

CITY OF LEAVENWORTH PLANNING COMMISSION
COMMISSION CHAMBERS, CITY HALL
100 N 5th Street, Leavenworth, Kansas 66048
REGULAR SESSION
Monday, August 5, 2024
6:00 PM

CALL TO ORDER:

Commissioners Present

Brian Stephens
Don Homan
Sherry Whitson
Maryann Neeland

Commissioners Absent

Bill Waugh
Kathy Kem

City Staff Present

Julie Hurley
Michelle Baragary

Chairman Stephens called the meeting to order at 6:02 p.m. and noted a quorum was present.

APPROVAL OF MINUTES: July 1, 2024

Chairman Stephens asked for questions, comments or a motion on the minutes presented for approval: July 1, 2024. Commissioner Homan moved to approve the minutes as presented, seconded by Commissioner Whitson, and approved by a vote of 4-0.

OLD BUSINESS

None

NEW BUSINESS:

1. 2024-17 REZ – CITY-INITIATED REZONING

Conduct a public hearing for Case No. 2024-17 REZ, wherein the City is requesting to rezone the properties located at approximately 2nd Avenue & Santa Fe from RM-F, Residential Multi Family, to R1-6 High Density Single Family Residential District.

Chairman Stephens called for the staff report.

Planning Director Julie Hurley stated this is a city-initiated request to rezone properties located at approximately 2nd Avenue & Santa Fe from RM-F, Residential Multi Family, to R1-6 High Density Single Family Residential District.

In recent years, the City of Leavenworth has received multiple rezoning and special use permit requests for properties occupied by existing nonconforming uses. Typically, these requests originate from the intention of the property owner to either sell or expand the existing nonconforming use on the property, which necessitates bringing the property into conformance with existing development standards. It has been the general desire of the Planning Commission and city staff to facilitate these applications in instances where no action of the property owner has caused the property to become nonconforming.

In an effort to further facilitate the bringing of nonconforming properties into conformance without any additional burden to property owners, staff has identified an area suitable for a city-initiated rezoning. State statute grants authority to municipalities to initiate a rezoning process for privately owned properties. The identified area consists of an existing neighborhood containing 15 individual properties all developed with single-family homes, which is currently zoned RM-F, Residential Multi Family. The area east of 2nd Avenue, roughly between Santa Fe and Sheridan Streets. The RM-F zoning designation makes all of the existing single-family homes nonconforming, as single-family homes are not allowed either by-right or with approval of an SUP in the RM-F zoning district. Staff proposes to rezone the properties within the identified area to R1-6, High Density Single Family Residential District, which will bring all properties included into conformance with current development standards.

The 15 properties included in the rezoning request are all currently occupied by single-family homes, and include the following addresses:

- | | |
|-----------------------------|---------------------------------|
| 1. 535 Santa Fe | 9. 510 Sheridan St |
| 2. 529 Santa Fe | 10. 506 Sheridan St |
| 3. 523 Santa Fe | 11. 2605 2 nd Avenue |
| 4. 517 Santa Fe | 12. 547 Sheridan St |
| 5. 513 Santa Fe | 13. 537 Sheridan St |
| 6. 507 Santa Fe | 14. 527 Sheridan St |
| 7. 2531 2 nd Ave | 15. 517 Sheridan St |
| 8. 514 Sheridan St | |

Ms. Hurley further stated that as staff was looking for areas that would be appropriate for a city-initiated rezoning, this area came up because staff had a request from one of the individuals who lives in this neighborhood at one of these addresses. That individual was looking to refinance her home and could not get that refinancing done because staff could not provide a letter to the financial institution stating that it was conforming and could be rebuilt as-is if the home were destroyed by more than 50% of its fair market value.

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 properties are located east of 2nd Avenue, between Santa Fe and Sheridan. The area is occupied by existing single-family homes, with a mix of single-family and two-family homes to the north, south, and west. To the east, across a creek and wooded area, are the State Street Apartments.

- b) The zoning and use of properties nearby;

The property to the north is zoned R1-6 and is occupied by two-family homes (existing nonconforming use). The property to the south is zoned RM-F and is occupied by two-family homes. The properties to the west are zoned R1-6 and are occupied by a mix of single-family and two-family homes. The properties to the east are zoned RM-F and are occupied by the State Street Apartments and a single-family home.

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

The subject properties have always been occupied by single-family homes, with no plans to demolish or convert the existing homes to multi-family housing.

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

The proposed rezoning will have no detrimental affect nearby properties. There is no proposed change in the use of the properties; they will continue to function as single-family homes. The proposed rezoning will bring the existing structures into conformance with the adopted Development Regulations and allow home owners to modify, expand, sell or refinance their single-family homes without the need to obtain a variance or rezoning.

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

The subject properties are 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 not affect the value of the landowner's properties. The properties are currently classified and taxed as single-family units, which will not be impacted by the rezoning.

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 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 the affected property owners as required by Kansas State Statute, staff received inquiries from 4 individuals pertaining to the nature of the request. No complaints or comments were received.

REZONING ACTION/OPTIONS:

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

Chairman Stephens asked the commissioners for questions about the staff report.

Commissioner Homan asked for clarification that single-family homes cannot be built in multi-family zoning districts.

Ms. Hurley responded in the affirmative stating single-family homes are not allowed by-right or with the issuance of a SUP in multi-family zoning districts.

Commissioner Whitson asked staff to go over the R1-6 and RM-F standards again for clarification.

Ms. Hurley responded that the R1-6 zoning district does not allow multi-family, and the RM-F zoning district does not allow single-family homes.

Commissioner Homan asked if he is correct by stating the R1-6 zoning district does not allow for duplexes but the RM-F zoning does allow duplexes.

Ms. Hurley responded that in the R1-6 zoning district, you can apply for a special use permit to have a two-family home, but in the RM-F zoning district, you cannot apply for a special use permit to have a single-family home.

Commissioner Whitson is hung-up on the “rebuild as-is”. Is this at the time of what the construction is warranting?

Ms. Hurley responded that she is not sure how the lending laws are, but this is just what staff has been finding from folks. Obviously, with every property that is sold, purchased or refinanced, staff does not get a request for a zoning verification letter for every single property. For the requests that staff does get, if we cannot provide that letter stating that the house is conforming and could be rebuilt, then some of these folks are unable to sell, purchase or refinance their home. For example, say one of the property owners of the subject properties were trying to sell or refinance their home, and they needed a zoning verification letter for their lending institution, staff could not provide a letter stating the home is conforming and could be rebuilt.

Commissioner Whitson stated the reason she asked this question is that she lives in a historical home, and had a difficult time getting her lender insurance to say that they could rebuild the home because they obviously cannot rebuild it as 1875, but they can rebuild it to the standards of today.

Ms. Hurley again stated she is not sure what it is with the lending institutions but it is something with the use of the property. If the existing use is nonconforming and the structure cannot be replaced, that is where folks are running into the problem.

Chairman Stephens stated that this city-initiated rezoning will match the single-family use to the proper zoning of R1-6, which will make these 15 homes conforming, and saves each property owners \$350 as well.

Commissioner Whitson asked staff if anyone was against this rezoning request.

Ms. Hurley responded that staff had four individuals call to ask questions about the rezoning, but after staff explained it to them, nobody had any complaints or concerns.

With no further questions or discussion from the commissioners about the staff report, Chairman Stephens opened the public hearing.

Sylvia Arvizu, 2531 2nd Ave., asked what are the limitations that are imposed on them with this zoning change. There are a couple lots included in the zoning request that could potentially have another house built on it or apartments.

Chairman Stephens replied that as it is zoned now, if one of those houses were to be destroyed, the owner of that property could build a duplex or any other multi-family housing on that parcel even though it is a single-family dwelling now. If the rezoning is approved, and these 15 properties are rezoned to what they should be, which is R1-6, then if any of these houses are destroyed, then they can only be replaced with a single-family dwelling. This is not the government infringing on anybody to create any type of hardship. This rezoning is helping so that if any of these property owners had their home destroyed, they could rebuild their single-family dwelling without going through some ridiculous government red tape.

Ms. Arvizu stated that some of her neighbors have large enough lots that they could build or continue to build on their lots.

Commissioner Homan stated they would have to come back to this commission to divide their lot.

Ms. Hurley stated the limitation would be that only single-family homes could be built on any of these lots. A property owner could apply for a special use permit to build a duplex, but that is it.

Ms. Arvizu stated that 507 Santa Fe is a large lot, and that property owner could potentially put a trailer on that lot.

Chairman Stephens stated if the property owner of 507 Santa Fe wanted to build an apartment complex, they could do that with the current zoning, but if the zoning changes to R1-6, then only single-family homes could go there. There are also requirements on how many outbuildings that are permitted for single family zoning districts.

Commissioner Whitson stated the way 507 Santa Fe is zoned right now the property could potentially build multi-family dwelling units. If the rezoning is approved to R1-6, then only single-family homes are permitted.

Ms. Arvizu asked if those lots would change back to multi-family.

Commission Homan responded in the negative stating they would have to request a special use permit that would either be accepted or denied. He further stated they could split the lot and build another single-family home, or build an outbuilding on their property.

(Inaudible. Everyone is talking over each other).

Ms. Hurley stated that with the R1-6 it would be single-family zoning, and all the regulations that go with single-family zoning would apply.

Commission Neeland stated she believes what is being asked is what happens if the owner of one of these larger lots wants to split their lot for example, to build two more homes that will be rentals. The property owner would need to come before this board, and notices would be mailed to property owners within the radius per Kansas statute. At the time of the public hearing, people would have the opportunity to speak in favor of or against the request.

Ms. Hurley stated 507 Santa Fe is a larger lot with 1.5 acres. It is certainly big enough that they could split it down the middle and sell that other half to build another single-family home. Except right now, they could not do that because it is zoned multi-family. Additionally, they cannot put another single-family home on the same lot as the existing single-family home because that does not meet the definition of multi-family. That would be two single-family homes one lot, which is not allowed by the zoning district.

Carla Herbert, 517 Santa Fe, stated that when she read the letter she was confused with the language "high density single family residential".

Chairman Stephens responded that is a category so we know what is rural, what is highly rural, etc. High density would be smaller lots in a more populated area.

Ms. Herbert asked what this zoning change will do to her taxes.

Chairman Stephens responded that the county handles the taxes, and taxes would not change with this rezoning request.

Ms. Hurley further stated that the county assesses the taxes based on the actual use, and not how the city has it zoned. These 15 properties are taxes as single-family homes, and that will not change.

Nicolas Rodriguez, 523 Santa Fe, stated he and his wife just moved into this home and it is the first home they have owned. He asked for clarification between conforming and nonconforming.

Chairman Stephens replied that conforming is when the property and any structures are conforming to the Development Regulations. Nonconforming is when they are not conforming to the regulations. Nonconforming would not come into play until something happens or you pull a permit, etc. The rezoning action would bring the properties into a conforming status with the city's zoning.

Mr. Rodriguez asked if he wanted to install a fence, would he need a special permit.

Chairman Stephens stated that permit does not go through this board but rather through the permitting process.

Mr. Rodriguez stated it sounds like the city is trying to help the homeowners in this neighborhood by rezoning the properties.

With no one else wishing to speak, Chairman Stephens closed the public hearing and called for discussion among the commissioners or a motion. Based on the findings as stated and conditions as presented, Commissioner Whitson moved to recommend approval of the rezoning request from R-MF to R1-6 to the City Commission, seconded by Commissioner Homan, and passed by a vote of 4-0.

Ms. Hurley stated this item will go to the City Commission for first consideration on Tuesday, August 27th.

OTHER BUSINESS:

With no other business, Chairman Stephens called for a motion to adjourn. Commissioner Whitson moved to adjourn, seconded by Commissioner Homan, and approved 4-0.

Ms. Hurley stated we will have a meeting in September, which will be the second Monday in September because of the holiday.

Meeting adjourned at 6:37 p.m.

Minutes taken by Planning Assistant Michelle Baragary.