

**PAYSON CITY PLANNING COMMISSION
MEETING MINUTES
September 24, 2014**

REGULAR SESSION – CITY COUNCIL CHAMBERS

CALL TO ORDER: 7:00 p.m.

ROLL CALL: Chairman John Cowan; Commissioners Blair Warner, Todd Cannon, Harold Nichols and George Van Nosedol, Amanda Peterson, Kirk Beecher; City Councilmembers Kim Hancock and Mike Hardy; City Planner Jill Spencer; Zoning Administrator Jon Lundell

INVOCATION: Chairman Cowan

CONSENT AGENDA

- Approval of minutes for the regular meeting of September 10, 2014.

Motion by Commissioner Peterson to approve the minutes for the regular meeting of September 10, 2014. Seconded by Commissioner Cannon. Motion Carried.

PUBLIC FORUM

No comment

REVIEW ITEMS

PUBLIC HEARING – REQUEST FOR APPROVAL OF AN AMENDMENT TO THE PAYSON CITY ZONING MAP THAT WILL AFFECT UTAH COUNTY PARCEL 08-013-0009 LOCATED AT 23 WEST 100 SOUTH. THE PROPERTY IS CURRENTLY ZONED CC-1, CENTRAL COMMERCIAL AND IT IS PROPOSED THAT THE ZONE BE CHANGED TO R-1-75, RESIDENTIAL TO ALLOW RESIDENTIAL USES IN AN EXISTING STRUCTURE.

Motion by Commissioner Beecher to open the public hearing. Seconded by Commissioner Van Nosedol. Motion carried.

Planner Spencer presented information from the following staff report.

Background

In accordance with Section 19.2.8 of the Payson City Zoning Ordinance (August 6, 2014) the applicants, Reed and Lori Finch are requesting a recommendation of approval from the Planning Commission for a zone change for Utah County parcel 08-013-0009 located at 23 West 100 South. The property is currently zoned CC-1, Central Commercial and it is proposed that the zone be changed to R-1-75, Residential to allow residential uses in the existing structure located on the parcel.

Staff is unaware of the precise year the structure was built, but the exterior design and floor plan would suggest the structure was constructed as a residential dwelling. Utah County records indicate the structure was built circa 1920 and City records suggest that historically the structure has been used for residential purposes. On December 4, 2002 the City Council granted a conditional use permit to operate a beauty salon in this location and the parcel has been used for commercial purposes since that time.

Prior to granting a conditional use permit, the residential use was classified as a non-conforming use in a commercial zone. A non-conforming use refers to a use that legally existed prior to a change in the land use regulations (i.e. zoning district). As long as the use is maintained in accordance with Chapter 19.14, Non-Conforming Uses and Non-Complying Structures, the non-conforming use may be continued. Approval of the conditional use permit for the beauty salon resulted in a use consistent with the allowable uses of the CC-1, Central Commercial Zone, thus the use conformed to the provisions of the zoning district. As a conforming use,

the previous classification as a non-conforming use that allowed the property to be used for residential purposes was nullified. In order to accommodate the request of the applicant, the zoning designation of the property will need to be amended to a zone that allows residential uses.

The applicants purchased the property in 2012 and have completed various improvements to the site. Upon purchase of the property their intention was to lease the building for commercial uses and they have actively solicited businesses with no success or interest. Rather, most calls received are from individuals that want to rent the structure as a dwelling unit. Therefore, the applicants are requesting approval of a zone change to accommodate a residential dwelling unit.

Approval of a zone change requires approval from the City Council and a recommendation from the Planning Commission. Both the Planning Commission and City Council are required to hold a public hearing and consider public input prior to reaching a recommendation or decision, respectively. Property owners within five hundred (500) feet of the proposed zone change have been notified, the notice has been posted in appropriate locations, and the public hearing was advertised in the newspaper for a minimum of fourteen (14) days.

Analysis

Approval of a zone change is a legislative action of the City Council. The Planning Commission is under no obligation to recommend approval and the City Council is under no obligation to approve the zone change request. The applicant is entitled to use the property consistent with the requirements of the underlying zone, CC-1 Zone, which was the designation when the property was purchased.

In light of the applicant's request and in consideration of current land use ordinances staff contemplated the following potential solutions to the challenge associated with this application.

- Residential apartments are allowed in the CC-1 Zone with approval of an overlay zone; however, the residential use is limited to the 2nd story or basement with a commercial use on the main floor. Several of the buildings in Downtown Payson (the primary geographic area of the CC-1 Zone) are designed to accommodate upstairs apartments, but this structure is a single story above grade home and therefore use of the overlay zone is not an option for the applicants.
- A new zoning district could be created to allow both residential and commercial uses in the structure. This may be impractical because of the different requirements of the building and fire codes for commercial and residential uses. There are also zoning regulations that vary with commercial and residential uses (i.e. parking requirements). It is likely that there are a number of existing structures in the commercial zones that have similar constraints as this parcel. If such a zone was applied to this and other locations in the community, it would be exceedingly difficult to encourage the conversion of non-conforming uses to uses identified as more appropriate, creating more inconsistency in the zoning district.
- The zoning of the parcel could be amended to a zone that allows residential uses, in this instance the R-1-75, Residential Zone. Although the subject parcel is surrounded by commercial zoning it is possible to complete a zone change. However, to avoid the possibility of creating preferential zoning, or spot zoning, it must be demonstrated that any parcel in the community similarly situated would be given comparable consideration.

The Planning Commission and City Council will need to evaluate the impact the rezone request could have on the land use and economic goals of the community. The Payson City General Plan indicates a commercial land use designation for this area; however, as adopted by the Payson City Council the General Plan is a guide for future development and the zoning designation of a particular parcel is not required to be consistent with the General Plan. This statement shouldn't be construed that the goals as outlined in the General Plan are not important, rather that the Planning Commission and City Council may determine at a micro scale parcel level that an interim use of the property is acceptable until future development occurs.

Once a zone change has been approved by the City Council, the property owner is eligible to develop the property in any manner that satisfies the requirements of the designated zoning district and the other applicable development ordinances of the City. Therefore, any of the permitted, conditional, or accessory uses of the R-1-75

Zone would be allowed. The Planning Commission, City Council or staff may require additional information in order to make a well-informed decision.

Recommendation

The applicant is seeking a recommendation of approval to change the zoning designation of Utah County parcel 08-013-0009 containing approximately .059 acres from the CC-1, General Commercial Zone to the R-1-75, Residential Zone. Following a public hearing to receive public input, the Planning Commission will need to determine if it is appropriate to modify the zoning designation of the subject parcel. If the Planning Commission determines the uses are appropriate in this location and consistent with the land use goals and objectives of the City Council, the Planning Commission should recommend approval of the request. Conversely, if the Planning Commission determines the uses are not appropriate in this location or inconsistent with the land use goals and objectives of the City Council, the Planning Commission should recommend denial of the request.

Any motion of the Planning Commission should include findings that indicate reasonable conclusions for the recommendation that will be forwarded to the City Council. If the City Council chooses to amend the zoning map to accommodate the zone change request, the amendment shall be completed by ordinance.

Commissioner Nichols asked for clarification of the businesses that have been located on the property.

Lorie Finch stated that the current business is doing very well in the building located directly east of the proposed zone change. When that building was purchased from a bank and they were aware that it was zoned commercial and planned to rent it to a business. The property that they are requesting the zone change has had multiple businesses that have been in the building but through a change in the business owner's personal situation, the businesses have closed.

Commissioner Peterson asked how they feel that they can rent the property without having a back yard.

Mrs. Finch stated that they have an occupant already lined up. The occupant doesn't need any outside living space and they have family on the same street as the property. She stated that they purchased the property so that they could control who was in the building because it look onto their personal back yard.

Commissioner Peterson asked about the boundaries of the zones in the area and about a home on the east side of Main Street across from the Finch's home.

Planner Spencer stated that it is zoned commercial and that the property owners wanted to have use of the building as their primary residence as well as a business. The property owner needed to request a text amendment to the ordinance that would allow them to use an existing structure for both commercial and residential uses.

Commissioner Canon asked what happens in the future when someone else comes and wants to have a salon in the same place.

Commissioner Peterson asked if the CAP zone would be a better tool.

Commissioner Warner stated that it would be better to address the ordinance instead of the zoning map. The simplest way to correct this issue is to remove the requirement that residential uses cannot be on the main floor of the building. It would draw people into the downtown area by allowing residential uses.

Commissioner Beecher added that it should include where the physical structure limits it to it being on the main floor.

Planner Spencer stated that if the direction is to apply for a text amendment then it would push the applicant into another process that would take additional time. However the applicant has the option to still take the matter to City Council for a final decision.

Commissioner Cannon stated that it would make more sense to proceed with a text amendment instead of a zone change because it would allow for a wider variety of uses and prevent spot zoning through the area.

Commissioner Peterson asked what the time frame would be for a text amendment.

Planner Spencer was not sure on the time frame.

Commissioner Beecher stated that the amendment would need to be written in a way that was structure dependent. If the structure could accommodate have an apartment on the second floor or the basement that it would need to comply with the requirements.

Planner Spencer stated if the Planning Commission wants to try and get more residential uses in the downtown area that type of language may prevent that from occurring. The current requirements are based on the square footage of each apartment not the amount of apartments.

Commissioner Nichols expressed concern with it turning into low income housing.

Planner Spencer stated that there is no definite vision of Downtown which makes it difficult to create tools to get there.

Chairman Cowan stated that he supports the proposal but wants to make sure that it is done correctly. He believes that the boundaries of the central commercial zone should be the two blocks from 100 North to 100 South.

Planner Spencer stated that it comes down to deciding on a specific zone for that area.

Commissioner Peterson expressed appreciation for what the Finch's have done for the downtown area and was wondering what they are planning on doing with the chapel located south of their home.

The applicant stated that she wants it to be a wedding chapel.

Commissioner Nichols asked about the possibility of including other properties in the rezone. He doesn't see any of the residential uses going away.

Planner Spencer stated that it would be difficult because that would make the businesses non-conforming. What is the long term goal for the area?

Commissioner Warner stated that if there were more people in the downtown area you would see more businesses moving downtown.

Commissioner Cannon stated that he supports the ordinance amendment. It would make more sense in the long term to allow this to be done.

Planner Spencer stated to really know what would need to be done in the downtown area that a study should be completed to really know the extents of a zone and the possible uses of the downtown area.

Commissioner Beecher stated that making decisions without having a plan in place is a waste of time.

Chairman Cowan stated that there are two options. One is to recommend the zone change or change to ordinance.

Commissioner Warner stated that spot zoning is not addressing the issue and it is not solving the problem.

Motion by Commissioner Cannon to close the public hearing. Seconded by Commissioner Beecher. Motion Carried

Motion by Commissioner Warner to recommend denial of the zone change to the R-1-75 Residential Zone and forward it to the City Council, with recommendation that staff provide a text amendment to the Central Commercial Zone that would create a residential uses as a permitted use with well managed incentives for residential uses within the zone. Commissioner Cannon seconded. Motion carried.

PUBLIC HEARING – PROPOSED AMENDMENTS TO TITLE 19, ZONING ORDINANCE AND TITLE 20, SUBDIVISION ORDINANCE.

Motion by Commissioner Beecher to open public hearing. Seconded by Commissioner Cannon. Motion carried.

Planner Spencer presented information from the following staff report.

Background

On occasion, changes in development practices, new land use goals of the City Council or other appropriate circumstances result in the need to update or revise the development ordinances of the City. Staff generally compiles several potential amendments until a pressing issue arises at which time the proposed amendments are prepared for review by the Planning Commission and City Council. In this instance, the proposed ordinance amendments are limited to staff suggestions and do not involve any land use application.

Often referred as the development ordinances, Title 19, Zoning Ordinance and Title 20, Subdivision Ordinance were adopted by the City Council as implementation tools to achieve the goals outlined in the Payson City General Plan. These land use and development regulations identify appropriate locations for various uses of land, establish proper construction standards, and provide procedures to manage growth and development. Implementation of these standards will ensure the desirable aspects of existing development are protected and the overall vision of the community is realized. While it is important for the regulations to be consistent and stable, it is equally important to review the regulations on a regular basis to ensure that the contents will accomplish the desired outcome in a constantly changing development environment.

Analysis

The authority for municipalities to adopt ordinances to guide development can be found in §10-9a Utah Code Annotated. Development ordinances are also influenced by federal laws and case law. It is the role of staff to ensure that any proposed amendments are consistent with the provisions of state and federal statute and all levels of case law. That said, despite the many laws and provisions that guide the creation of development ordinances, the City Council is granted a great deal of deference to enact development regulations tailored specifically for our community. The following list of ordinance amendments is proposed for consideration by the Planning Commission and City Council.

Title 19, Zoning Ordinance

1. Multiple pages – Staff is proposing to modify all references to the construction standards document to ensure consistent references in the development ordinances.
2. Section 19.6.16.14, Page 19-64 – Staff is proposing that restaurants with drive through facilities be allowed as a conditional use when located within the transition area of the S-1, Special Highway Service Zone.
3. Section 19.6.27.8, Page 19-95 – To ensure consistent regulations in the I-O, Infill Overlay Zone, staff is proposing to change the width of the access from twenty six (26) feet to twenty (20) feet.
4. Section 19.6.38, Pages 19-133-138 – Staff is proposing various changes to the regulations of the PRZ, Planned Reclamation Zone, specifically the requirements for wildland urban interface areas, storm drainage, and open pit extraction of earth products, including traffic analysis, travel route roads, financial assurance and rehabilitation.
5. Multiple pages – Minor amendments to references to Utah Code to ensure consistent verbiage.

Title 20, Subdivision Ordinance

1. Multiple pages – Staff is proposing to modify all references to the construction standards document to ensure consistent references in the development ordinances.

Recommendation

The Planning Commission will need to review the proposed amendments and forward a recommendation to the City Council for their consideration. The Planning Commission may recommend approval, approval with conditions, or deny the proposed amendments to the development ordinances of the Payson City Municipal Code.

Amendments to the development ordinances are legislative matters and the City Council is not obligated to approve any amendment. The Planning Commission should include reasonable findings in any recommendation forwarded to the City Council.

Commissioner Beecher asked if there are specifics regarding who is required to do the repairs when there is damage done to the roadway to the travel route roads designated by an applicant.

Chairman Cannon agreed that there needs to be language regarding repairing the roadway and that it needs to be done by the applicant.

Commissioner Beecher stated there needs to be language included that if damage occurs that the mining operator is responsible to repair the roadway.

Chairman Cowan stated that at BYU that required contractors would need to evaluate the area and document the existing condition. He suggested having a third party evaluate the existing condition that would be a shared responsibility for the study.

Commissioner Van Nosedol asked about who was responsible for repairs prior to the before the contract ends.

Planner Spencer stated that she was going to include language that required stated before, during and after contract.

Kenneth Abbott stated that he is the other business owner on the block from the previous item on the agenda. He stated that the business on 100 West and 200 South is his property. He stated the Finches have done a great job and that the property owner knows the best use for their property. Developing downtown is in the hands of the property owners of the downtown area and not the city.

Planner Spencer asked for suggestion on changes to the Central Commercial Zone.

Motion by Commissioner Peterson to close the public hearing. Seconded by Commissioner Nichols. Motion carried.

Motion by Commissioner Beecher to recommend approval to the City council with the amendments to the Planned Reclamation Zone regarding the transportation requirements. Seconded by Commissioner Nichols. Motion carried.

DISCUSSION REGARDING POTENTIAL ZONING MODIFICATIONS ALONG THE 100 NORTH AND 100 WEST CORRIDORS.

Spencer asked for direction on which properties should be a priority for zone changes along the 100 North and 100 West.

Properties recommended by planning commission:

1. The Parcel with the storage units on 900 East and 100 South from GC-1 to Residential.
2. LDS church property located at 600 East and 100 South.
3. Adjusting the zone boundaries to match the property line of parcels that are split between GC-1 commercial and residential.

COMMISSION AND STAFF REPORTS

Planner Spencer informed the commission about a work session with Salisbury Construction regarding the final phase Springside Meadows Subdivision.

Motion by Commissioner Warner to adjourn.

Meeting adjourned at 8:40 p.m.