MINUTES OF THE
SHAWNEE COUNTY PLANNING COMMISSION

Monday, August 12, 2019 – 6:00 PM
Shawnee County Annex

Roll Call and Announcement of Hearing Procedure: Brian Aubert, Chair, called the meeting to order at 6:00 p.m. and asked for roll call to be taken.

Members Present: Brian Aubert, Judy Moler, Chad Depperschmidt, Jake Fisher, Tyler Tenbrink and Elaine Schwartz. With six members present, a quorum was established.

Members Absent: Matt McCurry.

Staff Present: Randy Anderson, Planning Director; Anna M. Ortega, Zoning Administrator; Joelee Charles, Administrative Assistant; and, Joni Thadani, Assistant County Counselor.

Approval of April 8, 2019, Public Hearing Minutes: Ms. Moler moved to approve the April 8, 2019, public hearing minutes, seconded by Mr. Depperschmidt, and with a majority voice vote, the minutes were approved.

Communications: Ms. Ortega stated the communications received were included as part of the agenda packet.

Ex Parte Communication by Members of the Board: None were indicated.

Declaration of Conflict of Interest by Members of the Board or Staff: None were indicated.

Zoning and Subdivision Items:

1. Z19/01 by J W Congregation Support Inc. (Susan Littrell, Purchaser) seeking a rezoning from RR-1 (Residential Reserve District) to O&I-1 (Office & Institutional District) for the conversion of a church to a Daycare Type II facility at 3835 NW 43rd St.

   Mr. Anderson stated the church, located at the intersections of NW 43rd Street and U.S. 75 Highway, began operations in 1996. In the past year, it has been used for periodic meetings but largely church functions have ceased. The applicant is currently in the process of purchasing the property.

   The property located behind the church is undeveloped. An elementary school is located to the west on NW Brickyard Road. Everything to the north has been developed as residential. U.S. 75 Highway is located to the east of the church and runs south to north. Also, Northwest 43rd Street does not extend all the way to the highway.

   The undeveloped property located between NW 43rd Street and south of the property was designated in the Comprehensive Plan as being ideal for office and industrial development. This is due to the highway and it not being particularly conducive to having large homes backing up to it with the noises and sounds and a school located on the other side of NW Brickyard Road. Those who approved the Comprehensive Plan felt like it was a good opportunity to place a buffer there for the residences to the north of the property and the vacant land along U.S. 75 because it has been vacant for 20+ years.

   The State Fire Marshal’s office reviewed the applicant’s site plan and determined the daycare would be limited to 24 children. With this limited number, the applicant would not have to put in any additional improvements to enhance the fire protection of the building. The number of children could be increased if additional fire protection is added.

   Staff believes it would be undesirable to allow a building to remain vacant and not be protected for a period of time. Property may not be maintained in a timely manner resulting in the loss of its value. The use as proposed is consistent with the Comprehensive Plan recommendations. Brickyard Road does provide adequate access. Most of the homes are located a good distance from the property so there is a spatial buffer from the building to the neighborhood to the north. In consideration of all factors and comments from the referral agencies, Staff recommends approval with the five conditions included in the staff report.
Mr. Aubert asked for the maximum occupancy from the Fire Marshal’s report. Mr. Anderson stated the Fire Marshal set the maximum number at 24. The building can have a maximum of 49 occupants which would include staff and children.

With no further questions for Mr. Anderson, Mr. Aubert asked the applicant to make their presentation.

Susanne Littrell, 900 NE Brian Road, Topeka, KS 66617.

- Owner/operator for ten years of Lighthouse Day School located at Seaman Community Church. The school is licensed as a daycare facility under KDHE; however, it is an all-day preschool for children 3-5 years old. It was awarded Topeka’s Best Preschool in Topeka in 2018.
- Has a degree in Early Education and an educator for 28+ years. Enjoys working with little children.
- Per the Fire Marshal’s report, they will be allowed 24 children. The maximum for this space will always be 49 according to KDHE. In order to increase the number of children, a sprinkler system and fire system would need to be installed, including extra exit doors and a code footprint.
- In order to have more than 24 children, an architect must be hired to draw a code footprint and then a fire alarm system would need to be installed. Currently, she has no plans to increase to 49.
- The purpose of rezoning and buying the building is due to having limited space at the church.
- Daycare spaces in the community are currently limited, at capacity or there is a waiting list.
- A great opportunity for them to expand and give the public another option.
- Served many families in the USD 345 district. Some have sent more than one child to their facility.
- Business hours will be 8:30 a.m. to 5:30 p.m., Monday through Friday. Their hours are not like regular daycare hours. Some daycares have drop-in care and some have night time care.
- Currently, parents drop their children off by 8:30 a.m. The hours are similar to school hours. Children come in at the same time and it reduces some of the traffic.
- Hoping to influence the children in positive ways. They offer something a little bit different. Knowledgeable in European education. They also introduce and speak German with the children.
- Wants to put a garden on the property so the children can grow and eat their own vegetables.
- Even with the noisy highway, the land provides a bigger play space and a wonderful opportunity for the children to enjoy the outdoors which is rare these days.
- Would like to install a gate to keep people out when the school is closed and wants people to know it is a business. Trying to be neighborly and keep it nice and proper.

Questions from the Planning Commission for Mrs. Littrell:

Mr. Depperschmidt asked if they would continue to have two locations.
* Mrs. Littrell stated they would most likely move everything to the new location.

Mr. Aubert asked for their current location’s address.
* Mrs. Littrell stated it was 2036 NW Taylor Street.

Ms. Moler asked the ages of the children and for more information on the Fire Marshal’s report.
* Mrs. Littrell stated they would be 3-5 years old. They are now located in a lower level of the church. If you have children that are under 2½ years old, they need to have a certain way for them to get out safely in a fire. Since the new location would be on the same level, the Fire Marshal told her she could have younger children. She told him she was not interested in a younger age group.

Mr. Aubert asked for the number of families that would be dropping off the 24 children.
* Mrs. Littrell said it would be approximately 20. Sometimes siblings come in the same car. The new location would be for full-time children.

Ms. Schwartz asked for the number of children they were licensed for now.
* Mrs. Littrell stated they were licensed for 24 children.

Mr. Fisher asked for the number of employees.
* Mrs. Littrell stated there were three employees but would possibly add one more. For licensing, there must be a certain ratio of teachers to children.

Mr. Aubert asked if there was a representative to speak for those in favor and those in opposition. No representatives came forward. He stated their testimony was important to them.
Mr. Aubert asked if anyone wanted to speak in favor.

Blaine Moore, 9808 Valley View Drive, Ozawkie, KS 66070.
- Pastor of Seaman Community Church. His wife is a Special Ed teacher at Berryton Elementary.
- Involved in children’s ministry for 25 years and feel they have a good eye for excellence.
- Impressed with applicant’s work and how she runs her preschool. Glad to have the school at the church.
- Applicant and her husband are members of the church.
- Vouching for applicant’s expertise. If given the opportunity, she will run a top notch facility.
- There are many children on waiting lists who would benefit from being in a program of any kind; however, when there are no opportunities, they do not benefit. Should be a major consideration.

An audience member asked if it was proper for someone outside Shawnee County to speak on a zoning issue. Mr. Aubert stated property owner notifications are sent to the residents who are within 1,000 feet of the proposed location. All public comments are considered to make their decision.

Mary Froese, 2450 SE 29th Street, Topeka, KS 66605.
- Works with Next Homes Professionals and has the listing for this property.
- Has worked on three contracts for this property and gets calls for information on a regular basis.
- Knowledgeable of the property, the pros and cons, how it is structured and how it can be used.
- Originally, the road was going to extend to Highway 75. Not having the road is an issue and changed the zoning to where it could only remain as a church or be turned into a residence.
- Has spent a lot of time researching and studying and talking to many people at the county.
- A number of people have called wanting to make it a venue for weddings, graduation parties, etc.
- If she lived there, she wouldn’t want a venue with activities in the evenings, loud noise, drinking, etc.
- Thinks a preschool/daycare is something that could really add to the neighborhood.
- Minimal traffic especially by avoiding the traffic at 6-7 a.m. Most traffic would be contained until after the school bus comes through. People going to work or coming home would be avoided. There would be 20-24 cars picking up the children. There would be no evening activities or weekends.
- Hopefully the people in the neighborhood will enjoy having a daycare/preschool available for their children.

Mr. Fisher asked Ms. Froese how long she has tried to sell the property and for details on the other two contracts. Ms. Froese stated she has tried to sell the property for 15 months. A venue was proposed for the first contract. They could not get the zoning change. That took about four months. The second contract was for a church. They could not secure the funding. It was tied up for three months. People call asking about different businesses and she discourages them up front because she knows if it won’t work for one type of business or another.

Mr. Aubert asked if RR-1 allows for an event center. Ms. Thadani said RR-1 would allow for an event center with a Conditional Use Permit (CUP). There is an extensive list of items that can go in RR-1 including those that are permitted, those that are provisional uses and others that are allowed by a CUP. Someone considering a CUP would have to apply for a permit to use it for a specific purpose and the Planning Commission would have to approve it.

Ms. Froese asked if it could be a residence with a daycare. Ms. Thadani stated it would be run as a Daycare Type I which is within a Residential Rural Zone with some additional requirements and provisions.

Lindsey Smith, 110 SW Clay Street, Topeka, KS 66606.
- As Secretary of Seaman Community Church, has worked with the applicant for the last five years and met her as a parent of the school.
- Been in many centers in different places. When she found Lighthouse, she knew it was the right place. Her child would not be where he is if not for Lighthouse.
- Applicant is exceptional in her field and what she knows and applies to her program.
- Not a normal preschool. The different elements she brings in is extraordinary.
- Applicant would bring a very good value to that neighborhood.
Steve Littrell (Applicant’s Husband), 900 NE Brian Road, Topeka, KS 66617.
- Understands people’s concerns. Been part of the Seaman community for 25 years. Wouldn’t want someone bringing something into the community that wasn’t good for the community.
- Knows how people feel when something new is coming in and they don’t know exactly what it is.
- This is something good for the community.
- Knows people are proud of living in the Seaman community and they do too.

Ralph Krumins, 3934 NW Morley Street, Topeka, KS 66618.
- Lived around the corner from the property for 30 years. Proud of living in their great neighborhood.
- The applicant is experienced and knowledgeable.
- Ideal location for families with younger children and those with children attending West Indianola.
- Homes could be sold to families that want a daycare down the street.
- Appreciates the concerns those have about what might happen in the future and if the property sells.
- Per the zoning information, it could possibly be a veterinary clinic, bed and breakfast or an office. Not a major concern to him.
- It would be a change for their neighborhood but leaving the building rotting is not what they really want. There could be issues with squatters, people hanging out there, people driving through the parking lot and the property decaying over time because there is no maintenance.
- In favor. Thinks they should move forward. It could be advantageous.

Mr. Aubert asked if anyone wanted to speak in opposition.

Steve Seehorn, 3821 NW Morley Court, Topeka, KS 66618.
- A neighbor of Mr. Krumins and a resident for 30+ years. Disagrees with Mr. Krumins.
- Homeowners purchased their property in a residential and agricultural area, not commercial.
- They continue to invest in their homes and are concerned how it may affect their property values.
- Concerned about the proposed rezoning, not the daycare.
- Concerned about the applications they may struggle with if the property is rezoned and sold in the future.
- Concerned it will encourage more properties to be rezoned commercial along their residential streets.
- As a retired Pastor of Rolling Hills Christian Church, appreciates/supports children’s ministry.
- Concerned about access to the area is on streets that are not designed for additional traffic.

Rob Mercer, 3803 NW Morley Court, Topeka, KS 66618.
- He and his wife live next door to Mr. Krumins and their property is adjacent to the church.
- Absolutely against this rezoning for any commercial property.
- Shouldn’t be debating whether the applicant is qualified to be a daycare provider.
- Over the last 20 years, he and his wife have lived and raised their family at this location.
- Concerned about traffic that comes from West Indianola Grade School. It is only a block away from the church. During school activities cars park on 43rd Street.
- Concerned about increased traffic and the safety of those who walk, run and ride bicycles on 43rd, Brickyard and Morley Streets where there is no sidewalks or curbing.
- The church has only one access because it’s on a dead end.
- Concerned about the increase in trash from the additional traffic.
- Concerned about fire safety. Only one fire hydrant is located in their circle on their street. Several years ago, a neighbor’s house burned to the ground because the fire hydrant wouldn’t put out enough water and Soldier Township didn’t get there in time. They had to call in water trucks. They could only prevent the fire from spreading to the other houses.
- There is already a daycare across the highway behind the Petro Deli.
- Their bedrooms face the property’s parking lot so noise and traffic is going to affect them directly.
- There is a buffer but the people that live there would still be affected.
- Concerned their home’s property values will decrease and it will discourage any future homeowners.
John Flippo, 3920 NW 43rd Street, Topeka, KS 66618.
- Lives on the corner and is directly affected.
- Understands the proposed drop off and pick up times for the children in order to reduce traffic. But everyone works different shifts. Parents are going to drop their children off and pick them up when it's convenient for them, not the daycare. Because the doors are open during the hours of operation.
- Everyone utilizes their street for various activities and that will change.
- If the road turns into a higher traffic area, it is considered a higher danger and his car insurance premium could be raised.
- The business owner can explain their plans and want to be a friend to the neighborhood. But at the end of the day, they go home to their neighborhood where there is no commercial business.
- They moved there because it is a residential neighborhood and where they want to raise their kids. They got out of the city for this reason.

Al Studdard, 3820 NW Morley Court, Topeka, KS 66618.
- Agrees with some of his neighbors’ comments.
- Opposed to the rezoning. Not opposed to the daycare.
- Moved to this area 35 years ago and intends staying there.
- Brickyard Road is not adequate for the traffic. Before/after school and during daytime or nighttime activities, it is one lane from approximately 43rd Street to the dead end and it's difficult to get through.

Brad Broome, 4419 NW Geronimo Trail, Topeka, KS 66618.
- Agrees with his neighbors. It’s not about the daycare. It’s about what happens after.
- Current preschool is located in the church’s basement. Now applicant is responsible for a mortgage, insurance, taxes, maintenance, etc. Concerned that the business model is not sustainable. If paid $50 per day, per child for 24 children, it may be enough to just squeak by.
- Concerned about the change in the zoning. Doesn’t think it should be changed.

Debbie Studdard, 3820 NW Morley Court, Topeka, KS 66618.
- Loves their neighborhood.
- The daycare is not the issue.
- Concerned about changing the zoning and what might replace the preschool if it closes.
- Major concern about traffic on Brickyard Road by the school. Cars park in the grass on both sides.
- Wants to keep it residential and knows that change happens.
- There is a daycare by Petro Deli.
- Doesn’t think the building should be left empty. It could be a house.
- Concerned about the possible uses that would be permitted.

Rebecca Mercer, 3803 NW Morley Court, Topeka, KS 66618.
- Resided at this location for almost 20 years.
- The proposed property is directly behind their home and is surrounded by residential property.
- Purchased their home in a nice residential, county environment.
- They don’t want commercial property in their backyard now or in the future.
- Spent considerable time and money on their investment that they call their home.
- Concerned about the possible negative effects of rezoning on their quality of life and property investment.
- Concerned about the increase and congestion of traffic on surrounding streets.
- 43rd Street has no sidewalks and is a narrow, dead end road. Concerned for the safety of the pedestrians, adult and children, who travel on the road.
- Brickyard Road is already congested with the school traffic. During activities the space is limited on the roadway and cars are parked up and down 43rd Street in both directions.
- Possibly the property could be converted to a single family home and keep it a family environment.
- Doesn’t think they are going to help with the number of children who are on waiting lists since the preschool will be caring for the exact same number of children as it does now.
Ron Ward, 3810 NW Morley Court, Topeka, KS 66618.
- Has the same concerns as his neighbors but not so much with the daycare center.
- Concerned about what happens if it closed and what it would change to.
- Really concerned about the increase in traffic. The traffic from the school keeps him from traveling on Brickyard when children are being picked up. The traffic is backed up all the way to 43rd Street.
- Morley Court and Morley Street would be used to access the proposed property.

Reid Hash, 3931 NW 44th Terrace, Topeka, KS 66618.
- As a licensed financial planner, he doesn’t think the proposed property really affects the value of his home but his neighbors believe it will affect their value.
- Several of his commercial clients looked at this property and did not make an offer due to the zoning situation.
- It seems like they are picking winners and losers and really transferring value through a zoning issue.
- Future commercial development down Hwy 75 was mentioned; however, they closed 43rd Street which is the only access. 35th Street wouldn’t work with how the houses were developed.
- Really struggling with how this becomes a future corridor and when exactly that future is.
- Understands a lot of planning has been done for 30, 40 and 50 years from now. But, can we really be making financial decisions for people based on what is going to be there in the future.
- They have all seen the growth of Topeka and they need to be cognizant of taking from one party and giving to another party.

Rhonda Bowers, 1002 NE Michigan Avenue, Topeka, KS 66616.
- She and her husband recently purchased the corner of 43rd and Brickyard Road.
- They considered buying the property next to it also.
- They would have never purchased a property next to a commercial property because that would devalue their property in the future.
- The gentleman who they bought their property from owns a vast amount of land in the area and does a lot of business out of Holton but moved all his longhorns to his property here because it is nicer.

With no further comments in opposition, Mr. Aubert gave the applicant the opportunity to make a rebuttal.

Susanne Littrell, 900 NE Brian Road, Topeka, KS 66617.
- Didn’t foresee so much opposition but understands the neighborhood residents want a residential area.
- A resident of the Seaman community for 28 years.
- Knows how it is to have commercial property move in next door.
- Doesn’t think of her business as a commercial business with a bunch of traffic.
- Working with Go Topeka on a successor plan. Could possibly include language that would state if the business would fold, only a church, residence or another daycare could purchase the building.
- She believes in her business and saw the need for another center in the area to provide a better option.
- Unsure about the location if people are opposed and anxious. She would like friendly neighbors.
- This is about the children. They have a very good reputation.
- Parents have a set time to drop off their children and it is how they differentiate from other places.
- Considers their work a step above others in providing early childhood excellence.
- Has been working on this for almost a year and invested quite a bit of money.
- Only the full-time children will go to the new location to have more space. The part-time children will remain at the church.
- This is about accommodating the people who work and need a full-time place for their children.

Mr. Aubert closed the public hearing. Mr. Anderson offered two modifications per the applicant’s testimony:

2. The day care is limited to 24 children, including children 2 ½ years of age and less, in the main room, and a maximum of 49 occupants in the entire facility, per the State Fire Marshal;
3. The hours of operation of the day care shall be limited to 7:30 a.m. to 5:30 p.m., Monday through Friday;
Mr. Anderson stated a review of all the proposed uses in all the districts was needed. Some permitted uses in the RR-1 and O&I districts are not necessarily the right uses. For example, in RR-1, a group home or a medical care facility are included. The proposed building would be ideal for a medical care facility and it would be allowed. A daycare is not.

He suggested adding a sixth and seventh condition of approval:

6. The applicant down-zoning the property to RR-1 if the Zoning Regulations are amended to allow a Type II Day Care in the RR-1 district; and

7. The succession plan proposed by the applicant to limit the sale of the property only to persons or businesses that would operate a church of day care, within three years of the approval of this rezoning request. Once the property is down-zoned to RR-1, the applicant may sell the property to any person or business that would operate any use permitted in the RR-1 district.

Mr. Fisher asked for additional information on conditions six and seven. Mr. Anderson stated that the conditions would cover the potential sale of the property prior to updating the Zoning Regulations to allow a day care in the RR-1 district and the other condition states that the owner consents to the down zoning of the property back to the RR-1 district once the Zoning Ordinance is updated and would require the completion of down zoning prior to any expansion of the facility.

An audience member asked if they could review the revised conditions before a vote. Mr. Aubert stated the Planning Commission reviews these items from a planning aspect. This item will continue on to the County Commission with the staff report and recommendations. Ms. Thadani added the Planning Commission’s decision, whether approved or disapproved, is only a recommendation to the Board of County Commissioners. Another public hearing will be held next with the Board of County Commissioners. The Planning Commission adds the conditions they want included. Additional public comment will be considered at the Board of County Commissioner’s public hearing.

Mr. Aubert stated he drove by the property and it didn’t seem the right fit to be a residence. It has been on the market for over a year.

There was additional discussion about conditions 6 and 7 to clarify the specific language of each condition and the time frame for updating the Zoning Regulations. Mr. Anderson stated that only the permitted uses in the agricultural, residential, and office and institutional districts would need to be updated. The succession plan offered by the applicant would protect the neighborhood if the property was sold before amendments to the Zoning Regulations are adopted. The second condition, requiring the down zoning once the new regulations are adopted, protects the neighborhood against other rezoning applications for O&I-1 zoning. Furthermore, staff is highly motivated to complete this process as quickly as possible. The amendment process should take less than two years to complete.

Mr. Tenbrink moved for approval of the Conditional Use Permit including the original five conditions in the Staff Report and the two additional conditions, seconded by Ms. Moler. With a vote of 5-1-0 (Mr. Depperschmidt dissenting.), the item was Approved.

**Public Comment on Non-Agenda Planning and Zoning Items:** No one present to speak.

**Discussion of Planning Related Issues:**

Mr. Anderson reiterated he will be completing an in-depth review of the zoning and subdivision regulations. Ms. Thadani encouraged the Planning Commission to bring up items to be addressed so they can be placed on the agenda for discussion. She also notified them there will be an item proposing a minimum maintenance road and also a conditional use permit request for the September agenda.

**Adjournment:**

With no further items to consider, Mr. Aubert asked for a motion. Ms. Moler moved to adjourn, seconded by Mr. Tenbrink, a unanimous voice vote declared the public hearing be adjourned at 7:38 p.m.