

**PLANNING COMMISSION & BOARD OF ZONING ADJUSTMENT  
MINUTES  
ROSE ROOM; CREEKMORE PARK COMMUNITY CENTER  
DECEMBER 12, 2017 - 5:30 P.M.**

On roll call, the following Commissioners were present: Bob Cooper, Jr., Marshall Sharpe, Talicia Richardson, Shane Laster, Don Keesee, and Vicki Newton.

Chairman Sharpe then called for the vote on the minutes from the November 14, 2017, Planning Commission meeting. Motion was made, seconded and carried unanimously to approve the minutes as submitted.

Mr. Wally Bailey spoke on the procedures.

**1. Conditional Use #23-12-17 - A request by Nathaniel Mason, agent for Johnnie Lee Grizzle, for Planning Commission consideration of a conditional use request for an auto body and paint shop located at 4306 Towson Avenue**

Wally Bailer read the staff report indicating that approval of the Conditional Use would allow the owner to utilize the building, which was an auto repair garage as an auto body and paint shop.

Mr. Bailey stated that the applicant has suggested that he would add some additional landscaping in and round the building in pots to make the property more pleasing.

Mr. Mason was present to represent the application. Mr. Mason stated that he would like to give the building an entire new face change by March 2017. No one spoke in opposition of the request.

Chairman Sharpe called for a vote the conditional use with staff comments. Motion was made, seconded and carried to amend the request to make approval subject to the following:

- Construction must comply with the submitted development plan. Changes or amendments to the submitted development plan are permitted but limited to those described in Section 27-329-8 of the UDO. Any changes greater than those described in this section will require Planning Commission approval.
- Any signage proposed shall be submitted for staff review and approval.
- If a trash receptacle is proposed, it shall be screened with an opaque fence from adjoining properties and street right-of-way.
- Site lighting shall not produce glare, light trespass and/or unnecessary sky glow in accordance with the UDO Section 27-602-5 – Commercial and Outdoor Lighting requirements.
- Vehicle auto body and paint activities shall be conducted within an enclosed building.
- All appurtenances used for auto body and paint activities shall not be utilized outdoors.

- Abandoned vehicles shall not be stored on the premises.
- Vehicles that are wrecked or that have missing or damaged parts shall not be stored outside unless completely screened from public rights-of-ways and adjacent properties.

The vote was 6 in favor and 0 opposed.

**2. Conditional Use #24-12-17 - A request by Scott Branton, agent, for Planning Commission consideration of a Conditional Use request to develop a Nursing Home at 9000 US Highway 71**

Wally Bailey read the staff report indicating that approval of the Conditional Use would allow the property to be developed as a nursing home. He also indicated that the development met the UDO and had the required privacy fence, landscaping, and development requirements.

Scott Branton was present to represent the application. Commissioner Keesee asked if the detention ponds were sufficient for that development and other developments. Mr. Branton stated proposed detention ponds were for the proposed development only.

No one was present to speak in opposition to the request.

Chairman Sharpe called for a vote the conditional use with staff comments. Motion was made, seconded and carried to amend the request to make approval subject to the following:

- Construction must comply with the submitted development plan. Changes or amendments to the submitted development plan are permitted but limited to those described in Section 27-329-8 of the UDO. Any changes greater than those described in this section will require Planning Commission approval.
- The final plans must comply with the City's development codes and ordinances.
- All new trees must be placed outside the water/sewer easements, or if placed within the easement, are at least 10 feet away from the water or sewer lines. The trees must be those included on the utility friendly tree list.
- Free standing signage is limited to the monument sign shown on the submitted development plan.

The vote was 5 in favor and 1 abstention Bob Cooper.

**3. Conditional Use #25-12-17 - A request by Ron Brixey, agent, for Planning Commission consideration of a conditional use request to develop a restaurant with outdoor dining at 8655 South Zero Street**

Wally Bailey read the staff report indicating that approval of the Conditional Use was to develop 338 s.f. outdoor dining area for a proposed restaurant. Mr. Bailey stated that the location is across the Woods at Chaffee located in a Commercial Heavy zone adjacent to industrial zoning.

Mr. Bailey described the restaurant was in compliance with the UDO and that a privacy fence would be installed adjacent to the north property line.

He stated that a neighborhood meeting was held November 22, 2017, 4:30 p.m. at 8100 Dallas Street. Five surrounding property owners attended the meeting. Concerns were expressed about music associated with the outdoor dining, parking, landscaping, screening, and headlights from vehicles. The attendance record and meeting summary are enclosed.

Commissioner Keesee asked if that the outdoor dining, if approved, would allow live music. Mr. Bailey said that outdoor dining does not distinguish between live music and other music means.

Talicia Richardson asked if the screening to the north side of the building was necessary with the current vegetation. Mr. Bailey explained that the neighbors to the north were concerned about car headlights.

Ron Brixey was present to represent the application. Ron indicated that the 6' privacy fence would block headlights and help with noise.

Mike Beck spoke in favor of the project stating that he and others were glad to have a restaurant in close proximity to Arc Best and other property owners around this area.

Jo Ann Cain at 8803 Gracie Lane, Charles and Sharron McCord at 8905 Gracie Lane, Pete Pochattco at 8715 Gracie Lane, and James Webb at 6209 Red Oak Court spoke in opposition to this request. The residents cited traffic concerns, car lights, noise, and property values as reasons for their opposition.

In response to question by Commissioner Cooper, the applicant, Marco Vazquez, stated the restaurant would have outdoor music occasionally with special events and not every weekend. He also stated that he would screen the outdoor dining during the winter time.

Chairman Sharpe called for a vote on the conditional use with staff comments. Motion was made, seconded and carried to amend the request to make approval subject to the following:

- Construction must comply with the submitted development plan. Changes or amendments to the submitted development plan are permitted but limited to those described in Section 27-329-8 of the UDO. Any changes greater than those described in this section will require Planning Commission approval.
- All development requirements may or may not be specified within this conditional use application (e.g. landscaping, lighting, signage, screening, etc.). The final plans submitted for the building permit must comply with the City's development codes and ordinances.
- All signage will be reviewed upon submittal of the sign permit application for compliance with the UDO requirements and the Massard/Zero Street Overlay District.
- Any work in the right-of-way will require ARDOT approval.
- The property will require platting and potential right-of-way dedication.
- The project is limited to one driveway. The current driveway will require improvements to meet the driveway standards.

- A traffic information statement is required.
- All music (live or electronic) must comply with the City's noise ordinance.

The vote was 6 in favor and 0 opposed.

**4. Development Plan Request by Architecture Plus, agent for Firststar Bank, for development plan approval for a bank at 6200 Massard**

Wally Bailey read the staff report indicating that approval of the Development Plan is to develop a two-story 13,000 s.f. bank with three drive-thru lanes. Wally mentioned that when the property received the originally zoning the ordinance approved by the Boar of Directors had a condition that a development plan must be approved by the Planning Commission prior to the building permit being issued.

Craig Boone with Architecture Plus was present to represent the application. He mentioned that his staff has worked closely with the City to make sure the development complies with all regulations.

In response to a question from Commissioner Keesee, Mr. Boone stated that customers could turn left on Massard Road.

No one was present to speak in opposition of the application.

Chairman Sharpe called for a vote on the development plan. Motion was made, seconded and carried to amend the request to make approval subject to the following:

- Construction must comply with the submitted development plan. Changes or amendments to the submitted development plan are permitted but limited to those described in Section 27-329-8 of the UDO. Any changes greater than those described in this section will require Planning Commission approval.
- The proposed pole lights shall be shielded in compliance with the Commercial and Outdoor Lighting regulations.

The vote was 6 in favor and 0 opposed.

**5. Rezoning Application #24-11-17; A request by Billy Ward, owner, for a zone change from Transitional (T) to a Planned Zoning District (PZD) at 2215 North 58<sup>th</sup> Street.**

Billy Ward introduced himself and asked to postpone this item until the January Planning Commission meeting. Commissioner Keesee moved and Commissioner Cooper seconded the motion to table this item until the January 9, 2018, planning commission meeting. The motion was approved 6 in favor and 0 opposed.

**6. Rezoning Application #23-11-17; A request by Tim Beasley, agent for Central Christian Church, for a zone change from Residential Single Family Duplex Medium Density (RSD2) to a Planned Zoning District (PZD) at 400 North Waldron Road and 5403 and 5505 Park Avenue.**

Wally Bailey read the staff report indicating that approval of the development plan for a rezoning from a Residential Single Family Duplex Medium Density (RSD2) to a Planned Zoning District (PZD) to allow the church to purchase the two houses on Park Avenue so that the church can utilize the houses for campus ministry housing for students attending the U of A Fort Smith campus. Mr. Bailey stated that if this had been a conventional zoning request, the request would have been for a multifamily zoning district. He stated staff preferred the PZD to limit the uses.

He stated that a neighborhood meeting was held November 7, 2017, 5:30 p.m. at 400 North Waldron. Two property owners attended the meeting. Concerns were expressed at the meeting and in electronic correspondence from the neighbor at 5601 Park Avenue, Teena Crotty, concerning parking issues, traffic issues, increased noise, pedestrian traffic, trespassing, and decreased value in property.

In response to a question from Commissioner Keese, Mr. Bailey stated that duplexes are permitted with the existing zoning district provided they met the UDO requirements.

Tim Beasley was present to represent the application. He explained the operation of the proposed housing and stated that it would be a counterpart to the Greek Fraternity and Sorority housing at the UAFS campus. Commissioner Richardson asked if students have access to the church by walking. Mr. Beasley responded that the students can utilize the sidewalk on Waldron Road. Mr. Beasley also informed the Planning Commission that no access between the houses is planned and that it would be unfeasible with the church's budget. He also stated that no parking will be installed at the rear of the houses. He plans to completely comply with the UDO and any requirements and be a good neighbor.

Teena Crotty at 5601 Park Avenue spoke in opposition to this request. She cited traffic concerns, car lights, noise, disturbance of horses, and property values as reasons for their opposition. Commissioner Newton asked Mrs. Crotty how long she had been neighbors with the church and had she had any past issues with the church. Mrs. Crotty responded that the only past complaint was the church needing to mow their grass.

Chairman Sharpe called for a vote on the rezoning request. Motion was made, seconded and carried to amend the request to make approval subject to the following:

The vote was 5 in favor and 1 abstention Commissioner Newton.

**7. A request by Sam Malinowsky, SM Engineering, agent for Aldi, Inc., for development plan approval for an addition to a grocery store at 8400 Phoenix Avenue (Companion to item #8).**

**8. Variance #39-12-17; A request by Sam Malinowsky, SM Engineering, agent for Aldi, Inc., for a rear-yard setback from 20' to 12.9' at 8400 Phoenix Avenue (Companion to item #7 ).**

Wally Bailey presented the staff reports for the development plan and companion variance application. He stated the zoning on the property required development plan approval prior to the issuance of a building permit. Mr. Bailey explained that 2,000 s.f. addition is on the southwest corner of the existing building. He stated that the addition was high quality materials to match the existing building. He explained the variance request for the setback was for the rear yard setback from 20 feet to 12.9 feet at the rear southwest corner. The originally building was built prior to the UDO and the setbacks have changed for this zoning district. When the building was built the setback was 10 feet but now is 20 feet. Mr. Bailey explained that the building was built at an angle so the setback would only be for the one corner.

Sam Malinowsky was present to represent the applications.

No one was present to speak in opposition of the application.

Chairman Sharpe called for a vote on the development plan. Motion was made, seconded and carried to amend the request to make approval subject to the following:

- Construction must comply with the submitted development plan. Changes or amendments to the submitted development plan are permitted but limited to those described in Section 27-329-8 of the UDO. Any changes greater than those described in this section will require Planning Commission approval.

The vote was 6 in favor and 0 opposed.

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**8. Variance #39-12-17; A request by Sam Malinowsky, SM Engineering, agent for Aldi, Inc., for a rear-yard setback from 20' to 12.9' at 8400 Phoenix Avenue**

Chairman Sharpe called for the vote on the variance with staff comments. Chairman Sharpe called for a vote on the variance application.

The vote was 6 in favor and 0 opposed.

**9. Variance #40-12-17 ; A request by Kyle Thompson, agent for Patrick Hansson and Jin Li, from 176 s.f. to 276.21 s.f. maximum size of a sign area and from the UDO definition of a business sign at 5121 Towson Avenue.**

Wally Bailey read the staff report indicating that the variance request is similar to other variances recently approved by the Board of Zoning Adjustment, such as Kohl's on Rogers Avenue. He stated that the Golf Nut does not have any frontage on the Towson Avenue. He explained that the main point of the signage was to remove the marquee part of the sign and add a digital screen.

Kyle Thompson was present to represent the application.

No one was present to speak in opposition of the application.

Chairman Sharpe called for the vote on the variance application. The vote was 6 in favor and 0 opposed.

**10.Variance #41-12-17; A request by Craig Roberts from 250' to 173' minimum distance of an Outdoor Advertising Sign from residentially zoned or residentially developed property at 2700 South 66<sup>th</sup> Street.**

Wally Bailey read the staff report indicating that the variance from the minimum distance from residential zone was presented by Craig Roberts for 2700 South 66<sup>th</sup> Street. He explained that the existing west facing sign was digital and the applicant wanted to make the east facing sign a digital face. Mr. Bailey stated that the sign is an existing non-conforming sign because it is closer than 250' to residentially zoned property and there are more than 4 signs along Rogers Avenue within the required distance. He stated that the applicant held a neighborhood meeting and no neighboring property owners attended the meeting.

Craig Roberts was present to represent the application. Mr. Roberts stated that he agreed the sign was non-conforming. He stated that the area was a very commercial street and everyone wants to advertise on this street and wants to use digital. He stated that two businesses were located near the sign and that a 25' retaining wall was between the sign and the residence.

David Harris spoke in favor of the application stating that this development is good for the City and a win for everyone.

No one was present to speak in opposition of the application.

Chairman Sharpe called for the vote on the variance with staff comments. Chairman Sharpe called for a vote on the variance application.

The vote was 4 in favor and 2 opposed (commissioners Richardson and Keesee).

**11.Variance #37-11-17; A request by David Mermer, agent for Kendall Newton, from 25' to 5.5' front-yard setback and from 7.5' to .5' interior side-yard setback at 1619 North 33<sup>rd</sup> Street (tabled 11/14/17)**

Wally Bailey stated that the applicant has requested that the variance application be tabled until the applicant is ready to submit the updated site plan and elevations.

Chairman Sharpe called for a vote on the variance application. The vote was 6 in favor and 0 opposed.