

PLANNING AND ZONING COMMISSION  
MINUTES OF MEETING

July 19, 2011

6:04 p.m.

**Item 1. Roll Call**

PRESENT: Gene Deckard, Jim Rice, Tim Glenn and Sam Hargrove

STAFF PRESENT: Planning & Zoning Director Nick Pappas; Building Official Larry Murry; Police Chief John McGovern and Secretary, Kathy Twitchell

ABSENT: Bruce Collins, Ambrose Buckman and Bob Gerdes

Visitors: Eric Copeland, Betty Bissell, Keith Winge, Edna Whitmore, Laura Hollen, Gerald Edwards, Margaret McElwee, Barbara Vermillon, Laura Kingery, Tammy Creason several residents of Northview neighborhood.

**Item 2. Approval of Minutes-June 21, 2011**

MINUTES APPROVED: Commissioner Rice motioned to approve the July 19, 2011 minutes. Commissioner Hargrove seconded. The motion carried.

**Item 3. Special Use Request: SU-11-003 Dog Kennel at 102 Northview Dr.**

Nick Pappas gave the staff report for the Special Use Request: SU-11-003 Dog Kennel at 102 Northview Drive. The special use application for 102 Northview Drive is in response to Chapter 200 of the City Code which restricts the number of dogs a household can have. Currently, the owner has in excess of six dogs and has been instructed by Animal Control to conform to the code requirements of having no more than two dogs. The only possible exemption to this rule is to acquire a special use permit to operate a dog kennel.

Aside from the fact that the State of Missouri has implemented an array of stipulations for the operation of dog kennels, there are a number of additional considerations the Commission may want to ask the applicant (issues which she has not yet addressed) due to the particular location of the property:

How will the property be insulated to reduce or eliminate noise to neighbors within this residential neighborhood?

How will waste be disposed?

How will the owner ensure the health, safety, and welfare of the dogs?

Will the property be used for both residential and non-residential purposes? If so, how will the uses be separated?

Additionally, according to Section 400.230 of the Zoning Chapter, it is the applicant's responsibility to show that the use:

Is deemed necessary for the public convenience at that location:

Is so designed, located, and proposed to be operated so that the public health, safety, and welfare will be protected:

Will not cause substantial injury to the value of other property in the neighborhood in which it is located; and

Will comply with the height and area regulations of the district in which it is located unless specifically granted otherwise.

A notice was placed in the July 5, 2011 Standard and letters were sent to property owners within 200 feet of the location. Eight phone calls were received by the Planning & Zoning Department, six of which recommended against this request and two of which simply wanted more information.

Unless compelling information is brought to the Commission at the time of this public hearing, staff is recommending against this special use request.

Edna Whitmore, 106 Southview, spoke in favor of the special use request.

Applicant, Laura Hollon explained to the Commission that she had lived at 102 Northview Drive for four years, had six dogs and would like to keep the animals at her residence.

Commissioners asked how she got this many dogs and she cleaned up the waste from the animals. Ms. Hollon explained she took the dogs in because they were either sick or abandoned and she cleaned up after the animals.

Gerald Edwards, 424 N. Kimball told the Commission that if they granted this special use request they would be setting a poor precedence and property values would decline.

Margaret McElwee, 428 N. Kimball told the Commission that the dogs bark so frequently that the neighbors cannot enjoy their yards. She also stated that if the law states two dogs why did she have four dogs for four years?

Commissioner Decker was given a petition with twenty eight signatures requesting the special use request be denied.

Commissioner Rice motioned to deny Special Use Request: SU-11-003. Commissioner Hargrove seconded. The motion carried.

#### **Item 4. Preliminary And Final Plat: P-11-002 Villas Downtown**

Nick Pappas gave the staff report for Gardner Capital Preliminary & Final Plat: P-11\_002 Villas Downtown. Gardner Capital, Inc., owner of numerous properties in the downtown area, is requesting plat approval for an infill housing project that will result in thirty new single-family houses and the construction of one new commercial building. The area in question is generally bound between Main Street on the west, Bluff Street on the north, Broadway Avenue on the south, and Linden Avenue on the East.

With regard to environmental issues, the site is bound by residential neighborhoods to the east and west, the Central Business District to the south, and a greenway/conservation area to the north. There are significant drainage issues in the neighborhood, and Gardner Capital, Inc. will be installing new storm drains as well as upgrading infrastructure to address these challenges. In addition, the developer has complied with all EPA mandates, has completed soil borings, and has proactively gained approval from various entities having a stake in this project: the National Advisory Council on Historic Preservation, the Excelsior Springs Historic Preservation Commission, and various Native American tribes that have expressed interest in the Excelsior Springs area. Ultimately, the project area is ready for excavation.

In addition to grading that will take place to reduce the need for retaining walls, the developer will be installing new water, sewer, and electrical throughout the project area as well as upgrading fire hydrants to current city standards. Street lights and landscaping will also be installed. Design-wise, this plat adheres to the size and area requirements that were developed for the new R-1A: Single Family Traditional District earlier this year. With regard to traffic, improvements in the widening of Foley and Excelsior Streets-as well as the closing of Kugler Street and part of Penn Street-will improve the overall flow for the neighborhood. With this development, both Foley Street and Excelsior Street will become two-way streets that will help ease congestion during parades in the downtown.

Notice of this request was posted in the Excelsior Springs Standard on July 5, 2011 and letters were sent to property owners within 200 feet of the project area. No comments were received by the Planning & Zoning Department from the general public.

Ultimately, the final plat as submitted has been determined by staff to adhere to all applicable City Code regulations and is consistent with the regulations of the R-1A and C-2 zoning districts and all other land use considerations for development of the City. Therefore, staff feels the final plat warrants the Commission's recommendation to Council at this time.

Tammy Creason with Gardner Capital was present to answer questions.

Commissioner Deckard asked if the plans for the winery were still intact and if contact had been made with the Historic District. Tammy Creason stated Gardner Capital was working with the winery and the Excelsior Springs Historic Commission along with the State Historic Office had both approved the plans.

Resident, Betty Bissell was concerned with parking. Nick Pappas explained that there would be a community parking lot and actually one more parking spot would be added compared to the current parking spaces.

Commissioner Glen motioned to approve the request for Preliminary and Final Plat: P-11-002 Villas Downtown. Commissioner Rice seconded. The motion carried.

#### **Item 5. Zoning Text Amendment: Restrictions on payday and title loan businesses**

Nick Pappas gave the following staff report. At a previous Council meeting, it was requested that the Planning & Zoning Commission consider implementing an ordinance restricting Payday/Title Loan establishments in the city. Using both Gladstone and Liberty as a guide, the following ordinances have been created for your consideration.

#### Section 40.030: Definitions

The language set forth in the text of this Chapter shall be interpreted in accordance with the following rules of construction:

1. The singular number includes the plural and the plural singular;
2. The present tense includes the past and future tenses and the future present;
3. The word “shall” in mandatory while the word “may” is permissive;
4. The masculine gender includes the feminine and neuter;
5. Wherever a word or term defined hereinafter appears in the text of this Chapter its meaning shall be constructed as set forth in the definition thereof;
6. All measured distances shall be to the nearest integral foot; if a fraction is one-half (1/2) foot or more, the integral foot next above shall be taken;
7. The following words and terms, wherever they occur in this Chapter, shall be construed as herein defined.

**Payday Loan Business:** The business of making loans for a period of 30 days or less in duration, intended to coincide with the period from one payday of the borrower to the next, and in principle amounts of \$500.00 or less.

**Title Loan Business:** The business of lending money with the pledge of personal property as collateral, evidence by a certificate of title issued by the state, and regulated under RSMo 367.500-367.533, as from time-to-time amended.

To be added to Section 400.230: Special use Permits

F. Uses Which May be Permitted. Any of the following uses may be located in any district by Special Use Permit:

27. Pay loan and title loan businesses in accordance with the following provisions:
  - a. The business is not located within 5,280 feet of any other payday or title loan business;
  - b. The business is not located within 200 feet of a residential, church, park or school property; and
  - c. The business shall be located within a multi-tenant commercial building, housing not less than four separate occupancies.

Commissioner Rice expressed reservations about the ordinance holding up in a court of law. Nick Pappas explained the ordinance had been reviewed by the city attorney and it was in compliance with Missouri State Statutes.

Commissioner Rice motioned to table the request. Commissioner Hargrove seconded. The motion carried to table the request with Tim Glenn abstaining.

**Item 6. Comments of Visitors**

There were no comments from visitors.

**Item 7. Comments of Commissioners**

There were no comments from the Commissioners.

**Item 8. Adjourn**

Commissioner Rice motioned to adjourn the meeting, Commissioner Glen seconded. Motion approved. Meeting adjourned at 6:38 p.m.

Kathy Twitchell, Secretary to the Commission