

**CITY OF LEAVENWORTH PLANNING COMMISSION**  
**COMMISSION CHAMBERS, CITY HALL**  
100 N 5<sup>th</sup> Street, Leavenworth, Kansas 66048  
**REGULAR SESSION**  
**Monday, April 1, 2024**  
6:00 PM

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**CALL TO ORDER:**

**Commissioners Present**

Brian Stephens  
Sherry Whitson  
Bill Waugh  
Maryann Neeland  
Don Homan

**Commissioners Absent**

Kathy Kem

**City Staff Present**

Julie Hurley  
Michelle Baragary

Chairman Stephens called the meeting to order at 6:00 p.m. and noted a quorum was present.

**APPROVAL OF MINUTES:** March 4, 2024

Chairman Stephens asked for questions, comments or a motion on the minutes presented for approval: March 4, 2024. Commissioner Homan moved to approve the minutes as presented, seconded by Commissioner Waugh and approved by a vote of 5-0.

**OLD BUSINESS**

None

**NEW BUSINESS:**

**1. 2024-09 REZ – 707 PAWNEE STREET**

Conduct a public hearing for Case No. 2024-09 REZ – 707 Pawnee Street, wherein the applicant is requesting a rezoning of their property located at 707 Pawnee Street from OBD, Office Business District, to R1-6, High Density Single Family Residential District.

Chairman Stephens called for the staff report.

Planning Director Julie Hurley stated the owner and applicant, Chris Pena, is requesting a rezoning of their property located at 707 Pawnee Street from OBD, Office Business District, to R1-6, High Density Single Family Residential District. The property is .08 acre in size and is occupied by a single-family home. The owner is requesting the rezoning in order to bring the property into conformance with development standards for a single-family home. The existing single-family home was previously damaged by fire and was repaired. The home as it exists is considered legal nonconforming, and no action is required by the City of Leavenworth in order for the property to continue to function as it is. The owner is intending to sell the property, and current lending and insurance standards frequently require that a property be in conformance with applicable local development standards, which has led the owner to opt to apply for a rezoning in order to make the property conforming with current standards. No additions or new construction is planned at this time.

## **CONDITIONS OF DETERMINATION**

Whenever the Planning Commission or City Commission takes action on an application for amendment to these Development Regulations, and such proposed amendment is not a general revision of existing ordinances, but one which will affect specific property, the Planning Commission and City Commission shall consider the following factors:

- a) The character of the neighborhood;

*The subject property is .08 acre in size and is part of an established single-family neighborhood. The property lies just to the west of 7<sup>th</sup> Street, which functions as a commercial corridor with a variety of commercial and office uses.*

- b) The zoning and use of properties nearby;

*The property directly adjacent to the east is zoned OBD, Office Business District, and is occupied by a single-family home. The property to the south is zoned OBD, and is occupied by a single-family home. The property to the west is zoned R1-6, High Density Single Family Residential District, and is occupied by a single-family home. The property to the north is zoned GBD, General Business District, and is occupied by the Dog and Cat Clinic.*

- c) The suitability of the subject property for the uses to which it has been restricted;

*The subject property is occupied by a single-family home and has been identified as appropriate for single-family uses on the Future Land Use map.*

*Ms. Hurley noted that how this zoning got put in place with the Office Business District for an existing single-family home was that when zoning first came about in the City, back in the 60's, a lot of this zoning was applied broadly across the City without a lot of context or individual consideration to what was maybe on individual lots. The single-family house that was there was constructed prior to that time, which is how the City has ended up with a lot of these kind of strange nonconforming uses.*

- d) The extent to which removal of the restrictions will detrimentally affect nearby property;

*The proposed rezoning should have no detrimental effect upon surrounding properties. The proposed change to the existing use of the property, and it will continue to function as a single-family home.*

- e) The length of time the subject property has remained vacant as zoned;

*The subject property is not vacant.*

- f) The relative gain to economic development, public health, safety and welfare by the reduction of the value of the landowner's property as compared to the hardship imposed by such reduction upon the individual landowner;

*The proposed rezoning will have a neutral effect on economic development, public health, safety, and welfare of the City, as there is no proposed change in the use of the property, and no new construction proposed.*

- g) The recommendations of permanent or professional staff;

*Staff recommends approval of the rezoning request.*

- h) The conformance of the requested change to the adopted or recognized Comprehensive Land Use Plan being utilized by the city;

*The area is identified as appropriate for single-family residential uses on the Comprehensive Land Use Plan.*

- i) Such other factors as may be relevant to a particular proposed amendment. The factors considered in taking action on any proposed amendment shall be included in the minutes or otherwise be made part of the written record.

*No other factors.*

After the required notices were sent to property owners within 200' as required by Kansas State Statute, staff received one question regarding the status of the property from a notified property owner.

**REZONING ACTION/OPTIONS:**

- Recommend approval of the rezoning request from OBD to R1-6 to the City Commission.
- Recommend denial of the rezoning request from OBD to R1-6 to the City Commission.
- Table the issue for additional information/consideration

Chairman Stephens asked for questions about the staff report.

Chairman Stephens asked what the difference is between General Business District and Office Business District.

Ms. Hurley responded that the General Business District, GBD, allows for more retail and restaurant type uses, and the Office Business District, OBD, is more professional office type uses.

Commissioner Homan asked if this will give the property owner the correct tax bracket because they are a residential zoning district rather than a commercial zoning district.

Ms. Hurley stated this does not change the way the property is taxed. The County has their own land use classification, which does not always match the zoning, and that is the case in this one. Their tax classification is the appropriate single-family land use tax classification.

With no questions, Chairman Stephens opened the public hearing. With no one wishing to speak, Chairman Stephens closed the public hearing and called for a motion. Based on the findings as stated and conditions as presented, Commissioner Homan moved to recommend approval of the rezoning request from OBD to R1-6 for property located at 707 Pawnee Street to the City Commission, seconded by Commissioner Whitson, and passed by a vote of 5-0.

**2. 2023-33 SUP – 4100 S 4<sup>TH</sup> STREET**

Conduct a public hearing for Case No. 2023-33 SUP – 4100 S 4<sup>th</sup> Street, wherein the applicant is requesting a Special Use Permit to allow a College or University in the R1-9 zoning district.

Chairman Stephens called for the staff report.

Planning Director Julie Hurley stated the applicant, University of Saint Mary, is requesting a Special Use Permit to allow a College or University in the R1-9 zoning district (Medium Density Single Family Residential District), located at 4100 S. 4<sup>th</sup> Street. The property is occupied by the University of Saint Mary, which was established on the site in 1923. College or University uses are allowed in the R1-9 district with the approval of a Special Use Permit. The University is currently intending to construct a new dormitory facility on the existing campus.

The University is considered a nonconforming use, as there is no existing Special Use Permit. Any new construction or expansion of existing facilities associated with the University requires the approval of a Special Use Permit. Per section 1.05 of the adopted Development Regulations:

*Any lawfully existing nonconforming use of part or all of a structure or any lawfully existing nonconforming use of land, not involving a structure or only involving a structure which is accessory to such use or land, may be continued, so long as otherwise lawful.*

Section 1.05 of the Development Regulations also states in regards to nonconforming uses:

*Any nonconforming use shall not be physically extended, expanded, or enlarged.*

Since the time of adoption of the original Subdivision Regulations of the City of Leavenworth in 1966, there have been multiple structures added on the University of Saint Mary campus without the applicant being required to apply for a Special Use Permit. This is likely an oversight, due to the long-standing tenure of the University on the site. Approval of a Special Use Permit will bring the property into conformance with regards to land use and allow for future university-related construction on the property without the need for additional Special Use permits.

Pending approval of the Special Use Permit, all applicable building permits shall be reviewed and approved.

### **COMMISSION FINDINGS**

The Commission may recommend issuance of a special use permit whenever it finds that:

1. The proposed special use complies with all applicable provisions of this ordinance.

*Staff believes that this application complies with all provisions of City of Leavenworth Development Regulations.*

2. The proposed special use at the specified location will contribute to and promote the economic development, welfare or convenience of the public.

*The property has functioned as a University since 1923, providing a beneficial service to the economic development of the City by attracting a large number of students to the community, as well as functioning as one of the largest employers in the area.*

3. The special use will not cause substantial injury to the value of other property in the neighborhood in which it is located.

*Staff does not feel that the use will cause any substantial injury to the value of other property in the neighborhood, as there is no change in the use of the property.*

4. The location and size of the special use, the nature and intensity of the operation involved in or conducted in connection with it, and the location of the site with respect to streets giving access to it are such that the special use will not dominate the immediate neighborhood so as to prevent development and use of neighboring property in accordance with the applicable zoning district regulations.

*The use of the property will remain unchanged. The proposed new dormitory facility, which precipitated the Special Use Permit request, will be internal to the existing campus and will not adversely impact any neighboring properties.*

Notification was sent to property owners within 200' of the subject property, as required by Kansas Statute. Since notifications were mailed, staff has received no comments or inquiries.

### **STAFF RECOMMENDATION:**

Staff recommends approval of the Special Use Permit request based on the analysis and findings included herein.

**ACTION/OPTIONS:**

- Motion, based upon findings as stated and conditions as presented, to recommend approval to the City Commission with included conditions.
- Motion, based upon findings as stated and conditions as presented, to recommend denial to the City Commission
- Table the issue for additional information/consideration

Chairman Stephens asked for questions about the staff report.

With no questions about the staff report, Chairman Stephens opened the public hearing.

Commissioner Homan asked the applicant how many students the new dormitory will house.

Jeff Stockman, ACI Boland representing the university, stated there will be 16 rooms total with four students per room. Remote parking is also part of the project.

With no one else wishing to speak, Chairman Stephens closed the public hearing and called for questions/discussion among the commissioners. With no questions/discussion, Chairman Stephens called for a motion. Based upon findings as stated and conditions as presented, Commissioner Whitson moved to recommend approval of the Special Use Permit to allow a College or University in the R1-9 zoning district to the City Commission with included conditions, seconded by Commissioner Neeland, and approved by a vote of 5-0.

Since we get a number of these special uses or rezoning's for existing nonconforming uses, Ms. Hurley spoke with the City Attorney. There is no legal way to broad stroke and give approval to these nonconforming uses because while a good number of them may be appropriate to continue, there may be some that the City would want to go away through attrition. For the existing duplexes that require a Special Use Permit, staff could potentially make two-family dwellings just an allowed use in single-family zoning districts during the next update to the Development Regulations.

Chairman Stephens asked if there is a way that when someone submits an application and it makes sense that the special use should be allowed, such as the application for 707 Pawnee, that it could be approved without the applicant going through this whole process.

Ms. Hurley responded in the negative stating that rezoning and special use permits are clearly laid out in State Statute. If it needs to be rezoned or needs a special use permit, the City legally has to provide notice to neighboring properties, publish the notice in the local newspaper, and it must go to Planning Commission and City Commission.

**3. 2024-10 SUB – WHISPERING HILLS WEST REPLAT FINAL PLAT**

Consider a final plat for Whispering Hills West Replat, Case No. 2024-10 SUB.

Chairman Stephens called for the staff report.

Planning Director Julie Hurley stated the subject property is owned by Laura Fowler, plat prepared by Herring Survey Company. The applicant is requesting approval of a replat of Whispering Hills West. The property is 80.31 acres in size consisting of two lots, and is currently vacant. The property is zoned PUD, Planned Unit Development.

The applicant is requesting the plat for the purposes of creating five tracts along the eastern portion of the property to transfer to adjoining property owners. The adjoining properties are single-family lots, which are part of the Whispering Hills subdivision. Over the years, there has been some minor encroachment from the adjoining properties onto the subject property as it remained vacant, including shed, gardens and other minor accessory items, and the transfer of the newly created tracts will clear up any ownership issues.

**STAFF RECOMMENDATION:**

Staff recommends approval of Whispering Hills West Replat.

**ACTION/OPTIONS:**

- Approve the Final Plat
- Deny the Final Plat
- Table the issue for additional information/consideration

Chairman Stephens asked for questions about the staff report.

Chairman Stephens asked how the pool located at 2610 S 25<sup>th</sup> Street was installed over the property line when a site plan would have been submitted to get a building permit.

Ms. Hurley responded that she is not sure when that particular pool was installed. Building inspectors do not check the pool after it is installed and to make it easier, more expedient and less costly for property owners, a surveyed plot plan is not required for a pool; but then sometimes you end up with cases like this where the property owner drew the site plan correctly and the permit was approved correctly but then when the structure is installed, it is a little bit too far over.

With no further discussion, Chairman Stephens called for a motion. Commissioner Whitson moved to approve the Whispering Hills West Replat Final Plat, seconded by Commissioner Homan, and approved by a vote of 5-0.

**OTHER BUSINESS:**

With no other business, Ms. Hurley stated there are no agenda items for May.

Chairman Stephens adjourned the meeting at 6:35 p.m.

Minutes taken by Planning Assistant Michelle Baragary.