business. Wheeler stated Holliway is responsible for bringing the sno-cone guy, farmer’s market, and the flower market during the spring to the area. The flower market would not be able to operate if the zoning were changed and they bring vitality to the space.

Boyer asked Hutchison how long the property to the West had been zoned M-1 and what the reasoning was behind it.

Hutchison responded he was unsure of the timeframe and the property was owned by Pony Express Warehousing.

Boyer stated Staff makes a good point about the corner remaining Commercial. It is a prime intersection and she would be reluctant to rezone regardless of what kind of business that goes in the location. Boyer stated if the Commission starts to change zoning piece by piece it would be detrimental.

Boyer stated she doesn’t think the Commission should be considering the split at this time. The Commission should be considering whether they want the area commercial or light manufacturing.
Hebert clarified the decision before the Commission is first to vote on the amended application to allow the front portion of the property to remain C-3 and the back-portion rezone to M-1, and second to vote on the application-amended or original.

There was discussion among the commissioner regarding the amended application.

Hutchison stated the Commission would vote on accepting the amendment and then on the outcome of that vote.

Hebert stated the applicant asked to have the application amended to leave the front C-3 and change the back to M-1 as a result of communicating with Staff.

Boyer clarified first the Commission will vote on whether to allow the application to be amended. If approved they would be voting on the front portion remaining C-3 and the back being rezone to M-1. If the motion to amend the application fails, the would be voting on rezone the entire property.

Hutchison and Hebert responded correct.

Hebert stated if the motion to amend the application fails, they will not be considering the front portion C-3 and the back M-1. They will be considering rezone the entire area M-1.

Elo responded Correct, the Commission would be voting on the original application.

Vaughn asked Hutchison if there is any reason the amended application should be denied.

Hutchison responded only the non-conformity component but that has already been discussed.

Vaughn asked if the non conformity would come into play on the second vote.

Hutchison responded sure.

Boyer asked if the Commission can legally deny an application amendment.

Elo responded yes, if the Commission chooses to accept the amended application is would be proper because it is smaller in scope and there would not be a noticing issue.

Tschannen stated she did not see any reason not to approve the amendment.

Vaughn agreed.

Tschannen stated she would move to accept the amendment if this is the proper time.

Hebert responded it will be as soon as the public comment portion is closed.
Quintana Planalp stated each Commissioner has in front of them a copy of a comment form against the rezoning from UPCO.

 Vaughn stated what he's having a problem with is that there are other people wanting to buy the property and he is unsure if they are in competition with each other.

 Hebert responded let me make this very clear—that is not your problem. The only issue before the Planning Commission is whether the property is used better as C-3 or M-1.

 Hauser stated it is a land use issue—what is the best land use for that property.

 Hebert responded correct, light manufacturing or commercial.

 Burtnett asked Hutchison why the City recommended denial.

 Hutchison responded the original application was recommended for denial because of its noncompliance with the future land use plan which indicates that property as being a part of the South Belt Commercial Corridor. Commercial properties are supposed to be located along major arterial roads, uses that generate high levels of vehicular traffic and is a best practice not to create non-conforming uses.

 Tschannen asked if Staff has had enough time to analyze the amended application and make a recommendation. That may be a reason to postpone a vote tonight, so you have time to consider the amended application.

 Hutchison responded there are some additional things that would need to be worked out including handling of access. Any improvements to the property would need to go through the platting process. The access easements could be worked out at that time. Retaining the commercial frontage on Belt and Pear would support the future land use plan.

 Tschannen asked Hutchison if adding C-3 to the front of the property would change his recommendation from denial to approval.

 Hutchison responded correct.

 Hebert clarified again the first vote will be whether to accept the amended application. The Second vote is to rezone either the amended application or the original application depended on the first vote.

 Tschannen asked Hutchison if he has changed his recommendation to the Commission based on the applicant's submission of an amended application.

 Hutchison responded Staff's position in that situation would be approval if there was not going
to be non-conforming use created as a result of the zoning district change. The recommendation would be denial if you would be creating a non-conforming use.

Quintana Planalp made a motion to legally deny the amendment. Burtnett seconded.

Elo stated there is still time to discuss the amendment further if you so choose.

Tschanen asked if the rezoning would revert back under any circumstance.

Elo responded he could foresee if this property was partially rezoned and then sold with an existing non-conforming use, problems would in all likelihood exist that Staff has not had time to assess or give a proper opinion on.

Hebert stated in a prior meeting an applicant wished to rezone to R-ISH and the Commission identified the property would revert back to its original zoning in a few months if applicant was not able to get approval from building inspectors. Hebert stated she believes this is what Tschanen is referring to.

Tschanen clarified she was wishing to know how that was different from this case.

Elo responded it was the opposite use. In this case commercial use already exists on the property. It’s having its zoning taken away and making it a non-conforming use. The small house example did not in theory exist, so it was not creating a non-conforming use. Therefore, nothing was being taken away from the user of that property.

Hauser stated the land use plan is in the packet. It is easy to see the designated areas. The land use should not be chopped up. It will become patchwork.

Hebert clarified there is a motion and a second to deny the amendment.

Tschanen asked if the motion was to deny the consideration of the amendment to the application.

Hebert responded correct. The commission will still vote on the M-1 application, this is whether to accept the amendment.

Hauser asked if a yes vote was denying and a no vote was approving.

Hebert stated the way the motion was worded a yes vote denies.

Elo clarified the deny the amended application you would vote yes. To approve the amended application, you would vote no.

Quintana Planalp asked Elo to repeat his statement.
Elo responded to deny the amended application you would vote yes, to approve the amended application you would vote no because the motion was made to deny the amended application and it was properly seconded.

Hebert asked if there were any further questions prior to the vote.

**no one spoke**

Elo asked Shipp to state the motion so Commissioners know exactly what they are voting on.

Shipp stated a “Karen Quintana Planalp made a motion to deny the amended application. Seconded by Ben Burtnett.”

**VOTE: Quintana Planalp – yes, Tschannen –no, Burtnett – yes, Hauser – yes, Vaughn – yes, Hebert –no, Boyer-no.**

Ayes –4, Nays – 3, Abstain – 0  Motion to deny approved.

Hebert stated now the vote is whether to rezone the entire area from C-3 to M-1.

Boyer stated she feels the entire property should be kept Commercial because it fronts on Pear Street and also sits on Belt/169 which is commercial. Boyer stated changing to M-1 light manufacturing would ruin the intersection, it should remain C-3 commercial.

Boyer made a motion to deny the rezoning change from C-3 to M-1. Hauser seconded.

**VOTE: Quintana Planalp – yes, Tschannen –yes, Burtnett – yes, Hauser – yes, Vaughn – yes, Hebert –yes, Boyer-yes.**

Ayes –7, Nays – 0, Abstain – 0  Motion to deny approved.

ITEM #3  Minor Subdivision – A request for approval of a minor residential subdivision entitled Chapel Hill Subdivision located at 2526 Cook Road as requested by Roger Idecker.

Minor Subdivisions are approved or denied by the Planning Commission

Staff recommendation: approval

Hutchison gave the staff report.

Vaughn asked if minor subdivisions do not move on to City Council.

Hutchison responded correct.

Hebert stated minor subdivisions are decided by the Planning Commission.
Roger Ideker-25 Court Lane spoke in favor of the item. Ideker is constructing a new home on lot 1. Ideker is selling lots 2 and 3. There is a home in the middle of the tract built in the 80’s and it is currently occupied. The occupied home has been using the current access road for 30 years.

Quintana Planalp asked if the easements and right of ways are for construction or if they are in the permanent phase.

Ideker responded they would be permanent right of ways.

Ideker stated he is building an extension of the main water line from Rock Springs Road to the property which will serve all four properties.

No one spoke in opposition.

Burtnett made a motion to approve the request. Vaughn seconded.

**VOTE:** Quintana Planalp – yes, Tschannen –yes, Burtnett – yes, Hauser – yes, Vaughn – yes, Hebert –yes, Boyer –yes.
Ayes –7, Nays –0, Abstain – 0  Motion approved.

Hutchison gave a preview of next month’s meeting.

The meeting adjourned at 8:29 pm.

Minutes respectfully submitted,

Rebecca Shipp

cc:   Paula Heyde, City Clerk  
Planning Commission Members  
J. Bruce Woody, City Manager  
Clint Thompson, Planning & CD Director  
Ted Elo, Assistant City Attorney  
Brady McKinley, Civil Engineer  
Mark Townsend, Technology Associate Director