

**KENT PLANNING COMMISSION
BUSINESS MEETING
MAY 7, 2019**

MEMBERS PRESENT:

**Amanda Edwards
Jeff Clapper
Peter Paino
Michael Bruder
Chris Clevenger-Morris**

STAFF PRESENT:

**Jennifer Barone, Development Engineer
Eric Fink, Asst. Law Director**

I. Call to Order

Ms. Edwards called the meeting to order at 7:02 p.m.

II. Roll Call:

Ms. Edwards, Mr. Clapper, Mr. Paino, Mr. Bruder, and Mr. Morris were present.

III. Reading of the Preamble

The Planning Commission operates in accordance with the provisions of the Kent City Charter, the Kent Zoning Code and Subdivision Regulations, all of which establish the powers and duties of the Commission. Members of the Planning Commission are appointed by Kent City Council and serve without compensation. Certain cases such as Conditional Zoning Certificates, Special Zoning Permits, Overlay District Projects and Zoning Amendment require Public Hearings before the Planning Commission. During the Public Hearing, any person wishing to address their concerns to the Commission will be provided the opportunity. Once the Public Hearing is closed, it shall be the discretion of the Chair whether to allow any additional public comment. Cases such as Site Plan Reviews and Subdivision Projects do not require a Public Hearing. However, the Chair will allow public comment on each case as it is taken on the agenda. In each instance where the Commission receives public comments or conducts a Public Hearing, those persons wishing to address their concerns to the Commission will be required to do so under oath or positive affirmation. The oath or affirmation shall be administered to all who wish to speak at the beginning of the Planning Commission Meeting. Once a decision has been made by the Planning Commission on a case, the Case is closed for the Commission, as there is no provision to reopen a case. With the exception of cases falling under the Subdivision Code, any decision of the Planning Commission may be appealed to the City's Board of Zoning Appeals in accordance with the Chapter 1109 of the Zoning Code. Anyone interested in appealing a decision of the Planning Commission is advised to seek private legal counsel.

IV. Administration of Oath

Mr. Fink instructed those members of the audience wishing to be heard on any of the cases presented at this meeting to rise and raise their right hand. Mr. Fink administered the Oath, "Do you solemnly swear or affirm that the testimony that you are about to give this evening is the truth, the whole truth, and nothing but the truth, so help you God? Please say "I do." The participants responded, "I do."

V. Correspondence

None

VI. Old Business

None

VII. New Business

- A. PC19-006 Southwest Sanitary Pump Station
1296 Middlebury Road
Conditional Zoning Certificate and Site Plan Review & Approval**

The applicants are seeking a Conditional Zoning Certificate and Site Plan Review and Approval to construct a sanitary pump station. The subject property is zoned R-1: Low Density Residential Zoning District.

Ms. Edwards announced that the applicants have requested a continuance until the June 4, 2019 meeting.

- B. PC19-007 Text Amendment to the I: Industrial Zoning District
Review and Comment**

The proposed Zoning Code Amendment is being forwarded to the Commission for review and comment of the I: Industrial District Conditional Uses.

Ms. Edwards summarized that the applicant seeks a text amendment to the I: Industrial District to include restaurants, event centers, retail, and catering as conditionally permitted uses.

Ms. Barone reviewed the staff report that was presented to the Board.

Mr. Fink reviewed the Board's options for this case: Voting to recommend the amendment, recommending against the amendment, or to continue the matter for further deliberations.

Elizabeth Briggs, 962 Middlebury Rd, stated that the property that they are looking at has been vacant for the last two years mostly due to the zoning. She is seeking a text amendment and understands that the change will affect all I districts but feels that because it would be conditionally permitted, people would still need to go before Planning Commission for approval.

Mr. Bruder asked what the intent is if the text amendment is approved.

Ms. Briggs stated that they would like to open a tea room, restaurant space, and event center similar to the former owner, VFW, except they are not seeking a liquor license at this time. She said they would renovate the current bar area into the tea room and also renovate the event space so that it can be rented for community events.

PUBLIC COMMENTS

Daniel Dobrilovic, 6453 Woodlawn Ave, asked what year the Bicentennial Plan was created.

Ms. Barone stated it was about 15 years ago.

Mr. Dobrilovic stated that previous changes to the City's plan took an enormous amount of time to develop and create. He then asked how long it would take for this text amendment to go through the entire process.

Mr. Fink stated that City Council could act upon this within the next 60-90 days.

Ms. Barone stated that the Bicentennial Plan, also known as the Comprehensive Plan, is supposed to be updated every 10 years but because the City is in the process of changing the zoning code, it has been delayed until the zoning code changes are completed; possibly in the next couple years. The current plan was approved in 2004.

Mr. Dobrilovic made the point that normally changes take a number of years to research and approve, and expressed his concern for approving a text amendment in such a short amount of time.

Tamara Karel, 17401 Edgewater, Lakewood, stated that she is a former planning commission member from her community and Ms. Briggs' relative. She feels that the legislative process that involves the citizens of Kent is a good process and not a concern; timing is similar to other cities in Northeast Ohio. She also feels that the issue regarding utilities shouldn't be a concern for approving a text amendment. She agrees that definitions will need to be added. She stated that they think this is a beneficial way to get this property back to use and generate income for the city.

PLANNING COMMISSION DISCUSSION

Mr. Bruder asked for clarification of the difference between the zoning code and comprehensive plan.

Ms. Barone stated that the comprehensive plan is a guiding tool of what we want the city to look like in the future. The zoning code is the rules and regulations that must be followed now.

Mr. Bruder asked why they are also discussing the towing parcel and the VFW parcel contiguously.

Ms. Barone stated that the towing parcel would have been an issue if there was a request for a map amendment.

Mr. Fink explained that if they rezoned one parcel to a district that wasn't contiguous, they would be illegally spot zoning.

Mr. Bruder asked if there was a variance they could seek.

Mr. Fink stated that the City does not allow use variances.

Mr. Paino asked how Mad Cap is allowed in an I district.

Mr. Fink stated that they are allowed because they are bottling and serving their own product on site, which is also why they are not allowed to have their own kitchen.

Mr. Paino asked if this amendment is approved, then Mad Cap could have their own food service.

Mr. Fink responded yes. They could be a restaurant, event center, retail and do catering, but they would have to apply for approval as it would be conditionally permitted.

Mr. Paino asked for clarification on the definition of retail.

Ms. Briggs stated that she just wanted to also have a gift shop and make sure she was covered while she was asking for an amendment, but she would be fine if retail needs to be removed from the amendment.

Mr. Bruder and Mr. Paino stated that the retail is an ancillary use and may not be needed for her purposes.

Mr. Paino asked if any of the suggested conditions are on the present use.

Mr. Fink stated that the present use is subject to conditions 3, 4, 5, 7, and 55. So there is some overlap. The N-C district has restaurants as a conditional use and that is why staff made that comparison.

Mr. Paino stated that a condition of a restaurant in the N-C is that it is on a major road and this is not.

Ms. Barone stated that that is a condition of the N-C, but that doesn't mean it needs to be added to the proposed text amendment.

Mr. Fink added that it is a condition for clubs, lodges, and charitable fraternal and social organizations in the I District.

Ms. Edwards asked whose responsibility it would be to install utilities if they were not already provided.

Ms. Barone stated that it would be the applicant/developer.

Ms. Edwards asked if the applicant had anything further to add.

Ms. Briggs stated that she is confused as to why they are looking at the N-C District. She stated that she is more than happy to apply for a rezoning if that is preferable to the city.

Ms. Barone stated that the reason why the N-C District has come up is because she was looking through the code for conditions that might apply to this use and N-C was the only one that had restaurant as a conditional use; it is a starting point for discussion purposes.

Mr. Paino reviewed the staff's concerns listed in the provided staff report. He asked what a possible path to achieve an adaptive re-use of this building would be.

Mr. Fink stated that any of the uses that are identified in 1155.

Mr. Paino stated that another concern listed regarding a site not having utilities is not a concern to him. The definitions could be added and he agrees that retail may be too general of a term. Mr. Paino asked what the detriment would be to adding an amendment like this to all Industrial areas as a conditional use.

Mr. Clapper stated that it would be that a developer would buy a track of industrial land and develop a retail center under these conditions and drive business away from the central business district.

Ms. Edwards stated that they have had a lot of conditionally permitted plans that they have said no to because they feel they have good reasons and then they get overturned in court that they didn't foresee in anyway; it is hard to foresee what will be.

Mr. Paino agreed.

Mr. Morris stated that his concerns are first through the amendment process and the changes to the existing code; it isn't done on a case by case basis because there have been issues in the past. This change affects the entire the Industrial District. While he doesn't always agree with the Bicentennial Plan, a lot of thought and effort went into that plan and it is there for a reason. He sees this as a potential threat to the future but not necessarily this case. He is also troubled that language doesn't already exist for the proposed amendment and new language

would need to be created and added. While this case is something that deserves a lot of thought and effort from this Commission, he feels that it is better suited for the current process of revising the zoning code to see how some of these uses fit into other districts. He also feels that it sets a dangerous precedent for the city. By approving this change through an amendment process, he feels that it encourages other businesses to do the same. He said they need to also consider health and wellbeing of not only businesses but residents and feels that progress for the sake of progress in this instance has to be discouraged because it can be dangerous and near sighted. He cannot in good conscious support this in its current form as an amendment process.

Mr. Clapper stated that he agrees with Mr. Morris and feels that it could be discussed as we go through the zoning code changes but at this time there is not enough definition of what it is to make a decision. He added that the tea room may or may not work out, and then you have to consider what the next use will be. Rent and space are less expensive in industrial areas compared to downtown commercial retail areas. He asked if the tow company was allowed in an R-C District.

Mr. Fink stated that the tow company itself is allowed, but towing the vehicles back to that location is not.

Mr. Bruder stated that this is a tough one as no one wants to see the building sit vacant for another couple of years. He is a little concerned that Ms. Briggs feels that she didn't get good support from the staff side. He feels that the amendment has such sweeping ramifications. He asked if spot zoning is illegal or just not desirable.

Mr. Fink stated that the courts discourage it and he doesn't know if it would survive legal scrutiny. He stated that he believes that it is his obligation that the City does not engage in spot zoning. Mr. Fink stated that he will provide a written opinion to the Board as this is a difficult issue.

Mr. Bruder stated that he is just trying to understand all of the options.

Ms. Edwards cautioned the Board that they needs to adhere to the issue of the text amendment that is before the Board; not changes to the zoning districts and comprehensive plan.

Mr. Paino stated that he understands the issue before them tonight but agrees that discussing the comprehensive plan is important too.

Mr. Morris stated that he feels that spot zoning sets a precedent as well as puts the city in legal jeopardy.

Mr. Paino stated that in the current process of changing the zoning code, this parcel's zoning could be looked at.

Mr. Fink stated that when they are working on zoning updates, this may be something that might be reviewed to consider if the current zoning makes sense for all areas.

Ms. Edwards suggested scenarios where the parcels could be rezoned.

Mr. Fink stated that if there were multiple parcels, it could at the Planning Commissions discretion, be changed to any zoning district that make sense with the surrounding area.

Ms. Edwards stated that the way to get all three parcels rezoned to commercial is for them all to band together and ask for the change.

Mr. Fink responded, yes, that is one way.

MOTION: *Mr. Clapper moved that in case PC19-007, the Planning Commission recommendation to Kent City Council that Section 1155.02(b) of the Zoning Code not be amended as proposed.*

Mr. Morris seconded the motion. The motion carried 5-0.

VIII. Minutes

MOTION: *Mr. Morris moved to approve the April 2, 2019 minutes. The motion was seconded by Mr. Clapper.*

The motion carried 5-0.

IX. Other Business

None

X. Adjournment

MOTION: Mr. Morris moved to adjourn. The motion was seconded by Mr. Clapper. The motion carried 5 – 0. The meeting adjourned at 8:08 p.m.