



PLANNING COMMISSION FEBRUARY 22, 2021

MEETING

City Hall – 131 N Main St

February 22, 2021 at 7:00 PM

AGENDA

CALL TO ORDER

ROLL CALL

J. Albers___ B. Albers___ Block___ Henson___ Gile___ Harrison___ Kutilek___ Mason___ Rich___
Runnells___ Scott___ Woodard___

OTHERS PRESENT

AGENDA ADDITIONS

APPROVAL OF MINUTES

Commission member _____ moved to approve the minutes of the January 6, 2021 Planning Commission meeting.

Commission member _____ seconded the motion.

1. Planning Commission Minutes January 6, 2021

CITIZEN COMMENTS (Limited to items not on the agenda)

OLD BUSINESS

NEW BUSINESS

Business Items

2. Discussion of Special Use Permit at 229 N Main

A Special Use Permit was issued in September 2012 to Roger Zerener to construct 4 residential apartments on the second floor of the building located at 229 N Main. Zerener currently rents out the apartments, but has asked to utilize one of the apartments as a

"short-term rental". The City zoning code does not specifically address "short-term rentals" so clarification is needed if this type of use is allowed under his current Special Use Permit.

If the Planning Commission decides that "short-term rental" use does not meet the existing Special Use Permit, Zerener will be required to apply for a new Special Use Permit to allow for this type of use. Or the Planning Commission will need to define a code or administrative process on how to handle short-term rentals.

Open Public Hearing

Consideration

ADJOURN

Motion to adjourn at _____pm

Motion: _____ Second: _____



**PLANNING COMMISSION JANUARY 6, 2021
MEETING**

City Hall – 131 N Main St
January 06, 2021 at 7:00 PM

AGENDA

CALL TO ORDER

ROLL CALL

Members Present:

David Woodard, Bret Albers, Melanie Block, David Rich, Zach Henson, Ryan Runnells
Bryan Mason, Ryan Scott. Staff Present- Danielle Young and Angie Gassmann

OTHERS PRESENT - Brent & Julie Peintner, Keith & Jan Jopp

APPROVAL OF MINUTES

Planning Commission Minutes September 15, 2020

Motion: Approve the minutes of the September 15, 2020 Planning Commission meeting.
Motion made by Planning Commission member Bret Albers, Seconded by member Ryan Runnells.
Motion passed 8-0.

CITIZEN COMMENTS

OLD BUSINESS

NEW BUSINESS

Open Public Hearing

Planning Commission Chair David Woodard opened the floor for comments

Brent Peintner stated that he lived at 327 Evergreen. A few years back he bought property at 825 Sunset Ave. They had noticed the trailer on property was in disrepair so they removed it off of the property. A few years later, they purchased the property next to the existing property at 817 Sunset and after renting it decided to remove the trailer there also. They decided to build a shed on their lots on Sunset. Peintner stated he called in a Dig Safe and in turn received a call from the City. He stated he was informed he was not allowed to build a shed on the Sunset property due to no dwelling existing on the property. He stated that if they had left one of the Mobile Home's on the property then they could

have built the shed with no problem. Peintner is aware of the easement on their lot and the alley easement that exists between his dwelling and the two properties that he has mentioned. He stated that they met with City Administrator Young who informed them that they could request a Special Use permit. The shed will be built to look nice with special landscaping. The process has pushed back building their shed by almost a year and they have incurred extra costs. He has already spent money cleaning up the properties to make them look better.

Chairperson David Woodard asked Young to clarify why the properties are not able to be adjoined because of alley.

Administrator Young explained where the two properties were located on the map, projected on the TV for everyone to see. She explained the dashed lines on the map indicated an easement. Peintner's plan to locate their shed outside of the easements, but the lots cannot be joined together because of the alley easement in between Sunset and Evergreen. Young stated that the Code states accessory structures are to be built on property with a dwelling. They could join the two lots on Sunset and use a Mobile Home as the dwelling and build the shed. It was recommended by our attorney to apply for a special use permit.

Member Block asked about the part if they ever sell the house would they have to sell shed with their home? Young responded that they could attach the special use to the building permit or file a document with the Register of Deeds that this property could not be sold individually and has to be sold with the 327 Evergreen or attached to an adjacent lot to the north or south with a dwelling.

Block clarified that if they brought in a Mobile Home or had left the other Mobile Home, we would not be having this meeting.

Member Brett Albers asked about the cost to the City to vacate the alley.

Young stated the City could do that, but it would be costly. The City is already treating it as an easement anyways because drive access is blocked by Evergreens to the north. The ability to open the alley for drive access could be done as Young believed it was there to access utilities and explained that newer plats in the City have been done as easements instead of alleys. Where there are easements, the City allows fences to be built to the property line with the understanding that if the City needs to access the easement the property owner will need to remove the fence.

B. Albers was afraid they would open pandora's box regarding how far it will go with opening alleys to allow accessory structures to be built.

Resident Jan Jopp (326 Greenwood Ct) addressed the Planning Commission and had a concern with the easement. She stated it is cement and then turns toward the cement driveway that is also an easement. The City never completed joining where the cement ends to take it to the other open part. Jopp said she has requested this to be fixed and it has never been done. She said water is up to her thighs in the cul-de-sac center and wants it to conform like the other side so water can drain like it is supposed to. She thought this would benefit Peintner's also.

Chair Woodard requested Young bring the area up on map that Jopp was speaking of. Young described the area at the end of Greenwood Ct.

Jopp said it is the City's job and has waited 18 years to have this taken care of.

Young explained that the City had cleaned it out recently. Staff had looked at the area and water hits grass in the alley and has nowhere to go. There is a drainage issue that the City has tried to address. City recently purchased a mini excavator to help clean the area out to help with this issue. Young would have to check the flow of the drainage to the north down the alley.

B. Albers thought vacating the alley would eliminate the need for a special use permit. Young stated that if the alley was vacated then half of the alley would go to each property owner. She would have to check with Brad on what utilities, if any, run through there and Council would have to approve the vacate.

Chair Woodard asked if there were any more comments or questions.

Jopp asked what the building would look like and asked if it would look like the Body Forge building? Young showed a picture that Peintner's had presented with the application.

Julie Peintner stated that the photo is not what it will look like, just an example, as they wouldn't have final plans of the shed until after the Special Use was approved.

Jopp thought it looked like the Body Forge building. Young thought it was different. Jopp asked if it was a manufactured building like that, what would keep it from being a business. Young stated it would be zoned residential and unless it was an allowable at home business, it could not convert to commercial without a zone change. Jopp was concerned it wouldn't look residential.

Chair Woodard asked if they met setbacks, they could have built the shed if the mobile home was still there. Young agreed and explained as long as the mobile home was there, even if it was vacant, they could build the accessory structure. Young mentioned that setbacks on the Mobile Home lots were different than residential lots, but on Peintner's application they had indicated that they would build the shed with a front yard setback required in a residential district so if residential homes were built along Sunset it wouldn't stick out further than the homes.

Member Bryan Mason asked if they could put a 3-sided shed up right now if they wanted, like a carport? Young said a carport is an accessory structure and would require a dwelling.

Chair Woodard asked for any other comments or any other comments from anyone not here. Young read an email from Planning Commission Harrison who was not able to attend, but stated he did not see an issue with the shed location (across an alley right of way) or the use and thought it was a good plan to make it neighbor owned.

Planning Commission member Jessa Albers was not able to make the meeting, but had also emailed and said if absentee votes were allowed she would vote to approve the Special Use Permit to allow the building of the shed.

Young was also contacted by the resident at 803 Sunset who stated she had no issues, but hoped the trees on the lot would stay. They would eventually like to remove their mobile home and build a house and their current mobile home sits across two lots that are combined as well. She also mentioned that there was an accessory shed across the street (to the east).

Jopp added that this was the time to clean up the drainage between the properties and conform as she didn't want to file a lawsuit. She was afraid the building would cause an increase in water in the area.

Woodard asked for any other comments and requested a motion to close the public hearing.

Motion to close the public hearing on the Special Use Permit at 825 Sunset at 7:30 pm.
Motion made by Planning Commission member Bret Albers. Seconded by Planning Commission member Melanie Block. Motion carried 8-0.

CONSIDERATION OF SPECIAL USE PERMIT AT 825 SUNSET AVE

Motion: Approve the Special Use permit at 825 Sunset Ave to build a 30' x 56' shed.
Motion made by Planning Commission member Melanie Block. Seconded by Planning Commission member Bryan Mason.

B. Albers had concern about issuing the Special Use Permit over an alley and asked if they were getting into a situation that would be hard to tell the next guy no. Albers thought it might be worth exploring and asking the Council to vacate the alley. Then it would go around and combine the lots and build the structure.

Jopp asked if the alley was vacated who would be responsible for drainage. Young replied that the City would still be responsible for the drainage as the City would keep a 20' easement.

Block - this is why I did not motion like written because all they have to do is move a MH in and build it

Chair Woodard asked Young the time-frame on a consideration to vacate alley. Young replied that she wasn't aware of the City vacating an alley before, but had vacated streets and thought it could be a lengthy process. B. Albers stated he had asked Austin about the time frame and he stated it should be fairly quick, but it hadn't been discussed in-depth. It was asked if the item should be tabled for cost and time frame to be determined to see if a Special Use will even be required.

M. Block asked if vacating the alley, meant the whole alley or just a portion. Young showed on the map where the alley ran and that utilities would need to be checked to see what ran in the area.

Runnells asked if there was a way to expedite the process if they decided to go a different direction than the Special Use and if they could do a short term special use that would go away after completion of the vacate. Albers asked if the Special Use would go away if the Council decided to vacate the alley. Young stated it would.

Woodard asked Albers if he wanted to amend the motion or create a new motion.

B. Albers replied that whether he amends or starts a new motion, he would go with Block's motion, but adding for the Council to vacate the alley and if approved then the special use would go away.

B. Albers said his motion would be to approve the special use with input from Council on vacating the alley, which would void the special use permit that would allow them to the build accessory structure.

M. Block asked if getting rid of the alley created other problems. Young mentioned that she thought another variance had been done with the property at 319 Greenwood, where they were granted a special use or something else by the Planning Commission to use the alley as their backyard setback.

Jopp mentioned the alley was for utilities, but not sure what utilities ran there. Young stated that there was sewer within the alley and usually water was along the street, but was unsure of the location of the gas line. Jopp asked about the telephone poles. Young said that utilities ran through easements and the alley switching to an easement shouldn't be a problem for utilities.

Member David Rich suggested that we could clear up the Special Use by abandoning the alley.

Chair Woodard asked if there were any other questions and discussed the motions presented.

Jopp stated they would be for it if the City cleans up the drainage and conforms, otherwise she was against it. Woodard stated her concern was clearly understood.

Planning Commission voted on the motion to approve the Special Use Permit at 825 Sunset Ave to build a 30' x 56' shed. Motion carried 8-0.

Motion to send to Council with request to vacate the alley.

Motion made by Planning Commission member Bret Albers. Seconded by Planning Commission member Ryan Runnells. Motion carried 8-0.

Young stated it would be sent to Council next Thursday, January 14th at 7:00 pm.

ADJOURN

Motion to adjourn the meeting at 7:46 pm.

Motion made by Planning Commission member David Rich. Seconded by Planning Commission member Ryan Runnells. Motion carried 8-0.

Planning Commission Chair, David Woodard

Danielle Young, Secretary

How other cities address short-term rentals:

The City of Hillsboro did a conditional use permit on a request recently, but felt there should be an administrative process to it instead.

The City of Prairie Village said they license short-term rentals (VRBO) like they license their normal rental properties. (Cheney does not license rental properties, so that was no help.)

Goddard, Kingman, and Lindsborg all have short-term rental properties listed on VRBO's website and do not regulate them.

Wichita does not regulate short term rentals. People have asked about regulation at some point, but nothing has been done yet.

Hutchinson does not license, but a building official stated they would need an occupancy permit to operate.

I've checked with KDOR and transient guest tax would not need to be collected.

Cheney Zoning Code definitions:

"dwelling, apartment building" means a building arranged, intended or designed for residence by three (3) or more families living independently of each other"

"Apartment building" means a building arranged, intended or designed for residence by more than two (2) families"

"Motel or motor hotel" - means a building or group of buildings containing one (1) undivided tract or parcel of land with a group of individual private units, each provided with separate sleeping room or rooms, having bath, lavatory and toilet facilities, designed and to be used primarily for transient guests traveling by a motor vehicle.

Staff opinion is that neither of the apartment definitions are dependent upon length of the lease (short term, monthly, annual)

and "Motel/motor hotel" definition is for a "Group" - Mr. Zerener is only requesting one of his apartments be a short-term rental, so it is not a group of transient guests.

**SPECIAL USE PERMIT
CITY OF CHENEY, KANSAS
SUP-12-01**

WHEREAS, Roger Zerener has requested that the Governing Body of the City of Cheney, Kansas issue a Special Use Permit, pursuant to Chapter 21 of the City of Cheney Zoning Ordinance as adopted on January 14, 2006 by Ordinance No. 801;

WHEREAS, the requested Special Use Permit is to allow the construction and operation of up to four (4) residential apartments on the second floor of the building, with a current zoning of C-2 Commercial, located at 229 North Main, Cheney, Kansas;

WHEREAS, this request was forwarded to the Cheney Planning Commission for the holding of a public hearing and comment during its September 10, 2012 meeting;

WHEREAS, notice of a September 10, 2012 Cheney Planning Commission public hearing on the requested issuance of the Special Use Permit was published in the official city newspaper on August 16, 2012 and mailed on August 3, 2012 to all owners of record of lands, within the corporate limits of the City of Cheney, located within 200 feet of the proposed zoning change;

WHEREAS, after conducting the public hearing and reviewing the request, along with review of a description and the current C-2 Commercial zoning of the building proposed to be used, and considering the written factors for consideration and proposed standards provided pursuant to Chapter 21 of the City of Cheney Zoning Ordinance, the Planning Commission, during its meeting of September 10, 2012, made findings based upon said criteria and recommended that the Governing Body approve issuing a Special Use Permit upon the conditions contained herein; and

WHEREAS, the Governing Body was apprised of the recommendation of the Cheney Planning Commission and considered this request during its September 13, 2012 meeting. After review of the recommendation of the Cheney Planning Commission, and based upon its findings, the Governing Body of the City of Cheney, Kansas hereby approves issuing a Special Use Permit upon the conditions contained herein.

THEREUPON, a Special Use Permit is hereby issued to Roger Zerener, and conditioned upon the conditions provided herein, to allow the construction and operation of up to four (4) residential apartments on the second

floor of the building located at 229 North Main, Cheney, Kansas, on the lot legally described below.

CONDITIONS. The conditions upon which this Special Use Permit is issued are as follows:

- 1. Construction. – Up to four (4) residential apartments on the second floor of the building located at 229 North Main, Cheney, Kansas conditioned upon compliance with this Special Use Permit and all other permits necessary for the construction of such apartments, as issued by the applicable local, state and federal governmental agencies.
- 2. Occupancy. – Occupancy of each of the four (4) residential apartments shall be pursuant to an Occupancy Permit issued by the City of Cheney, Kansas conditioned upon compliance with this Special Use Permit and all other permits necessary for the occupancy of such apartments, as issued by the applicable local, state and federal governmental agencies.
- 3. Parking. – There are no on-site parking requirements for the four (4) residential apartments.

LEGAL DESCRIPTION. The legal description of the lots subject to the provisions of this Special Use Permit is Lot 1 and the north 5 feet of Lot 2, Block 13 of the original plat of Cheney, Sedgwick County, Kansas.

Approved by the City Council the 13th day of Sept., 2012.

Executed by the Mayor the 13th day of Sept., 2012.



 MAYOR, LINDA BALL

SEAL

ATTEST:



 CITY CLERK, DANIELLE YOUNG