

**ITEM NO. 5      RS5 TO RSO; 15,625 SQ FT; 135 & 137 PAWNEE AVE (SLD)**

**Z-4-6-09:** Consider a request to rezone 15,625 sq. ft. located at 135 & 137 Pawnee Avenue from RS5 (Single-Dwelling Residential) to RSO (Single-Dwelling Residential-Office). Submitted by Landplan Engineering, for Haskell Light Inc, property owner of record.

**STAFF PRESENTATION**

Ms. Sandra Day presented the item.

**APPLICANT PRESENTATION**

Mr. Stanley Sneegas, President of Board of Directors for Haskell Light, presented a slide presentation to give background and an overall idea of what the Light program does. He agreed with the Historic Resources Commission and Planning staff recommendations. He said he was informed by staff that the occasional overnight guest is considered to be a temporary shelter which is a prohibited use so he issued a memorandum to the Board of Directors to cease and desist that activity.

Commissioner Rasmussen asked if the current use for 137 Pawnee Ave is similar to a church.

Mr. Sneegas said the central focus is more of providing support for the Haskell students such as counseling but that worship service is one of the uses.

Commissioner Rasmussen asked who specifically told Mr. Sneegas that there could not be any overnight guests.

Mr. Sneegas replied Ms. Sandra Day.

*Commissioner Dominguez arrived at the meeting at 7:30pm.*

Commissioner Moore asked how many individuals they currently serve.

Mr. Sneegas said the whole student population.

Ms. Patricia Main, Director of Campus Ministry, said they allow different clubs and study groups to use the facility. She said they hold dinners that can feed anywhere from 50-150 students. She also stated that about once a week there is a bible study held at the facility and there are about 10-15 students that attend.

**PUBLIC HEARING**

Ms. Dorothy Hoyt- Reed, 50 Winona Ave, stated she and a few of her neighbors supported the rezoning, and asked that the mature trees be preserved. She also expressed concern about the property being reverted back to residential if it were to sell.

Mr. Mike Sizemore, 2301 Massachusetts, also serves on the Historic Resources Commission, speaking on his own behalf, expressed concern about building neglect to faith based facilities that have dwindling congregations. He said there have been two faith based facilities demolished in the area due to neglect. He felt that Breezedale is intended to be a residential area.

Commissioner Rasmussen asked Mr. Sizemore if he sees a role for a church type use in a residential neighborhood.

Mr. Sizemore said yes, and an appropriate design in this location could work.

Commissioner Singleton asked what the two religious institutions were that were demolished.

Mr. Sizemore said a Mormon church was demolished due to a leaky roof and mold and a Catholic center was demolished due to lack of upkeep.

Mr. Christopher Black, student at Haskell, said his involvement with Lighthouse has been a positive experience and he supported the rezoning.

Mr. Roy Coker, 110 Pawnee, supported the rezoning and felt that Lighthouse was a great organization.

Mr. Brandy Supernaw, supported the Lighthouse program and rezoning of the property.

Ms. Marsha Princivale, helps out at the Lighthouse occasionally. Said the LDS church that was recently demolished was for sale but there was a stipulation that they would retain member rights so that is why the building did not sell and fell into disrepair. She said that 137 Pawnee is very well taken care of but is a little outdated. She stated that the house on the right does not look very good but that if it were purchased by a homeowner it would be remodeled. She felt that if the two current houses were demolished and a bigger building were designed to fit in the neighborhood that it would improve the neighborhood. She did not feel it was a big deal if someone stayed the night located next to a residential neighborhood. She asked if Lighthouse had a plan for how long the new construction building would take.

Mr. Sneegas said it would be 3-5 years before a new building would be built.

Ms. Val Howland, 2563 Montana, non-denominational minister, supported ministry work in general.

Mr. Ron Schneider, attorney on behalf of Marian Percival who resides at 132 Pawnee Ave, expressed opposition to the rezoning due to details of the project not being available. He felt there should be more clarity on what is proposed. He wondered how big the proposed building would be and would it assist 20 or 200 guests. He said if the applicant is willing to work with the Planning Department then maybe incompatibility issues on boarding could be addressed. He also expressed concerns about easements and covenants.

Commissioner Hird asked Mr. Schneider if he has had any discussions with the applicant.

Mr. Schneider replied no.

## **COMMISSION DISCUSSION**

Commissioner Finkeldei inquired about protecting mature trees and reversionary zoning.

Mr. McCullough said currently there are environmental sensitive protections. Once the zoning is approved then there would be the site plan process so there will be opportunity for input into the site plan. He stated to revert back to a different zoning would require a new rezoning request so it would not automatically revert back to a former zoning when the use changes because it runs with the land not the occupant.

Mr. John Miller agreed with Mr. Scott McCullough.

Mr. Miller said regarding the restrictive covenants staff discussed them and it is not within the scope of the Planning Commission review to enforce restrictive covenants. It would be a private action that would be taken on part of the property owners affected by the restricted covenants. The restrictive covenants contain language that predates the Supreme Court Case Shelley V. Kraemer and there are concerns within those restrictive covenants about the equitable enforcement under the protection clause of the specific restrictions.

Ms. Lynne Braddock Zollner, Historic Resources Administrator, said that Historic Resources Commission did hear this rezoning application and they approved it under State Historic Preservation Law with conditions similar to what Planning Commission is looking at tonight. Their feeling was that this use has been ongoing in the neighborhood and has been compatible with the neighborhood for a length of time. The main key for the Historic Resources Commission will be the architectural styling, setbacks, height, mass and bulk of the new structure.

Commissioner Finkeldei asked what impact Historic Resources Commission will have at the site plan stage.

Ms. Zollner said Historic Resources Commission will have quite a bit of input because the whole project will go through the design review process. Historic Resources Commission will look at the site plan which lays out the building and also look at the elevations of the building and review their compatibility with the listed properties on Haskell and the Breezedale Neighborhood.

Commissioner Singleton asked about a more specific zoning classification for this type of use.

Mr. McCullough said the new comprehensive revision to the Development Code accounted for social service agencies and also looked at some religious assembly uses. With the 2006 Development Code we made a band-aid fix for social service agencies in the Office-Other category but now it has its own category use under social service agency.

Commissioner Singleton asked about the recent project that they heard for the funeral home on Connecticut Street. She was curious why the decision was made on this project to restrict uses.

Mr. McCullough said generally speaking, one of the differences is that this is a recommendation that grew out of input and discussions with the applicant. Staff had a different look and analysis of the two neighborhoods but staff supports conditional zoning and feel it's appropriate in this instance.

Commissioner Rasmussen inquired about temporary shelters and asked if any church in the city cannot have overnight guests.

Mr. McCullough said there are two types of shelters. One would house up to 15 guests and 5 staff, which is a permitted use and allowed in any religious institution for a certain time limit. If those thresholds are exceeded then it would require a Special Use Permit. Staff does not believe the Development Code defines this as a religious assembly use but rather a faith based social service use.

Commissioner Rasmussen asked where to find the definition of faith based social service agency.

Mr. McCullough said there is no definition for faith based social service agency, it is just social service agency:

*Social Service Agency*

*A service operated by a public, publicly funded, nonprofit, or charitable organization providing services undertaken to advance the welfare of citizens in need which typically includes supporting office uses. Typical uses include employment counseling, life skills training, counseling, food banks, and blood banks. Social Service Agencies shall not include Temporary Shelters, Group Homes, commercial uses such as medical, professional, financial, real, estate offices, or religious institutions providing these services as accessory to their religious assembly use.*

Commissioner Harris responded to Ms. Hoyt-Reed's question about reverting back to residential zoning. She asked if it was true one of the avenues could be a request for down zoning.

Mr. McCullough said there is a process initiated by City Commission and possibly an avenue through Planning Commission. A private owner can not initiate a rezoning for someone else's property but the governing body has been authorized to do so.

Mr. Miller wanted to address another issue in Mr. Schneider's letter regarding excluding group homes. He stated that statutorily if a property has single family dwelling unit zoning Planning Commission cannot, by State Statute, prohibit group homes from that zoning district.

Commissioner Moore asked about the Chabad House that is zoned RM12.

Ms. Day said the applicant first proposed the RM12 zoning but as discussions continued it was concluded that the use was not really religious assembly so we looked at use categories that better fit the applicants activities which is where the social service agency use was identified.

Mr. McCullough said the Chabad House meets the definition of a religious institution.

Commissioner Finkeldei followed up on the League of Women Voters letter and asked if there was progress being made to add conditional zoning into GIS.

Mr. McCullough said staff is still actively working on getting the ordinances linked in GIS.

Commissioner Hird expressed concern about religious uses because as the attendance goes down so does the funds for maintenance. He said the location of it lends itself well in assisting the students at Haskell and he is inclined to support the rezoning.

Commissioner Singleton expressed support for the Lighthouse organization. She said that the plans are vague but it will still go under scrutiny of Historic Resources Commission. She expressed concern about there not being a zoning category for this type of use.

Commissioner Finkeldei said he was supportive of the recommendation but not a big fan of conditional zoning. He said he has not heard any complaints about the use so he trusts the staff, applicant, neighbors, and Historic Resources Commission to review the design of the building.

Commissioner Moore said RSO zoning may be more compatible with the neighborhood and he supports the rezoning.

Commissioner Harris said she supports the rezoning and thanked staff for coming up with a sensitive solution to some of the concerns in neighborhoods. She felt it would be a good fit and potential for it to fit the needs of everyone.

### **ACTION TAKEN**

Motioned by Commissioner Blaser, seconded by Commissioner Finkeldei, to approve the request to rezone approximately 15,625 SF, located at 135 and 137 Pawnee Ave, from RS5 (Single-Dwelling Residential) District to RSO (Single-Dwelling Residential Office) District based on the findings presented in the staff report and forwarding it to the City Commission with a recommendation for approval subject to the following condition:

1. Uses shall be restricted to only:
  - a. Household Living Uses, except duplex residences, allowed in the RS5 and
  - b. Community Facilities – Social Service Agency.

Motion carried 8-0-1, with Commissioner Dominguez abstaining. Student Commissioner Shelton voting in favor.