



CITY OF  
**TOPEKA**

**MINUTES**

## **TOPEKA PLANNING COMMISSION**

**Monday, December 16, 2019**

**6:00PM – Municipal Building, 214 SE 8<sup>th</sup> Street, 2<sup>nd</sup> floor Council Chambers**

**Members present:** Brian Armstrong (Acting Chair), Corey Dehn, Marc Fried, Jim Kaup, Matt Werner (5)

**Members Absent:** Katrina Ringler, Wiley Kannarr, Corliss Lawson, Ariane Messina (4)

**Staff Present:** Bill Fiander, Planning & Development Director; Mike Hall, Current Planning Manager; Annie Driver, Planner; Kris Wagers, Administrative Officer; Mary Feighny, Deputy City Attorney

**Roll Call – Acting** Chairperson Brian Armstrong called the meeting to order with 5 members present for a quorum.

### **Approval of Minutes from November 18, 2019**

Motion by Mr. Fried to approve; **second** by Mr. Kaup. **APPROVED** (5/0/0)

### **Declaration of conflict of interest/ex parte communications by members of the commission or staff –**

none

### **Public Hearing of Z19/09 and CU19/08, both by Shorey Automotive (Michael Dean Luellen, owner)**

requesting to amend the district zoning map on property located at 1422 NW Eugene Street from “R-2” Single Family Dwelling District to “X-1” Mixed Use District, in conjunction with a Conditional Use Permit to allow for a surface parking lot in association with the automobile repair shop to the north at 1432 NW Eugene Street.

It was agreed that although the items were listed separately on the agenda, both would be reviewed together and one public hearing be held, but separate votes would be taken.

Ms. Driver presented the staff report and staff recommendation for approval of both the rezoning and the conditional use permit.

Kevin Holland of Cook, Flatt & Strobel came forward representing the applicant. Mr. Holland explained that prior to the applicant purchasing the property 1422 NW Eugene, several trailers were on the lot and there were multiple property maintenance violations. Since purchasing the property several years ago, the applicant has removed the trailers, cleaned up the property, and has had no code infractions.

Mr. Holland explained that the applicant’s business is growing and he needs the additional parking space for temporary (2-3 day) parking of cars while they are waiting to be picked up after being repaired. There will be gates at both the east and west ends, allowing no public access. The south side will have a privacy fence so people in the house next door won’t be able to see the vehicles parked in the lot and the front of the property will include a larger than normal set-back and ornate fence. It will, he said, be a much better situation than when the trailers were there.

Mr. Werner inquired about lighting of the property and Mr. Luellen came forward. He explained that upon removing the trailers he also had the electrical hookups removed. There is a pole on the lot that has a

**APPROVED**

directional light to provide lighting for the property. This was installed by Westar at the owner's request and the owner pays to have it maintained. He requested this specific type of lighting so that the light would protect his property but not spill over into neighboring properties. He believes the current lighting is sufficient and does not anticipate adding more.

Mr. Dehn asked about the number of parking spaces and Mr. Holland explained that the lot will not be striped. There is not enough space to park at 90 degree angles so it will be diagonal parking. The position of the neighbor's front porch was taken into consideration when determining the setback and location of the privacy fence in order to protect the view of the homeowner. The owner anticipates keeping most of the cars he works on in his business parking lot but does need the space for occasional overflow and storage of cars if someone has to wait 2-3 days to come pick up their vehicle after repairs are complete. In response to a question by Mr. Kaup, the owner stated he works on personal vehicles and believes the height of the fence should be sufficient to shield them from the view of surrounding properties.

Mr. Luellen stated that he owns the property between the auto repair and the lot in question and uses that as his business office. He purchased 1422 specifically to clean it up and be able to keep it looking nice.

With no more questions from commissioners, Mr. Armstrong **opened the floor for public comment**. With nobody coming forward to speak, he **declared the public comment period closed**.

Mr. Fried asked whether the "general notes" are enforceable legally and Ms. Feighny confirmed they are. Mr. Fried noted General Note #1 on the Conditional Use Permit (CUP) that states there shall be no parking/storage of vehicles waiting pick-up longer than 7 days.

Mr. Kaup noted that the repair shop is a legal non-conforming use and asked for confirmation that this request would not be a prohibited expansion of a non-conforming use. Mr. Hall explained that if new, the repair shop today would require a CUP and there are provisions in the code for expansion of that. Staff found it to be more straight-forward to view the proposed parking lot as a separate principle use, or accessory parking off-site. It is separated from the auto repair shop by one lot.

Mr. Kaup noted if re-zoned to "X-1", all the uses permitted in "X-1" would be allowed on the property. These potential uses would not be restricted by the proposed CUP. Mr. Hall confirmed. Mr. Kaup noted that the lot is quite small and asked Mr. Hall what might be allowed on it if the owner didn't choose to use it as a parking lot as allowed by the CUP. Mr. Hall reviewed what is allowed in "X-1" zoning.

Mr. Kaup asked if staff would be likely to support re-zoning to "X-1" for a use un-related to the repair shop as it would be introducing a non-residential use into a residential neighborhood. Mr. Hall stated that staff feel the risk of that happening is low because of the owner's history and stated intentions, however it's true that there are other potential uses that are both more *and* less threatening than a parking lot. Mr. Kaup asked if staff would be likely to seek to re-zone the property back to R-2 if the owner chose not to go forward with the parking lot. Mr. Hall stated it would be at the direction of the planning commission. Mr. Hall noted that a Planned Unit Development (PUD) zoning might be an option but not as straight forward as what is being recommended.

Mr. Armstrong noted that there is quite a bit of X-1 zoning around the property so the proposed X-1 zoning would not be new or rare in the area. Ms. Driver confirmed that properties to the north are zoned X-1. Mr. Kaup stated that while he's not speaking against the application, he does note that the X-1 zoning is "moving south" and referenced the concern neighbors and the Neighborhood Improvement Association (NIA) have voiced.

Ms. Driver stated that there is one additional condition that needs to be added to the CUP request. The site plan calls for 4" gravel surfacing but it needs to be 8" gravel surfacing (or an approved equivalent) to ensure it is consistent with the city's surfacing policy. She stated concrete or asphalt would work and that the

applicant was unaware of this change prior to this evening's meeting.

Mr. Kaup asked if the Governing body would consider the re-zoning and the CUP separately, and what would happen if they approved the re-zoning but not the CUP. Ms. Feighny stated that the zoning would be approved without the CUP.

Mr. Fiander pointed out that re-zoning to a PUD is an option for the applicant. Staff feels the current requests would serve the purposes but would discuss PUD zoning with the applicant if that's what the commission requests.

Mr. Fried stated that his concern is not so much with what the current owner intends but rather what would happen if he sold the 3 lots.

**Motion** by Mr. Dehn to recommend to the Governing Body approval of the reclassification of the property to "X-1" Mixed Use District in conjunction with approval Conditional Use Permit (Case CU19/08) for Shorey Automotive. **Second** by Mr. Werner.

Mr. Fried asked for clarification of the motion; was it in conjunction with the CUP or simply the zoning. Mr. Dehn confirmed the motion was regarding the zoning.

Mr. Kaup asked to have the record reflect that if there's favorable action taking by the Planning Commission, it is with the expectation that the applicant will use the property for the use set out in the Conditional Use Permit. He believes the X-1 zoning should be contingent upon approval of the CUP and is concerned about what would happen if the Governing Body approved the re-zoning but disapproved the CUP.

Mr. Fiander noted that while technically there are two questions, staff is recommending approval of the X-1 zoning but it is in conjunction with the CUP; if someone were requesting to re-zone to X-1 with a different use in mind, staff's recommendation may be different.

Mr. Dehn asked if the two cases could be combined into one vote, with the motion being to approve the X-1 zoning and the CUP. Ms. Feighny stated she is comfortable with that. She added that if the Governing Body is uncomfortable with a recommendation of the Planning Commission, it is customary for them remand the item(s) back to the Planning Commission for further discussion. Mr. Fried asked if there had ever been a time when a zoning and a CUP went to Council together and Council approved the zoning but not the CUP. Ms. Feighny stated no – not to her recollection.

Following discussion, it was agreed that the motion would be to revise the motion, making it read: **motion to recommend to the Governing Body approval of the reclassification of the property to "X-1" Mixed Use District , in conjunction with approval of the Conditional Use Permit requested for a "Surfacing Parking Lot" with all the conditions stated in staff's report plus an additional condition that the surface parking lot be 8" aggregate on compacted subgrade, or approved equivalent, or concrete or asphalt, in accordance with city standards.** Mr. Werner approved the revision.

Upon roll call, the **motion passed 5/0/0.**

#### **Communications to the Commission**

Mr. Fiander stated that the zoning case heard at the November meeting will be considered by the Governing Body on 12/17.

**With no further agenda items, meeting was adjourned at 6:54 PM**