

Planning & Zoning Minutes

July 21, 2011

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CITY OF
REXBURG
America's Family Community

Commissioners Attending:

Thaine Robinson
Scott Ferguson
Marilyn Rasmussen
Gil Shirley
Dan Hanna
Cory Sorensen
Jedd Walker

City Staff and Others:

Val Christensen – Community Development Director
Natalie Schneider – Compliance Officer
Kelvin Giles – IT Assistant
Daren Spencer – Community Development Intern
Elaine McFerrin – P&Z Coordinator

Chairman Winston Dyer was excused. **Thaine Robinson** acted as Chairman for tonight's meeting. He opened the meeting at 7: 05 pm and welcomed everyone.

Roll Call of Planning and Zoning Commissioners:

Dan Hanna, Scott Ferguson, Thaine Robinson, Cory Sorensen, Marilyn Rasmussen, Gil Shirley

Nephi Allen, Winston Dyer, Richie Webb, and Mary Ann Mounts were excused.

Minutes:

1. Planning and Zoning meeting - July 7, 2011

Marilyn Rasmussen motioned to approve the Planning & Zoning minutes of July 7, 2011. **Scott Ferguson** seconded the motion.

Dan Hanna and Gil Shirley abstained for having not been present.

None opposed. **Motion carried.**

Public Hearings:

7:05 pm – Rezone – Block bordered by South Center, West 2nd South, South 1st West, and West 1st South – change from Medium Density Residential 1(MDR1), High Density Residential 1 (HDR1), and Central Business District (CBD), to Mixed Use 2 (MU2)

Chairman Robinson explained the procedure that is followed for public hearing. The applicant will come forward with the proposal. The Commission and the public will be given the opportunity to ask clarifying questions to help them to understand the proposal. Public testimony will be heard. Staff evaluation and recommendations will be given. The Commission will then deliberate the issue in order to come to a decision.

Val Christensen presented the proposal. The subject block was shown on the overhead screen. At the March 17, 2011 P&Z meeting, an applicant (Steve Nethercott) requested a zone change for several properties in this block, to be changed to the Mixed Use 2 zone; this rezone request was granted by City Council. The project architect notified staff that they were having trouble because of the setbacks of some of the adjacent properties. The problem is they would have to meet the requirements of those lesser zones for setbacks. The City's Ready Team discussed the issue and made

the decision to move forward to request to rezone the entire block to Mixed Use 2, which would make the block ready for redevelopment. This change would be in compliance with the Comprehensive Plan land use designation of Neighborhood Commercial/Mixed Use. The City has sponsored this requested zone change.

Marilyn Rasmussen asked for clarification regarding the reasons for the requested zone change. Is it because of the setbacks for the said development?

Val Christensen clarified that was not the only reason. The Comprehensive Plan anticipates the land use to go in the requested direction in the future.

Mrs. Rasmussen asked the difference in side setbacks.

The side setback for Medium Density Residential 1 (MDR1) is at least 6 feet or 6 inches for every foot of building height, whichever is greater. Mixed Use 2 MU2) has a 10 foot front setback; it has no side yard requirements, but when it is adjacent to a residential zone it must match that zone's side setbacks.

Dan Hanna was excused from the meeting because of another obligation.

Chairman Robinson asked if the audience had clarifying questions to help them to understand the proposal.

An audience member asked if the properties previously rezoned had been changed to high density.

Val Christensen said the properties were changed to the Mixed Use 2 zone, which is a high density residential zone that allows a commercial mix. The applicant also was granted a Conditional Use Permit to not have any commercial.

An audience member asked the meaning of the setbacks.

Val Christensen explained the side yard setbacks are the ones in question. For example, the side yard setback where he lives is a 6-foot minimum or 6 inches for every foot of building height.

The developer in higher densities would want to be able to have buildings closer to each other.

Abutting the MDR1 zone, they would have to follow those rules of the lower density zone's bigger setbacks. This would make the developer's March zone change unfeasible. The question back to the City is if they are going to change the zone, let's change it for the right reasons. Let's make it work.

A man asked who set up the City's Comprehensive Plan.

Mr. Christensen said the current Comprehensive Plan was done with consultants, with staff and public input.

Chairman Robinson explained that the Comprehensive Plan was approved by the P&Z Commission and the City Council. It is a planning tool for the future.

Mr. Christensen said the public was included in the making of this Comprehensive Plan. Public hearings for the Comprehensive were advertised and held to get input.

A woman said she lived on the corner of 1st West and 1st South. If a building is put next to her house how far away must it be?

Val Christensen said that is the issue that is being discussed tonight.

Scott Ferguson asked Mr. Christensen to clarify what the setback currently would be and what it would be if the zoning is changed.

Mr. Christensen said currently the setback is 6 inches per foot – if the building was 50 feet tall, the setback would be twenty-five feet. If the zone is changed to MU2, the distance would be 10 feet.

He understands those who do not want the change. Everyone is entitled to express how they feel. He clarified if the zone change is not granted, it will be difficult to do in bits and pieces. The City wants to see development proceed the right way. Redevelopment would be more of a reality.

A woman asked if they want to stop this, what do they do? If the City “messed up” when the applicant got his zone change in March, how will that be corrected?

Val Christensen said the City did not “mess up”. They did not have specific plans on the building locations at that time.

A man asked about the possibility of eminent domain.

Val Christensen said there has not been a case of eminent domain in Rexburg that he knows of. The man said Mr. Nethercott had called him and used the words “eminent domain”. He said it made him angry.

A woman asked if the zone change would raise the property value of her home long-term. The Chair thought the question could not really be answered.

A woman asked who will be able to vote on this issue.

Chairman Robinson said the Commissioners present tonight would vote. He clarified that the Commission’s decision will be a recommendation to the City Council. The City Council will make the final decision.

The woman asked if P&Z Commissioner Cory Sorensen was going to vote on this issue – he owns property in the block and has a vested interest.

The **Chairman** said that would be addressed in the next few minutes.

The woman asked how many Commissioners are needed to vote.

The Chair said that would leave four Commissioners to vote. He reiterated the P&Z Commission decision is a recommendation to the City Council.

Chairman Robinson opened the public input portion of the hearing.

In Favor: None

Neutral: None

Opposed:

Garth Kennington, 643 N. 2800 E., St. Anthony. His mother owns the corner property at S.1st W. and W. 2nd S. He stated he is against this rezone request. He has had some dealings with Rexburg in the past and is fed up. He said at the March 3rd P&Z meeting, Mr. Nethercott said he had spoken to all the neighbors and he had not spoken to all of them (*the correct P&Z meeting date for the Nethercott Rezone and Conditional Use Permit public hearings was March 17, 2011*). Mr. Nethercott also used the words “eminent domain” when he called Mr. Kennington, which thoroughly ticked him off. On March 3rd Mr. Nethercott said this is what the college wants. Mr. Kennington said he got the minutes from the March 3rd P&Z meeting, and there was no mention of Mr. Nethercott in the minutes, and he was the main speaker. He does not know what happened to the minutes; they have been laundered. This type of behavior should not be tolerated. He is against this rezone.

Joan W. Brunson, 147 South 1st West. She stated all she can do is plead with the Commission not to pass this rezone request. She will be the one that is right next door to the 5-story building, which would be directly south of her property. Mr. Nethercott has owned the property since February or March. He has not done one thing – he has not mowed the lawn, or watered the lawn. He has been so derelict in his care for the property already – what is going to happen when he builds something right next to her? She knows that the college wants to build housing. Everybody says why did she

buy property there? Her house was built in 1900. She has been there almost fifty years. There were about 300 college students when they bought their property. They had no idea what was going to happen in the future. There is blood, sweat and tears in her home. It is a very personal issue. Please do not change the zoning of her property.

Written Input: read by Chairman Robinson
Letter from Dorothy Kennington, opposed to the proposal.

July 15, 2011

Mayor and City Council
City of Rexburg,
c/o Blair D Kay, City Clerk
35 North 1st East
Rexburg, ID 83440

RE: Zoning Change 11 00212

Dear City of Rexburg:

I am in receipt of your letter regarding the zoning change bordered by South Center, West 2nd South, South 1st West, and West 1st South. I appreciate your solicitation of comments and the opportunity to comment. I regret that I will be unable to attend the meeting as travel is difficult for me as an elderly person. I wish however that this letter be read into the meeting record.

I do have several concerns with regard to the proposed zoning change from HDR1 to MU2 and do not fully understand why my lot on the NE corner of W 2nd S and S 1st W has now been included in the proposed zoning change but was not included in the earlier (March) proposed zoning change to other portions of this block. My concerns may also apply to other lots on the block.

The current 4-plex apartment meets requirements of the current zoning HDR1 but will not meet requirements of the new zone MU2. Areas of non-conformance will include MU2 3.14.040 Lot Area, 3.14.100 Yard Requirements (setback greater than 10 feet), 3.14.170 Design Standards (Trash Storage)

As the lot will be in non-conformance, my lot will then be subject to Section 3.14.080 Prior Created Lots, wherein it states my lot will be "subject to review and may be denied building permit for non-conformance with this section".

Wording under my current zoning under HDR1 3.10.060 Prior Created Lots, provides for my lot with the phrase "shall not be denied building permit solely for reason of non-conformance".

By changing the zoning of my parcel, the City will be creating a situation of non-conformance with the zoning laws. Any work requiring a building permit, including major building maintenance, would be subject to review; and if denied; will prevent the needed maintenance, diminish the value of the property and in an extreme scenario deprive myself of the benefit of

the property. In the case of the lot area, the only way to arrive at conformance would be to combine with other lots on the block to create a conforming parcel.

I request that my parcel remain under the current zoning of HDR1 to prevent difficulty and potential cost to myself or heirs or deprivation or loss of current benefits.

I do understand that there will be significant development on this block. If I am standing in the way I would appreciate knowing and perhaps could be accommodating. To date I have not received any personal communication or contact regarding the project or why the zoning on my lot needs to change.

Thank you for your consideration in this matter.

Sincerely,

Dorothy Kennington

Val Christensen said he spoke to David Kennington, Mrs. Kennington's representative, regarding this letter. He explained to this representative that the property would not be in non-conformance – it is grandfathered in as far as the building is concerned. If the building were torn down, it would have to be rebuilt following the current structural regulations.

Rebuttal:

Val Christensen said he did not have anything to add and declined the opportunity for rebuttal.

Chairman Robinson closed the public input portion and asked for the staff evaluation and recommendations.

Val Christensen added for clarification that the subject area is 10 acres. All other points have been addressed.

The **Chair** asked if any of the Commissioners needed to declare a conflict of interest.

Cory Sorensen recused himself due to a direct conflict of interest - he owns property in this subject block (67 and 63 West 1st South). He was also excused from the remainder of this meeting.

Scott Ferguson commented on the opposing letter from Mrs. Kennington. The implication the developer gave the Commission in March was that he had contacted property owners. To put a 5 story building next to someone without having talked to them about it is a big issue.

Marilyn Rasmussen said she can understand these property owners' concerns. They could have tall buildings shadowing their homes, as was mentioned by Commissioner Mounts in the March meeting. The setback distances trouble her.

Val Christensen said if a zone change is not accomplished, it would kill what that developer wants to do regarding having a 5 story building. The question becomes do they want to see that get started or not? It is the Commission' decision.

Scott Ferguson said the developer needs to speak with the neighbors.

Chairman Robinson said the Commission asks developers if they have talked to the neighbors. It gives the Commission a sense of where the development is going. As areas transition, the Commission needs to protect the residents and at the same time watch the City grow. It is a fine line.

Scott Ferguson said in regard to a remark earlier about mistakes being made, mistake is the wrong word. There may be dishonesty in conversations outside, but minutes cannot be changed. If they are going to look at larger developments, they now had better get it right.

Gil Shirley said change is hard. He knows most of the people that are here. He looks at his old block where he used to live and how it is now surrounded by apartments; he is weighing both sides. Moving was the best thing that happened to him. The developer needs to talk with the neighbors.

Marilyn Rasmussen said these are the citizens of the community that have lived here and helped to develop this community. Their heritage has to be taken into account.

Chairman Robinson suggested looking at the merits of the proposal. The entire block would change to MU2. There is the setback issue for those who live there; they will still have their homes. A developer coming in would have to buy multiple lots to make a project work. The first large project is tough.

Scott Ferguson said this issue does impact people's lives and the quality of life even though the people here would still have their homes.

Jedd Walker arrived at 7:50 pm.

Chairman Robinson clarified that the request tonight is a land use issue and not a development issue.

Scott Ferguson motioned to recommend to City Council to deny the rezone request for the block bordered by South Center, West 2nd South, South 1st West, and West 1st South, - (he clarified it was because conversations between the neighbors and the developer for the March rezone for several properties on this block did not take place as the Commission was told). **Marilyn Rasmussen** seconded the motion.

Those In Favor:

Scott Ferguson
Marilyn Rasmussen
Gil Shirley

Those Opposed:

Thaine Robinson

Motion carried.

Jedd Walker did not vote on this rezone request due to not being present when the proposal was presented and when public testimony was heard.

Compliance:

Natalie Schneider stated staff has been doing some clean up around the City – removing garage sale signs and trying to close out some older permits.

Mrs. Schneider introduced D.J. Barney, who wanted to address the Commission regarding some compliance issues and his properties on West 1st North and on Airport Road. He has been moving forward in the clean-up of his Airport Road property. She stated that Betty Rowbury, his neighbor on West 1st North, had requested that his property be cleaned up. Mr. Barney has been working on this issue also.

Chairman Robinson expressed that the Commission wanted to thank D.J. Barney for his clean-up efforts and for a very noticeable positive change. Things are looking really nice.

D.J. Barney said he did the first landscaping in 17 years on his 1st North property today. He has had some financial struggles. Once he moves he wants to put the complaints behind him.

He has started building a fence on 2 ½ foot concrete blocks between his property and the trailer court on Airport Road. He feels this kind of fence will make things better once it is done, because a chain link fence does not protect you. It will take some time to complete but it will be worth it.

The **Chair** said the Commission applauds him for this effort.

D.J. Barney said he wants to see Airport Road developed in a positive way. He started his work about ten years ago when he bought the property. A photo map of the area was shown.

He wanted to bring his concerns to the Commission's attention. Mr. Barney referenced City Ordinance No.548 regarding mobile home parks and mobile homes. A new mobile home trailer has been put on Airport Road in the trailer park just to the south of his property. The trailer is too close to his property line and to the street. This is a compliance issue. The setbacks are not as they should be. He is worried about safety and feels the new trailer should comply with current requirements.

The **Chair** said the Commission feels the matter would need to go to the City Attorney.

Natalie Schneider thanked D.J. Barney for bringing his concerns to the attention of City staff and to the P&Z Commission. She will bring the issue to the City Attorney.

The **Chair** reiterated that the Commission thanks Mr. Barney for all of his hard work. He has made some dramatic changes.

Natalie Schneider asked if the Commissioners had any compliance issues to bring to her attention.

Chairman Robinson said he often notices the many temporary signs.

Mrs. Schneider said she strives to keep on top of the situation and always keeps temporary sign applications in her vehicle to give out if she sees a new temporary sign. She stated that the Bell-Black “Now Open” sign was up over a year; it was not taken down after she requested it to be. She then asked them to take it down while she was present, and they did so.

Chairman Robinson said the Custom Auto temporary sign may need to be checked on.

Mrs. Schneider will do so.

Gil Shirley asked for clarification on the tent case-lot business on North 2nd East.

Natalie Schneider explained that this temporary business, which came before the City Council a couple of weeks ago, has been given a temporary business permit for 6 months.

If the situation works out for the business owner, he will go to a brick and mortar building.

She clarified that all temporary businesses must complete a business registration permit application with the City; it is reviewed by staff for safety, parking, setbacks, etc. The temporary businesses also have to complete a temporary sign permit application, which staff also reviews.

Unfinished/Old Business:

1. Possible roads over the Teton River, and possible right-of-ways – Map discussion

Val Christensen provided the Commissioners with a conceptual map of possible river crossings. These possible roads were discussed.

Chairman Robinson asked what the process would be if the Commission wanted to move forward with this issue.

Val Christensen said the City has a transportation plan. The Commission could take some time to look at the map. Staff could bring the issue to the transportation committee and the City Engineer, who could attend a P&Z meeting to give input. A recommendation on the issue could eventually be given to the City Council.

New Business: None

Non-controversial Items Added to the Agenda: None

Report on Projects: None

Tabled Requests: None

Building Permit Application Report: None

Heads Up:

August 4th – Conditional Use Permit- 881 Jet Stream Drive – to allow an “Off-Premise” sign

The meeting was adjourned at 8:30 pm.