

PLANNING AND ZONING COMMISSION

June 1, 2010  
7:30 p.m.  
Council Chambers

SPECIAL ANNOUNCEMENTS

PUBLIC COMMENTS

CONSENT

1. Roll Call.

Commissioners Present: Best, Davis, Hartley, Loyd, Wescott, Woolery, and  
Vice-Chairperson Romine  
Commissioners Absent: Chairperson Harris  
Staff Present: Jim Lawson Director of Planning and Development  
Joel Hornickel Senior Planner  
Matt Filice Assistant City Engineer  
William Duston Assistant City Attorney  
Sonja Paden Office Assistant II  
Also Present: Cris Bohinc Aldermen

2. Approve Agenda.

Recommended Action: Approval of the agenda for the June 1, 2010 Planning and  
Zoning Commission meeting.

MOTION:

Motion by Commissioner Davis and seconded by Commissioner Best, and unanimously carried to  
approve the format of the June 1, 2010 agenda as amended with the withdrawal of project no. 10-1.1  
at the request of the City of Branson Engineering Department.

3. Approve Minutes.

- A. May 4, 2010;
- B. May 4, 2010;
- C. May 4, 2010.

Recommended Action: Approve the following minutes from May 4, 2010:  
A. Joint Comprehensive Plan Steering Committee  
meeting;  
B. Planning and Zoning Commission study session; and  
C. Planning and Zoning Commission regular meeting.

**MOTION:**

Motion by Commissioner Davis and seconded by Commissioner Wescott and unanimously carried to approve minutes of the May 4, 2010 Joint Comprehensive Plan Steering Committee meeting; the Planning and Zoning Commission study session; and the Planning and Zoning Commission regular meeting.

OLD BUSINESS
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None.

PUBLIC HEARINGS
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4. Request For Recommendation Of Approval To Zone An Unzoned Property To R-1 Residential At 146 Shell Lane, Branson, Missouri.  
Project No. 10-2.2 (10-00200002)  
Applicant: Church Army USA

Mr. Hornickel presented the staff report as filed with the Planning Division.

Mr. Lawson stated that the code staff referred to in the presentation dealt with non-conforming use. He added that it stated, if the property is abandoned for a period of six months or more, it would lose its non-conforming status. He also stated that they would not be able to expand or add rooms to it. Mr. Lawson stated that a file would be created with their current status and that was what their non-conforming status would be based upon.

Vice-Chairperson Romine asked if the applicant or anyone else was present who wanted to come forward and speak about the request.

Mr. Kevin Hunt approached and stated they were currently in operation. He stated that they have guys living there who go to work, go to their classes and pay rent to live there. He commented that it was no different than the other houses they currently had within the city limits. He stated they kept their property maintained more than others and they tried to be good neighbors. Mr. Hunt explained they just wanted to hook up to city sewer and that these were the hoops they had to jump through to do it.

Mr. Lawson stated that they had had up to fourteen people in the house and that was what they would like to establish their non-conforming status upon, but that did not mean there would be fourteen people there at any given time.

Vice-Chairperson Romine asked if fourteen was a maximum. Mr. Lawson confirmed.

Vice-Chairperson Romine asked if this residence was mandatory for its occupants or if it was something they could check in and out of on their own, or voluntarily.

Mr. Hunt stated that for some it was mandatory because some of the judges sent people there. He added that they have a zero tolerance if drugs or alcohol are used in the house and the resident would have one hour to leave the home.

Commissioner Hartley asked how this was monitored.

Mr. Hunt stated that there were two staff members in all of their houses and some of the houses had three. He added that someone was always there, if any problems were to come up.

Commissioner Hartley asked if the staff members were in addition to the possible fourteen residents.

Mr. Hunt stated that the staff members were included in the fourteen.

Commissioner Loyd asked how many bedrooms there were and how big the home was.

Mr. Hunt stated he could not remember the square footage, but that there was a big living room space downstairs and that the garage was turned into a bedroom. He added that he believed there were seven bedrooms.

Commissioner Davis asked staff to review the portion of code that explains the amount of unrelated individuals allowed to live in a single family home as a non-conforming structure.

Mr. Lawson stated that it is non-conforming in terms of a similar house because our code only allows for eight people and two house parents to live there. He added that if they were starting from scratch, and the property was being zoned and required a Special Use Permit, then eight would be the maximum plus the two house parents. He stated that in this case, though, they have purchased the property outside the corporate limits, so fourteen is allowable.

Commissioner Davis asked if Taney County had any requirements for a house like this at this time.

Mr. Lawson replied no.

Commissioner Davis asked Mr. Hunt how many other facilities they operated in the area now.

Mr. Hunt stated there were five inside the city limits and maybe six more outside the city limits, not including this property. He added that the homes currently inside the city limits followed the code previously mentioned regarding the maximum of eight residents.

Vice-Chairperson Romine asked if there was any way to guess how many residents they would have in the house on any given day.

Mr. Hunt stated that it would be between twelve and fourteen. He added that this house is for people that have been in the program for awhile, have a job on that side of town and have established that they will be in the program for awhile. He stated that the residents have shown growth and they have been moved over to this house since they are not required to go to as many classes as some of the other houses are. Mr. Hunt stated that most of the residents of this house have been in the program for at least sixty to ninety days and have not shown any problems.

Commissioner Davis asked how many individuals in this house, or other houses, operate motor vehicles.

Mr. Hunt stated that probably between forty to sixty percent.

Commissioner Davis asked if they run into any parking problems.

Mr. Hunt stated that they do look at that when they purchase a home, and at this particular home they have expanded the driveway. He added that since many of the residents had been there for sixty to ninety days, many have taken steps to get their licenses.

Commissioner Loyd asked if they had originally asked for fewer residents and staff had added to it.

Mr. Hunt stated that Tara, who works in the Planning and Zoning, called him and had asked about twelve, but he had stated that they sometimes have fourteen. He stated that she therefore recommended putting fourteen down so they would not have to come back or get in trouble for having more than was stated.

Commissioner Loyd asked if he wanted fourteen then.

Mr. Hunt stated that he did, but they were willing to do what the city tells them to do.

Commissioner Hartley asked if staff had received any concerns from any of the neighbors.

Mr. Hornickel stated that they had not received any emails or phone calls in regards to this request.

Commissioner Hartley asked if the neighbor notices had been sent out. Commissioner Best asked if they were also sent to businesses.

Mr. Hornickel stated that they had, and that they go to every property owner within two hundred feet of the subject property. He added that it does not matter if you are a business or residential, as long as you are within two hundred feet.

Commissioner Davis asked if they would be willing to operate this house consistent with the maximum occupancy of the other houses in the City of Branson.

Mr. Hunt stated that when they bought this house, they had a financial plan that stated if they got it at a certain price and they housed a certain amount of people, then they could pay for the house. He added that they provide the food and the power and they had allotted for a certain amount of beds. He stated that they could operate with less occupancy, but the other houses would have to pick up the slack because it wouldn't pay for itself.

Mr. Lawson stated that this was just a request for R-1 zoning and that was the only thing that was before the commission. He stated that the staff's report was just to get a record of the non-conformity. He added that they do not have the authority to work on the particular use because they are just zoning the property. He stated that they simply need to decide if R-1 is the appropriate zoning. He asked if Mr. Duston had anything to add.

Mr. Duston stated that are sending a recommendation on to the board for annexation and they can say yeah or nay to it.

Mr. Lawson stated that was correct as far as the annexation goes, but that is already in process right now with the Board.

Vice-Chairperson Romine asked if you got one with the other. She stated that once the property was annexed, then it was in.

Mr. Lawson stated that was correct.

Commissioner Davis stated that for the zoning, staff's recommendation makes sense. He added that it maintains integrity of the surrounding neighborhood and does not perpetuate the ongoing use if Church Army were to sell this property. He stated that they were hung up by the inconsistency between the County and the City in terms of how these types of situations are handled.

Mr. Lawson stated that if they remain in the County then they are not restricted to fourteen because there are not any building requirements. He added that they could add on to it and have twenty people.

Commissioner Wescott asked if the State had any requirements for a property like this to follow.

Mr. Lawson stated that he did not know.

Vice-Chairperson Romine asked if there were any others present who wished to speak in regards to the request; there was no response.

Commissioner Davis stated that they were glad to have people from the neighborhood come out and that if they had any questions, now was the time. He added to have them suggested the neighbors trade information with Mr. Hunt in case there was a complaint or a concern.

Mr. Hunt stated that he did not have a business card with him, but he was more than happy to give out his number. He added if anyone had any questions, they were more than welcome to call him.

Ms. Bobby McTaggart approached and stated that she lived in the neighborhood. She asked if they did not get annexed, then how many bathrooms were needed for that amount of people. She also asked how many bathrooms were currently in the house.

Mr. Hunt stated there were three full baths.

Mr. Lawson stated that the sewer district and County stated you could not use septic tanks any more. He added that from an environmental stand point, the City would prefer they hook onto our sewer.

Commissioner Davis asked if a residence was built inside the city limits, would there be any codes that required a certain amount of full bathrooms per resident.

Mr. Lawson stated that there would be very minimal.

Ms. McTaggart asked if it would be appropriate to ask why it could not be brought in to fit the City code, which only required eight to ten persons. She asked if it would be appropriate for them to conform totally to the City.

Mr. Lawson stated that based on what they paid for the house, and how they had it set up from the beginning, the answer would be no.

Commissioner Davis stated that when the requirements of the City were different than what had been allowed in the county, and later a jurisdiction would come in and tell them they could not do that anymore, that gets like we are taking something from them. He stated that the only question they could deal with was whether or not the zoning is appropriate.

Vice-Chairperson Romine asked if there were any other comments from the commission or the audience.

Mr. Jim McTaggart stated that he appreciated the meeting that night. He stated that if the item did not go through, there were plenty of sewer pipes in the area that go down to the City of Branson.

Mr. Mark Weisz approached and stated that he was in favor of the zoning request. He stated that he was a neighbor to the Church Army house on Dalton Drive. He said it was well-maintained and there had not been any problems. He added they were good neighbors and he thought it was a wonderful thing they were doing help these people get back to a job. Mr. Weisz stated he had lost his son to a drunk driver eleven years ago and he only wished that there had been programs like this to help those people. He also added that the sewer connection was good for the environment.

In response to an earlier request, Mr. Hunt stated that his phone number was 417.699.0205.

Commissioner Hartley stated that, if it seemed they were emphasizing the other portion, it was because the information was given to them.

Commissioner Wescott stated the information was just establishing why it was non-conforming.

Commissioner Loyd asked why the resolution spelled out to allow up to fourteen clients in a neighborhood. He asked if it was not the responsibility of the group, why was it even on there.

Mr. Lawson stated that his only reason for it was to help establish a file for the non-conforming use. He stated that if they ever got a complaint and went out there and there were fifteen, then we could tell them that they were not allowed fifteen. He added that it will also establish the non-conforming use so, if Church Army wanted to expand, we would be able to tell them that they could not. He stated that staff could have done it on their own, but he felt they needed to be aboveboard and establish this use.

Vice-Chairperson Romine added that it also now gives the applicant guidelines so they know that they cannot add on.

Mr. Lawson agreed.

Mr. Hornickel stated that since they were still new to the City, when a request came through, it was very difficult to find information because previous records were not kept this way. He added that this would ensure the details would be in the minutes, be recorded and kept in the file.

Commissioner Wescott stated that if there were no conditions on the item and it was approved as R-1, the city ordinances would not allow it to be this kind of facility any more.

Mr. Hornickel agreed and stated that they were currently working with a theater that was built in the county and annexed in as non-conforming. He added they were now looking to do some different things and staff was trying to figure out what their non-conformity meant and if they had it any longer. As a result, they were going back and forth with the property owner. He stated that was why it would be very helpful to have these kinds of statements in the report.

Commissioner Wescott stated that if it was approved with neither of the conditions then staff would have to do some work on the back end regarding their status.

Mr. Lawson stated that they would get a copy of the deed and try to figure out when they went into operation and the number of people that had been there. He added they could do the same thing, but it would not be in a public forum.

Commissioner Best asked if the minutes could reflect this information, but to not have it in the resolution.

Mr. Lawson stated that was fine. He added it would be fine if they felt more comfortable taking it out of the resolution, as long as it was documented. He stated they included it so everyone would have a very clear understanding of what it was and what the limitations were.

Commissioner Davis stated that he thought it was good to establish the level of non-conformity and he was not partial with it being in or out of the resolution. He stated they were accepting the non-conformity, but not allowing it to increase. He compared the issue to an existing, non-conforming sign that can be maintained or repainted, but not made bigger or made more non-conforming. He asked staff if the list was adequate to establish its non-conformities.

Mr. Lawson stated that it was. He said they trusted Church Army and if they said they would not have more than fourteen then they would not have more than fourteen.

Commissioner Davis stated that going forward there would be a new policy or process for the group to do for like instances.

Mr. Lawson stated that when he first got here and was working on non-conforming issues, he asked where the files were. He added that what he was used to was if there was a theater it would state how large it was, how many people were coming to it and how many seats it had. He stated that staff has no files and they did not have anything. Mr. Lawson stated that they had not been recording these files and that they really needed to be documenting these types of things. He added that all they were trying to do was establish these non-conformities.

Commissioner Wescott stated if it were not done like this, then the public would know only that a zoning of R-1 had been approved and when a potential neighbor called in at some point in the future to question why so many cars were being allowed in R-1 zoning, staff could inform them of the exact situation.

Mr. Hornickel stated that was correct and if the current staff was no longer around and someone called in five years from now, the information would be documented and could be found.

Commissioner Loyd asked if they were setting precedent with the fourteen people. Additionally, he asked if they were able to modify the fourteen in the future if they decided that it was not working for the neighborhood.

Mr. Lawson stated they would not be able to change it, but if anyone else were to come in for another location, they would have to prove what they had at the location. He stated that the non-conforming status is established by law, as to how it is operated.

Commissioner Wescott asked if they were to approve the item without the conditions, if it would still be just a recommendation to the Board of Aldermen.

Mr. Lawson stated that was correct.

Commissioner Wescott asked if the Board of Aldermen would treat the item the same or if they would consider the additional conditions.

Mr. Lawson stated that it was the job of staff to ensure that the Board and the Commission understood all of the facts for each issue. He added that they usually try to explain the use within the zoning portion of the report. He stated that they would approach it the same way with the Board and that the question before them and the Board is only the zoning.

Mr. Duston stated this was a resolution, or a non-binding document. He stated it would be the consensus of the board being handed over as a recommendation to the Board of Aldermen, who makes the final decision through an ordinance. He added they had asked if they needed to put the conditions in the resolution and that it does not matter per se because it was not the end of the road for the item. He stated what they were doing was making a recommendation of what the sense of the Board was, as a body, and what items should be recommended or not recommended. He added that the Board will take these codicils to the resolution and either put them in their ordinance or not put them in their ordinance. He stated the effect is how the Board of Aldermen's confidence in this body's assessment is to make recommendations to them. He added that they could say no to everything they do, but they do not because they have the confidence in this Board's ability to make decisions and have these kinds of conversations and not repeat these conversations at the Board meeting. He concluded by stating it does not have to be in there, but it is up to them to make a concrete recommendation to them on how to look at their ordinance, which he will be enforcing as the prosecutor.

Vice-Chairperson Romine asked if there were any other questions or comments by the commission; there was no response. She entertained a motion.

Commissioner Hartley made a motion to approve the item based on the conditions to include number one of the staff report and to modify number two to only allow no more than what is allowed by code, or up to eight residents and two house members.

Mr. Lawson stated that the motion was out of order and that they were not requesting a Special Use Permit, so they could not condition the zoning on eight or more.

Vice-Chairperson Romine asked for a second and none was given, so she stated that it would die due to a lack of a second.

Vice-Chairperson Romine entertained a motion.

**MOTION:**

Motion by Commissioner Woolery and seconded by Commissioner Best, to approve Resolution 10-2.2.

Vice-Chairperson Romine asked if there was any further discussion about this item; there was no response.

AYES: Commissioners Best, Davis, Hartley, Loyd, Wescott, Woolery and  
Vice-Chairperson Romine.  
NOES: None.  
ABSTAIN: None.  
ABSENT: Chairperson Harris.

Motion to approve Resolution 10-2.2 carried with a 7-0 vote.

5. Request For Recommendation Of Approval Of A Final Subdivision Plat For  
The Preserve At 164 Preserve Drive, Branson, Missouri.  
Project No. 10-8.2 (10-00800002)  
Applicant: The Preserve, LLC

Mr. Hornickel presented the staff report as filed with the Planning Division.

Vice-Chairperson Romine asked if the applicant or anyone else was present who wanted to come forward and speak about the request.

Ms. Diana Dohmen approached and stated she represented Bockman in Springfield.

Vice-Chairperson Romine stated it appeared the changes were very minor.

Ms. Dohmen stated that was correct and that the change was due to the financing. She stated that when they started two years ago, they had a different loan and now a certain parking area that was to be built at a later date must be included in the platted area. She added the engineering changes that were mentioned were accidentally left off of the print and will be added for the Board of Aldermen meeting. Ms. Dohmen stated they were still working with Engineering on a couple of off-site easements to the existing sewer in the valley and were about wrapped up.

Commissioner Davis asked Ms. Dohmen if she was still okay with the previously approved condition from the previous month that stated all requirements of the Engineering Department were to be met. He also asked if the statement still needed to be added to the resolution.

Mr. Filice stated they were not going to sign the plat until all of the requirements had been met regardless. He added they were really close to being completed.

Ms. Dohmen stated that, to her, it was just a standard requirement to do what was requested of them.

Mr. Hornickel stated it was another situation where staff wanted it on the record so the Board would see it, but since they had completed many of the requirements, and even some more before it gets to the Board, it was unnecessary.

Vice-Chairperson Romine asked if there was anyone else present who wished to speak in regards to the request; there was no response. She then asked if there were any other questions or comments by the commission; there was no response. She entertained a motion.

**MOTION:**

Motion by Commissioner Davis and seconded by Commissioner Wescott, to approve Resolution 10-8.2.

AYES: Commissioners Best, Davis, Hartley, Loyd, Wescott, Woolery and  
Vice-Chairperson Romine.

NOES: None.

ABSTAIN: None.

ABSENT: Chairperson Harris.

Motion to approve Resolution 10-8.2 carried with a 7-0 vote.

<b>OTHER BUSINESS</b>
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Mr. Hornickel stated, per Chairmen Harris' request at the previous meeting, the neighbor notices would begin providing the city's website to point interested parties in the right direction to obtain further information regarding a specific item. He added that the change would occur with the next month's notices.

Commissioner Loyd asked how we restrict street parking through the city code currently.

Mr. Duston stated that some streets had no parking. He said sometimes the City Engineer might say there was a safety issue then the Board of Aldermen would make a decision that those streets had no parking.

Commissioner Davis stated that a street could have parking or no parking, depending on the City Engineer's recommendation and the ordinance. He asked about the number of cars in a driveway.

Mr. Hornickel stated that it really came down to how many vehicles could fit in the driveway.

Mr. Lawson stated as part of the nuisance ordinance, and as had been done in Little Rock, the City could restrict people from parking on the grass. He added vehicles must be on a parking surface and that residents could not just enlarge their driveways.

Commissioner Loyd stated that some care and some thought needed to be taken to the parking on some of our streets.

Mr. Hornickel stated to share any concerns with Mr. Filice or Mr. Miller.

Mr. Lawson stated in some cases parking could be restricted to only one side of the street.

ADVISORY RECOMMENDATIONS

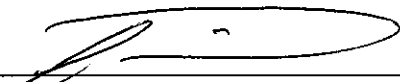
None.

ADJOURNMENT

Motion by Commissioner Best and seconded by Commissioner Wescott, and unanimously carried to adjourn the meeting at 8:30 p.m.

  
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Brenda Romine, Vice-Chairperson

7-6-10  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Joe Hornickel, Senior Planner

7/6/10  
\_\_\_\_\_  
Date