

March 2, 2023
Planning Commission Meeting
Virtual Meeting
7:00 p.m.

Commissioners Present: Chairman Marcus Wager, Commissioner Jan Kerr (on-line), Commissioner Beth Thompson, and Commissioner Ryan Vaughn

Commissioners Absent: Vice Chairman Stephan Moss, Commissioner Julie Jones, and Commissioner Blake Broadhead

City Staff Present: Mayor Jeppsen (on-line), City Administrator Bob Barnhill, City Attorney Chris Crockett, and Planning Secretary Tyra Bischoff (on-line)

Others Present: Crista Francis, Shane Francis, Marsha Francis, Justin Francis, Micah Capener, David Holbrook, Clint Nelson, Karen Nelson, Jason Mendenhall, and Brach Nelson (on-line)

1. 7:01 p.m. - Call to Order and Opening Ceremonies

Chairman Marcus Wager called the meeting to order.

A. Declare Conflict of Interest, if any

None.

2. Action Items

A. Site Plan Application – Maverik Located at 1674 W 1100 S Parcel #03-236-0018 Applicant: Brach Nelson/Maverik Inc.

Mr. Barnhill showed the site plan application for Maverik and explained their property was approximately five acres and consists of three lots which were zoned Industrial Commercial. He said they plan to install more fuel dispensers and more parking lines on the west side of the property. Along with redesign and improving the Dairy Queen drive through. He mentioned that the commission needs to consider the city landscaping code for the whole property and not just the developed part. He also remarked that they need a storm water plan which was not presented with this application. He read from the city code that, "No area of the development shall be left un-improved or without development. All areas should be developed with buildings, hard surfacing, or landscaped. No area of the lot or parcel shall be arbitrarily excluded from the site plan to avoid development requirements." He commented that there were areas to the west and north of the property that are not shown to be developed in this plan but the Planning Commission might want to have it addressed at this time. He recommended they table this action until they get more information from the applicant on behalf of Maverik Inc.

Chairman Wager inquired that if the storm water was on the west side of the development then what would happen if at a later time they developed there. Commissioner Kerr asked to see where the storm water was currently on the property. Commissioner Vaughn asked about the landscaping around the property. They further discussed the plans as presented and said they felt they need more detailed information with this application.

Applicant Brach Nelson mentioned that a couple of weeks ago he sat down with the engineering firm and Mr. Barnhill. In this meeting they discussed items that needed to be met and that they were working through those items and were close to having those plans completed. He said he recently sent updated

plans to Mr. Barnhill that were approximately 90 percent done but not a formal submittal. He said he hoped the Planning Commission continues the site approval process with a contingency that they meet code, so they do not have to wait or do this process again. Mr. Barnhill remarked that he had not been able to see the updated plans before the meeting but that he had spoken to their landscape architect about the city code requirements for this plan. Commissioner Kerr said that they cannot approve something they cannot see and do not have much of a choice (but to table this motion) because they cannot see if it is in compliance yet.

MOTION: Commissioner Kerr made a motion to table until more details come for the site plan to make sure it is in compliance with city code. Commissioner Thompson seconded the motion.

Roll Call Vote:

Commissioner Wager, Yes
Commissioner Moss, Absent
Commissioner Jones, Absent
Commissioner Kerr, Yes
Commissioner Broadhead, Absent
Commissioner Vaughn, Yes
Commissioner Thompson, Yes

Motion Passes Tabled

B. Public Hearing – Ordinance 23-B Zone change from NC2 (Neighborhood Commercial) to R-1 (Residential) located at 615 W 2200 S Parcel #03-278-0034 Applicant: RM Mills Construction

Mr. Barnhill said this is an application for a zone change to residential. He said the property is approximately 0.5 acres in size and part of the Davis Creek Subdivision. The lot was split with an NC2 (Neighborhood Commercial) zone along Highway 89 on the East and R1 (Residential) zone on the West side of the property. He said the applicant, RM Mills, is asking for the entire lot to be zoned R1 so it can be developed as a single-family lot. He noted that this property has single family homes around it and that there is a similar zone change like this to the south of this property. He mentioned that the General Plan of the city could support this change.

Public Hearing opened at 7:21 p.m.

No public comments

Public Hearing closed at 7:22 p.m.

MOTION: Commissioner Kerr made a motion to approve the zone change and make the recommendation to City Council for NC2 (Neighborhood Commercial) to R-1 (Residential). Commissioner Vaughn seconded the motion.

Roll Call Vote:

Commissioner Wager, Yes
Commissioner Moss, Absent
Commissioner Jones, Absent

Commissioner Kerr, Yes
Commissioner Broadhead, Absent
Commissioner Vaughn, Yes
Commissioner Thompson, Yes

Motion Approved

C. Public Hearing – Ordinance 23-C Zone change from R1 (Residential) to NC2 (Neighborhood Commercial) located at 2544 S Highway 89 Parcel #02-028-0031 Applicant: Shane Francis

Mr. Barnhill introduced this zone change by saying it was like the previous request because the property zone is also split between residential and neighborhood commercial. He described the property around this lot that they have single family housing to the West, a city park to the North, and Highway 89 to the East. He explained that the applicant wants to combine the split zones on the property to be commercial instead of residential. He pointed out that the commissioners should carefully consider the compatibility of commercial development with the existing residential development and the General Plan. He read the following from the staff report:

Please note that Perry City is part owner of the subject property. Perry City was not involved in submitting the application, nor is the City privy to the motivations or plans associated with the application. As an owner Perry City should be cognizant, of and in agreement with the application. In regard to the legislative decision, staff recommends that the decision be in conformance with the General Plan, consistent with past zone change decisions, and sensitive to the existing land uses in the area; our part ownership of the property should not override these important policies and guiding principles.

Commissioner Kerr said it stated in the staff report that they did not have any immediate plans to develop this property. Mr. Barnhill responded that they did not submit information about a development agreement and that this was just a zone change request. They looked at the Land Use Chart and what business would be allowed on the property with a commercial zone. In addition, they discussed different types of developments and the density allowed in that quadrant of the city.

Public Hearing opened at 7:35 p.m.

Dave Holbrook lives across the street from the Francis property and has for sixteen years. He said he bought the lot in Perry because it was in a residential area and if he had known that it was going to be changed to commercial, he would not have built there. He mentioned that commercial developments bring different problems such as looking at the back side of a building, noise, lights and increased traffic. He said he feels that if they allow commercial to build there he will have to sell and move away. He asked the commissioners to take into consideration how they would feel if this change happened to them.

Micah Capener said he was working with the Francis family and willing to answer questions about this project. He explained that the NC2 zone was designed to be a transitional zone to minimize the noises and other things that came from the highway. He mentioned that the NC2 zone requirements have specific uses that fit and work next to a residential zone. He pointed out that because of the weird diagonal of the lot a commercial use would be next to the backyard of someone's home but with this zone change the road would be a buffer for this issue. He then said this was a prime retail area for Perry City and read the few sections from of the Perry City code 15.07.0404.2:

3. One or a combination of the following methods for determining land use may be applied by the Planning Commission to make recommendations for the parcel in question:

a. The Planning Commission may recommend that the uses allowed in the majority zone of the parcel be extended to the entire parcel.

4. In making land use recommendations, the Planning Commission may give consideration to one or more of the following suggestions:

b. Re-Zoning of a parcel to conform to NC zone should be recommended when appropriate.

c. Discouragement of small lot developments of multiple density uses.

He said the Francis' do not have any specific plans but want to get it ready to sell. He showed examples of other zone changes similar to this request that have previously been accepted.

Clint Nelson said he lives on 900 West in the "L" shaped lot across the street from this property and next to his dad who has lived there for eighty-five years. He pointed out that the 900 West Road is not very wide; in addition, he would get all the storm water from the area draining onto his property. He said he had been on the Planning Commission and NC2 was meant to protect the citizens from commercial development companies who think it is the best use for the city. He expressed that the city should not arbitrarily change a zone so that maybe the landowner, in the future, may want to do something with it. He voiced that they should not allow a zone change without a plan.

Jacob Mildenhall commented that if a person wanted to build on the east side of 900 West they would know that Neighborhood Commercial would be in their backyard. (And it should not be an issue.)

Karen Nelson said she was the wife of Clint Nelson and was concerned about the storm water runoff and that they have had a flooded basement because of it. She exclaimed that Perry City has not done anything about this problem. She then mentioned that the road was barely enough for two cars to pass and that there are many school children that walk along it. She noted that in the past she had to stop people going to Perry Ice from trespassing on her property. She was concerned that adding more retail outlets will increase this action. She was also worried that their property value would decrease because of the commercial retail being so close to their house.

Justin Francis who runs the orchard property commented that there was a storm drain on the corner that keeps getting buried. He pointed out that storm water would not be a problem in the future because any development would have to fix it in order to build there.

Public Hearing closed at 7:50 p.m.

Commissioner Thompson inquired if only a portion of the property might be developed. Mr. Barnhill stated that if a developer wanted to develop the entire three acres of the property, he would be required to improve the roads with curb, gutter, and sidewalks on all three sides of the property boundaries, and that they would need to bring in any other utilities. They then looked at the requirements for the setbacks and what would be allowed for future improvements or other possibilities for the lot. Chairman

Wager suggested they square off the property and keep both zones. The applicant responded that they prefer to have the whole property the NC2 zone. Attorney Crockett gave a few suggestions for wording in the motion the commissioners might use if they are still undecided.

MOTION: Commissioner Kerr made a motion with the recommendation that the lot gets squared off to the minimum requirement of 130 feet depth for R1 (Residential) along 900 West and broaden the NC2 (Neighborhood Commercial) acreage as much as reasonable to allow this residential area. Commissioner Vaughn seconded the motion.

Roll Call Vote:

Commissioner Wager, Yes
Commissioner Moss, Absent
Commissioner Jones, Absent
Commissioner Kerr, Yes
Commissioner Broadhead, Absent
Commissioner Vaughn, Yes
Commissioner Thompson, Yes with the comment that she struggles with dictating what people can do with their property and the impact it makes to everyone around it when it is not what was expected.

Motion Approved

Mr. Barnhill said this will go to City Council on March 23, 2023 and he will communicate the information to them discussed at this meeting. He mentioned there will not be another public hearing about this ordinance but that the public may submit comments to him before that day.

3. Approval of the Minutes

A. February 2, 2023 Regular Planning Meeting

Commissioner Kerr said there were grammatical changes as follows: line 85 “audit” not “audited”. Commissioner Thompson asked for better clarification on line 33 with a utility or multiple utilities. Commissioner Ryan Vaughn said his name was spelled wrong again because it was missing the “n” at the end of it.

MOTION: Commissioner Vaughn made a motion to approve the February 2, 2023 with the corrections. Commissioner Thompson seconded the motion.

All In Favor

4. Discussion

A. Future Projects

Mr. Barnhill said he will have the ordinance amendment next month for them to look at. He mentioned the State sent a memo about a program they have for citizens to convert their grass to water wise landscaping. For the residents to be eligible the city needs to have certain landscape standards in place. He said the Mayor wanted a proposal and for it to come through the Planning Commission to get their input on the city landscape requirements.

B. Report on past-approved Planning Commission Agenda Items

None.

C. Report from Commissioner regarding previous Council Meetings

Commissioner Kerr reported she attended the February 9, meeting where they had training for open public meetings. In addition, there was a storm water training that she found interesting. She said she learned about how to mitigate the pollution from storm water runoffs. She explained that they approved a transfer of the city code from using the system provider Municode to Civicling. She mentioned that the city was hiring (contracting) a Fundraising Consultant to get grant money. She highlighted a few other things discussed in the meeting.

D. Make Assignments for Representative to Attend City Council Meeting (March 9 & March 23, 2023)

Commissioner Jan Kerr said she will try to attend the March 9th meeting. Mr. Barnhill said he will attend both the March 9th and 23rd City Council Meetings.

5. Public Comment

None.

6. Training

A. Staff

Mr. Barnhill commented to council that they did a good job on the site plan.

City Attorney Crockett taught the difference between Legislative and Administrative actions along with the rules of conflict of interest. He explained that originally the role of the Planning Commission was to give recommendations on legislative matters. He said in certain cases they have been delegated authority by the City Council to act as a Land Use Authority. With this legislative authority if there were ethical concerns and conflicts of interest the city would default to the State Acts. Under State Law a commissioner would be required to disclose ownership of a business entity that is regulated by the city or if there is a possibility of a conflict of interest. Non-disclosure was a misdemeanor with the immediate removal from office.

He explained the administrative actions for the Planning Commission was to review and apply the code as it exists. He said there will be due process rights or the right to be heard with the application process. He pointed out that the same disclosure requirements are also applicable with this function. He related what would happen if a Land Use Application was taken to court. He said as long as the commission makes thorough motions with substantial evidence the court will not overturn their decision. He expressed that in the commissioners position eventually they will make someone upset. They just have to be fair with the people by applying the code and they will never be able to please everyone.

He complemented the commissioners for their appropriate and fair decisions they had on the motions in this meeting. They then discussed and asked questions on what was done in the meeting that worked along with what would have changed if the appropriate and complete paperwork was submitted.

7. Review Next Agenda and Adjourn

A. Items for March agenda (next meeting April 6, 2023)

Mr. Barnhill said that they will have the Maverik site plan application, an ordinance amendment, and an interesting site plan application for a car dealership with part in Brigham City and about 15 percent in

Perry City. He mentioned that they might need to reschedule the date for next month if they cannot get a quorum to vote on these agenda items.

B. Motion to Adjourn

Motion: Commissioner Kerr made a motion to adjourn the meeting. Commissioner Thompson seconded the motion.

All Commissioners were in favor. The meeting ended at 8:46 p.m.