

Memorandum

City of Lawrence

Planning & Development Services

TO: Lawrence – Douglas County Planning Commission

FROM: Scott McCullough, Director

Date: For January 25, 2010 Planning Commission Agenda

RE: Z-7-11-09 – Casitas Rezoning

History

September 21, 2009: the PC recommended, with an 8-1 vote, that the City Commission approve the subject rezoning request as proposed. Few public comments were made at the PC hearing.

October 6, 2009: the City Commission considered the request and denied the rezoning application. Substantially more neighbors attended and testified in opposition to the rezoning request. Noise, traffic, aesthetics, concern for “straight” zoning without restrictions, etc. were cited as unacceptable elements of the request.

November 2, 2009: the City received a letter from Mark Andersen, applicant’s attorney, “to formally appeal in writing the City Commission’s denial of the rezoning request” and requesting that the City Commission reconsider its denial of the rezoning request.

December 10, 2009: the applicant’s engineering consultant hosted a meeting with nearby property owners to discuss their concerns.

December 15, 2009: Mark Andersen submitted a second letter to the City Commission for their consideration. The City Commission, by a 4-1 vote, rescinded their October 6, 2009 vote to deny the rezoning request and referred the request to the Planning Commission to consider conditional zoning to include the following:

1. The restrictions contained in the December 15, 2009 letter from Mark Andersen.
2. That the contract for purchase for the property be revised to provide that the request for rezoning not be final unless and until the applicant has removed all contingencies to close under the contract.
3. That the site plan, as finalized, be attached to and made a condition of the rezoning.

Staff Recommendation

Staff recommends that the PC consider the restrictions and recommend approval of the rezoning with the following conditions placed on the RM15 zoning (as applied to the approving ordinance) for this specific site:

1. Development of the property shall be in substantial conformance with the site plan dated January 4, 2010 and attached hereto. Any changes to the site plan that oppose the spirit of these conditions or that are considered major by the Planning Director shall be reviewed by the City Commission after public hearing in which mailed notice is provided to owners within 1,000 feet at least 20 days prior to the hearing.
2. The use of the property shall be limited to Multi-Dwelling Structures as shown on the site plan.
3. Every building in the development shall be limited to a maximum height of one story above grade.
4. Every residential unit shall be limited to a maximum of one bedroom.
5. The development shall be limited to a maximum of 161 residential units.
6. Advertising banners shall be prohibited at the corner of 24th Place and Inverness Drive.
7. The number of adult occupants shall be limited to no more than two (2) per unit.
8. Prior to the zoning ordinance being published, the applicant will record a Declaration of Covenants and Restrictions which, among other things, will (i) prohibit the construction of any permanent structure on the corner of 24th Place and Inverness Drive, (ii) restrict the use of the property to a maximum of 161 one-story, single-bedroom, residential units, and (iii) name the City of Lawrence as a third-party beneficiary whereby the Declaration may not be amended or terminated without the prior consent of the City. The City's Legal Department shall review this document prior to recording.
9. These zoning conditions shall be listed on the approved site plan prior to site plan approval.

Discussion

The request received staff and PC support without restrictions and without substantial public testimony. After the PC meeting, the neighborhoods to the south carried notice of the proposal around the neighborhood (the code-required notice did not reach them). Their testimony prompted the City Commission to deny the rezoning request. After this action, the applicant and Commissioner Johnson coordinated a meeting with property owners in these neighborhoods to discuss the development of the property. Several concerns were raised and the City Commission determined that the request would best be served by being returned to the Planning Commission for a discussion on conditional zoning and appropriate conditions to place on the request.

This request demands a brief discussion on the options the city has relative to zoning and rezoning property, especially if there is concern, as is the case here, with unrestricted "straight" zoning where no plan accompanies the zoning request or where the plan can be revised once zoning is established. Several options are in the zoning "tool box" to both benefit applicants and to address neighbors' concerns. The following mechanisms exist in the Development Code.

1. Initiate rezoning – if the PC or CC believe a property is not properly zoned it can initiate rezoning to a more appropriate, comprehensive plan compliant district. While most rezonings are requested by property owners, the city has initiated rezonings in the past in order to meet a specific community or neighborhood goal.
2. Planned Overlay districts – this district intends to, amongst other things, “promote attractive and functional residential, nonresidential, and mixed use developments that are compatible with the character of the surrounding area.” The overlay is established and reflected in a plan that identifies density, structure type, uses, etc. They can benefit applicants by permitting certain variances to development standards and they can benefit neighbors because the overlay acts as a hard zone and any major changes to the plan may only be made after public hearing before the City Commission.
3. Conditional zoning – This topic is not new to the PC. It involves placing conditions on a rezoning request to restrict use or other elements of a proposed development. Conditions can vary widely and are typically very specific to a site or to elements that demand special attention.

In order to address the neighbor’s concerns, the applicant has proposed recording a Declaration of Covenants and Restrictions which would name the City of Lawrence as a third-party beneficiary whereby the Declaration may not be amended or terminated without the prior consent of the City. As the Planning Commission is often advised by staff, the City does not enforce private deed restrictions. While naming the city as a third-party beneficiary may be legally feasible, it is not a tool of the Development Code and staff and the applicant will need to work on how to address future revisions to the Declaration – notice, timing, etc. Further, staff points to consistent Development Code processes for restricting land use and code standards and does not wish to process Covenants and Restrictions as a matter of course without including them in the Development Code tool box.

The Development Code speaks to the kinds of protections being sought by the neighbors by allowing Planned Development Overlay districts and by allowing conditional zoning, code mechanisms that insure appropriate public notice if the plan is revised in the future. With the recommended conditional zoning, the deed restrictions may be unnecessary, but will act as additional assurance to the neighbors that the applicant’s intention will be carried out.

Staff appreciates the efforts made by the applicant and the neighbors to arrive at an acceptable plan. Staff continues to recommend approval of the request, but with zoning conditions as outlined in this report.