

BUTLER COUNTY PLANNING COMMISSION

Scheduled Meeting
November 3rd, 2020
Butler County Courthouse-4th Floor
205 W. Central
El Dorado, Kansas 67042

MINUTES

The scheduled meeting of the Butler County Planning Commission began at 7:00 p.m. on Tuesday, November 3rd, 2020 on the 4th Floor of the Butler County Courthouse located at 205 W. Central in El Dorado, Kansas.

Chairman: Jim Ralston

Members Present: David Greene Jr., Kristi Sullivan, Kermit Frey, Andy Jones, Bryce Flaming

Members Absent: Jeff Varner, Jeremy Sundgren

Guests: Roger Cutsinger, Neal Allmond, Robyn and Robby Heinz, Gerald Dixon

The meeting was called to order and a quorum was declared

Approval of the November 4th, 2020 Planning Commission Agenda

Motion: Bryce Flaming

Second: Andy Jones

Approved

Approval of the October 6th, 2020 Planning Commission Meeting Minutes

Motion: Kristi Sullivan

Second: David Greene Jr.

Approved

Old Business:

None

New Business:

PL 20-10

Request for a Mortgage Split with APO Provisions

Applicant/Owner: Jason and Rachel Fenske

Agent: Gerald Dixon, Goedecke Surveying

Location: 0 SW 30th, El Dorado, KS

Discussion: Staff recommends approval

Staff: This is a request for a Mortgage Lot Split. The applicant owns 78 +/- acres and the current zoning is AG 40. He is proposing to split a 7 +/- acres tract of land and placing a 33 +/- acre APO on a portion of the remaining property. The property is primarily used for farming activities.

**Gerald Dixon is present for comments or questions.
No further questions or comments were made**

Motion: Andy Jones
Second: Bryce Flaming
Action: Approved

To be heard before the BOCC on December 1st, 2020 @ 9:00am

PL 20-11

Request for a Homestead Lot Split with APO Provisions

Applicant/Owner: Kyle Nichols
Agent: Roger Cutsinger, Savoy Company P.A.
Location: 6659 SW 40th Street, El Dorado, KS
Discussion: Staff recommends approval

Staff: This is a request for a Mortgage Lot Split. The applicant owns 78 +/- acres and the current zoning is AG 40. He is proposing to split a 10 +/- acre tract of land and placing a 30 +/- acre APO on a portion of the remaining property. The property is primarily used for farming activities.

Roger Cutsinger is present and available for questions

No further questions or comments were made.

Motion: Bryce Flaming
Second: Kristi Sullivan
Action: Approved
To be heard before the BOCC on December 1st, 2020 @ 9:00am

PL 20-12

Request for a Final Plat Approval

Applicant/Owner: Ryan Underwood, RUJH Investments LLC
Agent: Roger Cutsinger, Savoy Company P.A.
Location: SW 40th and Butler Road Benton, KS
Discussion: Staff recommends approval

Staff: This is a request for a final plat approval. RUJH owns a tract of land containing 53 +/- acres and is zoned RE. Preliminary Plat was approved for 9 lots ranging in size from 5 to 7.57 acres. While the lay out does comply with the Butler County Subdivision regulations, it needs to be noted that there is significant floodplain that will need to be addressed during the construction phase of the infrastructure and Single Family Residences. In this case, there is a need for a right-of-way acquisition, if approved at the Planning Commission level, it will need to be submitted to the Board of Butler County Commissioners as a final plat.

Analysis: As mentioned, the property is zoned RE and the size of the lots proposed by the applicant would confirm to the size requirements in the RE zoning classification Staff feels the

Plat, as proposed, complies with the County's Subdivision regulation in that it meets the area requirements for each lot and complies with the Lot Width to Depth ratio of 3:1.

The property will be accessed via SW 40th and SW Butler Road.

As you are aware, the Planning Commission is the approving body for Plats, however, since there will be Dedicated Rights-of-Way, the dedications must be accepted by the Board of County Commissioners. As per the requirements of the County, the applicant is dedicating 60' of R.O.W. on SW Butler Rd. and a 40' R.O.W. along SW 40th St.

Overall, Staff does not have a problem with the proposal. The lots as proposed will contain the necessary acreages, and appear to be of a shape and size that would allow them to be buildable.

I do want to add that a floodplain permit as well as a DWR permit will be required for prior to the start of construction.

Roger Cutsinger is present and available for questions

Board: So let's say we approve this and then there is an issue with the DWR permit, then what happens to the plat?

Staff: The plat is good for at least 12 months so should there be an issue, the plat could be vacated.

No further questions or comments were made.

Motion: Andy Jones

Second: David Greene Jr.

Action: Approved

To be heard before the BOCC on December 1st, 2020 @ 9:00am

CU 20-04

Request for a Conditional Use Permit for Storage Units

Applicant/Owner: Neal Allmond

Agent: N/A

Location: S. Randall, Potwin, KS

Discussion: Staff recommends approval

Staff: This is a request for a Conditional Use Permit to allow the applicant to construct Storage Units on the Property to then rent the Storage Units to the general public. The property is located adjacent to the City of Potwin and consists of 4 +/- acres and is currently zoned AG 40. There currently is one metal building on the property and the applicant is proposing a 3 phase approach. He is proposing to erect one 30'x100' storage building that will contain numerous storage units and depending on the need of the general public, he would then erect an additional 30'x100' storage building and then possibly another unit that would measure 30'x50' in size. Access will be off South Randall Street and any/all parking will take place on the site. The units will be accessible 24/7 that will require the use of a code or access card.

Article 7-AG-40 Zoning District:

Section 22-109-Factors to be considered in an application for a Conditional Use Permit

Because of particular conditions associated with their activities, certain uses which might have an adverse effect upon nearby properties or upon the character and future development of a district are not permitted outright in districts, but are permitted as Conditional Uses when their proposed location is supplemented by additional requirements; so as to make the use requested compatible with the surrounding property, the neighborhood, and the zoning jurisdiction.

In approving a Conditional Use the minimum requirements of approval for all similar types of permitted uses, in the same district, must be met unless otherwise reduced by specific reference in the recommendation of the Planning Commission or the approval of the Board of County Commissioners. The requirements may be made more stringent if there are potentially injurious effects; which may be anticipated upon other property and the neighborhood or contrary to the welfare and convenience of the public.

The Planning Commission may recommend approval of a Conditional Use and the Board of County Commissioners may approve such Conditional Use using the following factors as guidelines:

1. Whether approval of the Conditional Use would be consistent with the intent and purpose of these regulations:

Staff: The property is zoned AG-40. The intent and purpose of the zoning regulations as they apply to AG-40 zoning classification is to allow for some development in rural areas outside the Urban Growth Area (UGA). Storage Units can be suitable in rural locations outside the UGA where adequate public roads are available. It is not necessarily whether the proposed use is consistent with the intent and purpose of the zoning regulations, but rather, whether the proposed use is appropriate for the area in which it is located. In this instance, staff feels the use proposed would not necessarily be consistent with the Intent and purpose of the regulations but since the project is located on a paved road, it may not be a detriment to the area. The property is located adjacent to the City of Potwin but outside the Urban Growth Area of the County.

2. Whether the location of the proposed use is compatible to other land uses in the surrounding neighborhood:

Staff: Based upon the type of use proposed, its location along a paved road, operated in the manner proposed by the applicant, and operated in accordance with any other conditions that might be placed upon it, its impact upon the surrounding properties would be minimal. The land currently has a metal building on it and the surrounding properties are either vacant or have single-family dwellings on the property.

3. Whether the proposed use places an undue burden on the existing transportation and service facilities in the area affected and, if so, whether such additional transportation and service facilities can be provided:

Staff: As mentioned the property is located in an AG-40 zoned area, adjacent to the City of Potwin, and the road serving the area is a paved road. There will be minimal traffic to and from the site but it should have no impact any other property owners.

4. Whether the proposed use is made necessary or desirable because of changed or changing conditions in the area affected:
Staff: There are no changed or changing conditions in the area. The applicant is merely proposing to construct storage units for individual use.
5. The length of time the subject property has remained vacant or undeveloped as zoned; (the use of land for agricultural purposes shall be considered as viable use of the land and not be considered as allowing the land to be vacant or undeveloped):
Staff: The property has a metal building on site but wants to make better use of the property.
6. Whether the applicant's property is suitable for the proposed use:
Staff: It is felt the property is suitable for the proposed use. The nature of the use of the land will change, as there will be traffic to the site but, given the nature of the type of Business proposed it should have minimal impact to any neighboring properties.
7. The recommendations of professional staff:
Staff: Staff feels the proposed use could be appropriate if certain conditions are met and recommends approval.
8. Whether the proposed Conditional Use would be in conformance to and further enhance the implementation of the county's Comprehensive Plan:
Staff: This particular site is outside the Urban Growth Area of the County as noted in the Butler County Comprehensive Plan. The Comprehensive Plan stipulates that the property is outside the UGA. Many uses, even with an AG-40 designation, could be considered a commercial use therefore staff feels the use proposed could be considered to be in conformance with the Comprehensive Plan.
9. Whether the relative gain to the public health, safety, and general welfare outweighs the hardship imposed on the applicant by not upgrading the value of the property by approving the proposed Conditional Use:
Staff: Staff feels the hardship issue is irrelevant in this case. Zoning Regulations have been upheld in Courts for a long period of time. The very nature of zoning regulations implies that the public good is served by not allowing certain uses in certain locations. to imply that they serve as a hardship by not allowing a certain use on any particular property is incorrect. When a person buys property, he/she is not guaranteed a use of that property other than what is allowed at the time they buy it.
10. Whether the proposed Conditional Use, if it complies with all the conditions upon which the approval is made contingent, will not adversely affect the property in the area:
Staff: It is felt the proposed use would not adversely affect the property in the surrounding area and is therefore proposing the following Conditions:
any security lighting will be placed as to not shine on or have an impact on neighboring residences. (motion lights to be facing south)

11. For uses as solid waste disposal facilities, including sanitary landfills, construction and demolition landfills and transfer stations, whether the proposed Conditional Use is consistent with the Comprehensive Solid Waste Management Plan for Butler County, and amendments thereto:

Staff: N/A

12. Such other factors as may be relevant from the facts and evidence presented in the application:

Staff: Staff visited the site and the impact to any adjoining landowners would be minimal,
if operated in the manner proposed.

The applicant, Neal Allmond, is present and available for questions

Board: Are you going to have some sort of security lighting or security?

Neal Allmond: Yes I would like to do some type of security lighting. The area is fenced and I was thinking of adding some type of secured gate as well.

Board: Will those lights be on all the time or will they be motion detection?

Neal Allmond: I would probably like motion detection lights and face them towards the south, which will be towards the highway there.

Board: I assume there aren't any sanitary facilities?

Neal Allmond: No there is no need for that.

Board: Was there any feedback received?

Staff: As required, we did notify everyone within 1000 feet, with as you get closer to the City, that distance changes to 200 feet and we receive no comments.

Staff made the comment that language in the resolution will be included about the security lighting before the case goes to the BOCC.

No further questions or comments were made.

Motion: Kristi Sullivan

Second: Andy Jones

Action: 4-0 Approved

To be heard before the BOCC on December 1st, 2020 @ 9:00am

*******Meeting Adjourned*******

The chairman opened the Board of Zoning Appeals and declared a quorum

VA 20-02

Request for a Variance to build a new Shop Building in a Special Flood Hazard Area

Applicant/Owner: Robyn and Robert Heinz

Agent: N/A

Location: 15337 NE 150th Street #110; Fox Lake Estates, Cassoday, KS

Discussion: Staff recommends approval

Staff: This is a request for a Variance. The applicant is proposing to remove an existing garage that is in dilapidated state and replacing it with a new garage, using the old footprint, but adding additional square footage in size. The applicant's property is located in a floodplain area and floodplain regulations require a variance if a newly built garage exceeds 400 sq. ft.

Article 26-3-Variances-Criteria

A request for a variance may be granted upon a finding by the Board that **ALL** of the following conditions have been met.

- 1. The variance requested arises from such condition which is unique to the property in question and which is not ordinarily found in the same zone or district; and is not created by an action or actions of the property owner(s) or of the applicant;**

Staff: There really are no conditions that are unique to this particular property. This request arises from the fact that the applicant wishes to replace an existing structure, utilizing the same footprint, but with the adoption of the Floodplain Regulations a clause was inserted stating that any structure exceeding 400 sq. ft. would require both a State and Local Floodplain Permit. In this case the Applicant is requesting a waiver of that regulation which Staff is good with.

- 2. The granting of the variance will not adversely affect the rights of adjacent property owners or residents;**

Staff: Residents have a right to expect that Zoning Laws/ Floodplain Regulations will be enforced consistently countywide. The Floodplain Regulations typically allows for the construction of Accessory Structures but does not allow the structure to exceed 400 sq. ft. without either a State or Local Permit. In this particular situation, even though the new structure will be placed on the same footprint it exceeds the 400 sq. ft. regulation thus the need for the Variance.

With this in mind, staff feels the structure will not adversely affect the rights of adjacent property owners. In fact, Staff has not heard from any of the property owners within the 1,000' radius notification area.

- 3. The Strict application of the provisions of the zoning ordinance of which the variance is being requested will constitute an unnecessary hardship upon the property owner represented in the application;**

Staff: The meaning of the term hardship for variance purposes is whether the strict application of the zoning ordinances would prevent the property owner from being able to use his/her property for a use that is normally allowed in the affected zoning district in which they are located. In this instance, the applicant could be allowed to place the structure on the existing footprint but due to its size exceeding the 400 sq. ft. regulation it requires a State and Local Permit without the approval of a Variance. This request stems merely from the desire of the applicant to build a new building without the process of securing a State or Local Permit and staff supports the request.

4. **The Variance will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare;**

Staff: Public health, safety, morals, order, convenience, prosperity, or general welfare will not be adversely impacted, with the replacement of the existing structure.

6. **That granting of the variance desired will not be opposed to the general spirit and intent of these regulations.**

Staff: The request does not necessarily meet the strict requirements for the granting of a variance. An argument could be made that the granting of the variance would undermine the general spirit and intent of the regulations, but in this case the replacement of the structure will have minimal impact to the neighbors since it will be placed on the same footprint as the existing structure.

With this in mind, staff feels the granting of the variance would not be opposed to the general spirit and intent of these regulations. We notified everyone within 1000 feet of the applicant's property and received no comments.

The applicants are present and available for questions

No further questions or comments were made.

Motion: Andy Jones

Second: Kermit Frey

Action: Approved

This ruling is final and will not be heard by the BOCC

*******Meeting Adjourned*******