

**ITEM NO. 1 RMG TO MU; .483 ACRES; 1420 CRESCENT ROAD (JCR)**

**Z-05-10-08:** Consider a request to rezone a tract of land approximately .483 acres from RMG (Multi-Dwelling Residential-Greek Housing) to MU (Mixed Use), located at 1420 Crescent Road. Submitted by Jayhawk Bookstore, for William P. Muggy, property owner of record.

**STAFF PRESENTATION**

Mr. Joe Rexwinkle presented the item.

**APPLICANT PRESENTATION**

Ms. Jane Eldredge, Barber Emerson, representing Jayhawk Bookstore, thanked staff for their work.

Commissioner Rasmussen asked what would they would be able to develop with Mixed Use zoning.

Mr. Rexwinkle said the Mixed Use zoning district is designed to permit a variety of residential and non-residential uses so there are a number of Commercial uses that would be permitted. Last month the Planning Commission recommended approval of a Text Amendment for tweaking the retail uses category. Some eating and drinking establishments are permitted. Bars are not permitted in the zoning district.

Commissioner Harris asked what setback would be allowed with Mixed Use zoning.

Mr. Rexwinkle said the minimum setback is zero so they could build to the property line. It would be limited by the maximum building coverage of 85% so they could not build over the entire property.

Commissioner Harris asked if there was guidance for the mix of uses for how many types of uses.

Mr. Rexwinkle said the Mixed Use zoning district only requires at least one residential and one non residential use.

Commissioner Harris asked if an accessory bar was allowed.

Mr. Rexwinkle said he believed so but that he would have to double check.

Commissioner Harris asked if a brew pub was allowed.

Mr. Rexwinkle said it would be allowed with a Special Use Permit.

Commissioner Harris asked if a fast food restaurant would be allowed.

Mr. Rexwinkle said he would have to get his Development Code book to answer that question.

Commissioner Harris said that the other uses that stood out to her were sexual media store, manufacturing and production, and a small recycle facility. She asked if the uses were allowed by right. She also inquired about the maximum height of 36' and asked if that was two or three stories high.

Mr. Rexwinkle said that 36' would be about three stories, depending on the height of each floor. He said that was in the tertiary zone and that in the secondary zone it would be 24' high.

Commissioner Harris was concerned that some of the uses might be inappropriate and she wondered if staff had the discretion to say that certain uses were not allowed.

Mr. Rexwinkle said an accessory bar would be permitted but it had to be accessory to a quality

restaurant. He gave the restaurant example of Applebees. He stated that staff would not have the ability to restrict the use if it were with a quality restaurant. He stated that brewpub is allowed with a Special Use Permit. He said that fast order food with drive-in would not be permitted but that fast order food without the drive-in would be permitted. Sexual oriented media store, small collection recycling facility, and limited manufacturing and production are all permitted uses.

Commissioner Harris asked what kind of concerns the neighbors had when Mr. Rexwinkle met with them.

Mr. Rexwinkle said the majority of the meeting was about the zoning district in relation to the property and that most of the questions were about the zoning district. He said they seemed satisfied that the Mixed Use zoning district had more development control than a typical zoning district. He said they seemed to indicate that this worked better than previous zoning requests. The property had a history of zoning requests and this is the first zoning district that balanced the neighbors concerns.

## **PUBLIC HEARING**

Mr. Bill Mitchell, read the following letter he wrote:

"Although I have, over the years, written countless letters and spoken to you and your predecessors many times in opposition to rezoning 1420 Crescent, there'll be no letters and not much to say – only a copy of these remarks to staff so this time the minutes can accurately reflect what I said. Staff has – in order to eliminate the nuisance of non-conforming uses – created a new zoning category designed to accommodate 1420 Crescent. What is convenient for staff, I fear, will prove to be discomfiting to the west-of-campus soon-to-be-new-student-ghetto. In a single-family neighborhood our only small hope against commercial encroachment lies in having this illicit island remain a non-conforming use so that when use changes are asked for, we will have an opportunity to speak up and to petition. The neighborhood was dealt a deadly blow, sotto voice, by the new Development Code which changed the zoning on the northwest corner of Crescent/Naismith to U-KU. First, that enabled 1420 Crescent to say that it was bordered chiefly by U-KU and RMG, only minimally by RS7 even though the use of the NW corner has remained single-family. Second, how long do you think it will be before KUEA sells the 2 single-family residences they inherited on the NW corner for commercial, "campus-related" development? Nor will it take long for Goldie Goldsmith's house, on the SW corner, to follow. Really good planning folks. I've grown increasingly uncomfortable as I've watched operate the eleemosynary function of the City's various bodies which control zoning. Zoning upgrades are monumental monetary windfalls to those who play the system. The owner of 1420 Crescent was uncharacteristically ingenuous in at least a couple of his earlier rezoning requests. In the 1980's rezoning was "required" in order to enable him to get financing for his expansion. He didn't get the charity of rezoning but somehow managed to get the financing anyhow and expand. In 2007 he applied for the charity again this time because it would make the property 'more credit worthy.' Momentarily ingenuous he might have been but he reverted to his usual disingenuousness this go-around by answering question 2, 'To what extent will....rezoning detrimentally affect nearby properties?' by saying 'None. The rezoning will simply make the legal non-conforming use and structure a conforming use and structure that is compatible with the neighborhood.' Compatible? That takes disingenuousness to a new level. But it's also technically wrong as I read the Code. 20-233 (f) 'Any structure which existed prior to being rezoned... [MU] may become nonconforming with regard to the Development Standards of Sec. 20.1108.' 1420 Crescent has a 'history' but I won't take you clear back to the 1948 beginning; I will say only that it seems to me morally wrong to reward, in your eleemosynary function, the King of site-plan-violations. I think David Guntert, who shepherded the 1980's expansion, would not disagree with that title. The neighbors have been assured the owner has no plans to change the use from bookstore to something else. I'll take him at his word. But when rezoning has provided his golden parachute, what will happen to that corner? Oread Inn II? A heads up to any land speculators: Goldie Goldsmith's house on the SW corner, is currently on the market – just buy and hold. No finder's fee required. I retire, firm in my opposition to granting this rezoning, futile though it may be. Firm, too, in my belief that

this town ought to plan, ought to have been planning, to preserve the neighborhood west-of-campus instead of allowing it – encouraging it – to go the way of east-of-campus.”

Ms. Muff Kelly, 1531 Crescent, thanked Mr. Rexwinkle for talking to the neighbors and answering their questions. She was concerned about increased parking.

Mr. Rexwinkle said that with the exception of permitting on street parking, all the parking would be required on the property as with any other zoning district. The regulations for on street parking would require it to be in front of the property. A parking requirement is a limitation on how much you can develop the site. Even though you may be able to develop the site to 85% coverage, you still have to provide parking for the site. He went on to say that the only exception is a 10% parking reduction allowed for being located near a transit stop, which this property is.

### **APPLICANT CLOSING COMMENTS**

Ms. Jane Eldredge, said the rezoning application is to bring the property into compliance and that there are no plans to make any changes in the use as it stands now. She stated that this is a matter of making the property credit worthy so it can be maintained.

*Commissioner Dominguez arrived at the meeting at 7:00pm.*

### **COMMISSION DISCUSSION**

Commissioner Singleton asked what would happen if the rezoning is not approved and left as is.

Mr. Rexwinkle said it would remain RMG zoning and the uses would remain non-conforming. He stated that any time they would want to make a physical improvement on the property it would require a Site Plan or expansion of uses that would have to be processed differently than other Site Plans. It would have to be approved by City Commission, so procedurally it would be handled differently. The rezoning would allow them to make such an expansion with an administrative Site Plan.

Commissioner Harris asked if underground parking would be allowed at the location.

Mr. Rexwinkle replied yes.

Commissioner Harris asked how the rezoning would provide more certainty and comfort for the neighbors versus conventional zoning.

Mr. Rexwinkle said that because the Mixed Use zoning district requires development zones within it, the burden of the transition and compatibility is on the developer within that zoning district. The Jayhawk Bookstore building site is reserved for more intense development. Taller buildings have greater development potential than the areas to the north and west. In a conventional zoning district there would not be any difference. You could build the same height right up to the boundaries of the zoning district. He said for instance, CN2 zoning district the maximum height does not change the zoning districts so 40' buildings could be build throughout the entire district. This zoning would control the scale and density through the zones of the district.

Commissioner Finkeldei asked if there was an appeal process.

Mr. Rexwinkle replied yes, the Planning Director's decision can be appealed. He also stated that the neighbors are notified of site plans.

Commissioner Singleton inquired about the process and asked if under the current zoning could they put in a sexual oriented media store.

Mr. Rexwinkle said that under the current zoning they could not have that use so they would not be able

to proceed with a Site Plan to document that change of use. He went on to say that under the Mixed Use zoning district, since that use is permitted, they would have to undergo Site Plan review and notification would be sent to the neighbors. It would be the responsibility of the person who received the letter to appeal the decision of the Planning Director.

Commissioner Carter felt that Mixed Use zoning was correct for this location. He said that if they were looking to exclude uses then they need to revisit Mixed Use zoning.

### **ACTION TAKEN**

Motioned by Commissioner Carter, seconded by Commissioner Chaney, to approve the rezoning of approximately .483 acres from RMG (Multi-Dwelling Residential-Greek Housing) to MU (Mixed Use) and forwarding it to the City Commission with a recommendation for approval based upon the findings of fact outlined in the staff report.

Commissioner Harris said she had mixed feelings about Mixed Use zoning at this location. She said that the Code could allow a building or some uses that would not be what they would want to see there. She did not like having a non-conforming use at that location but did not feel comfortable approving as is.

Commissioner Rasmussen agreed with Commissioner Harris. He said that this location is a transition point from neighborhood to campus and that it concerned him what the wide variety of uses could be. He felt that a sexual oriented business would not be appropriate at that location.

Commissioner Finkeldei said that section 20-528 of the Land Development Code does not allow a sexual oriented media store within 600' of any school. He inquired about the definition of school and if that included Universities.

Mr. McCullough said that the definition does not include Universities.

Commissioner Finkeldei said a sexual oriented media store could not be located on the same block as any R zoning district and asked if there were any R zonings on the same block as 1420 Crescent.

Mr. Rexwinkle said it is located on the same block as RMG.

Mr. McCullough said that the standards of the Code still need to be adhered to. Staff was attracted to the potential for vibrant pedestrian friendly redevelopment or expansion to include other types of uses at the property that would be compatible with the mixture of uses in the campus, residential, and Greek system.

Ms. Eldredge said that the applicant would not object to having uses that seem objectionable excluded from the zoning.

Commissioner Singleton said she would rather the owner have a specific proposal that could be approved. She felt that Mr. Mitchell's comments were well taken. She said she would not be very supportive of this.

Commissioner Rasmussen asked if a firearm store would be a permitted use.

Mr. Rexwinkle replied yes, under the retail sales category.

Commissioner Hird said that the Mixed Use district was created for this type of thing and felt that Mixed Use seems the most appropriate zoning. He wondered if they would face the same type of questioning on every Mixed Use application. He asked staff if they rezone the property to Mixed Use would the Planning Commission have any control over the type of use.

Mr. McCullough said that they have the same control as a CN1 or CN2 zoning district. He said that the use table from the Code grants the property owner the ability to request a use through the site planning process. Through the site planning process staff makes sure the parking will serve the use, but do not question the use if it is in the Code. The standards are based on the use.

Commissioner Hird felt it might not be wise to not zone the location appropriately because of fear of misuse of the property in the future.

Mr. McCullough said the applicant did offer to place conditions on the rezoning to exclude certain uses.

Commissioner Hird said he would be in support of conditioning zoning.

Commissioner Harris said the uses she listed earlier were just from a quick review and not necessarily a comprehensive consideration.

Commissioner Carter did not want to defer the item and that their job is to apply the Code as written. He shared Commissioner Hird's concerns about gun sales and sexual oriented business. He withdrew his motion.

Commissioner Harris felt that a Mixed Use area was not meant for a site this small as infill. She felt the guidelines for the use were for bigger areas.

Mr. Rexwinkle listed the uses that Commissioner Harris identified: accessory bar, brewpub, fast order food with drive-thru, sexually oriented media store, small collection recycling facility, and manufacturing and production limited.

Mr. Finkeldei said he was not opposed to the uses and thought that a recycling center might be useful at that location and a Subway might be a good pedestrian oriented use.

Mr. McCullough said that firearms fall under the general retail category and is technically not a use.

Commissioner Singleton did not think they could pick from a list right now and make special provisions.

Motioned by Commissioner Hird, seconded by Commissioner Carter, to approve the rezoning of approximately .483 acres from RMG (Multi-Dwelling Residential-Greek Housing) to MU (Mixed Use) with the addition that the property be conditionally zoned to exclude the uses of sexually oriented media store and manufacturing and production limited, and forwarding it to the City Commission with a recommendation for approval based upon the findings of fact outlined in the staff report.

Commissioner Harris did not feel that a small recycling facility, fast food business, brew pub, or accessory bar to a quality restaurant would be good uses at this location.

Commissioner Hird shared Commissioner Finkeldei's opinion that a fast food restaurant might be appropriate for that corner.

Commissioner Rasmussen said he would vote in opposition and felt that a fast food restaurant would not be appropriate at the location.

Mr. Rexwinkle said that the property is within the historic environs and would have to go through Historic Resources Commission and the emphasis would be on design, not use.

Motion carried 5-3-1, with Commissioners Blaser, Carter, Chaney, Finkeldei, and Hird voting in favor. Commissioners Harris, Rasmussen, and Singleton voting in opposition. Commission

Dominguez abstained from voting since he arrived at the meeting late.