



City of Keller
Planning & Zoning Commission
Meeting Minutes

Keller Town Hall
1100 Bear Creek Parkway
Keller, TX 76248
817-743-4000
www.cityofkeller.com

Tuesday, August 11, 2020

PRE-MEETING BRIEFING 6:30 P.M.

A. CALL TO ORDER – Chairperson Gary Ponder

Chairperson Gary Ponder called the virtual Pre-Meeting Briefing to order at 6:30 P.M.

The following Commissioners were present:

Ralph Osgood, Vice Chairperson

Leslie Sagar

Tom Thompson

Paul Alvarado

Bob Apke

James Dawson

The following Commissioners were absent:

Phillip Maxwell, Alternate (Non-voting)

Staff present included Katasha Smithers, Planner I; Jerald Ducay, Planner I; Trina Zais, Director of Public Services and Economic Development (PSD); Chad Bartee, City Engineer; Sean Vreeland, Director of Information Technology and Amy Botcher, Planning Technician.

B. ADMINISTRATIVE COMMENTS

Planner Smithers stated there was one item that went to City Council on August 4, 2020, for the dental office, Just for Grins. The item was approved unanimously.

Chairperson Ponder asked if there were any questions or comments from Commissioners.

There were no questions or comments.

Planner Smithers reminded the Commission the project status list they had requested had been emailed to them the prior Friday.

Chairperson Ponder asked if there were any questions or comments from Commissioners.

There were no questions or comments.

C. DISCUSS AND REVIEW AGENDA ITEMS

C (1) Rabbit Hole SUP

Planner Smithers stated that this item had been tabled at the July 14, 2020, and the July 28, 2020, Planning and Zoning Commission meetings due to the Applicant not being available for questions by the Commission. Planner Smithers acknowledged that communication had been made with the Applicant and she had confirmed she would be available in the regular meeting. She added the Applicant will be occupying 800-sf of the 1600-sf building.

Chairperson Ponder asked if there were any questions or comments from Commissioners.

Commissioner Alvarado inquired if Staff had given the Applicant pre-questions as discussed in the previous Planning and Zoning Meeting.

Chairperson Ponder stated that he recalled the options of pre-questions or the Applicant coming in person to Town Hall for the Commissioners to ask questions directly.

D (1) Discuss and Approve Planning and Zoning Commission Meeting Minutes for July 14, 2020.

Chairperson Ponder asked if there were any questions or comments from Commissioners.

Commissioner Apke stated that he should be listed as the voting member instead of Commissioner Maxwell on the vote to table The Rabbit Hole SUP Request for the minutes of July 14, 2020, and July 28, 2020.

There are no additional comments or questions.

D (2) Discuss and Approve Planning and Zoning Commission Meeting Minutes for July 28, 2020.

Chairperson Ponder asked if there were any questions or comments other than Commissioner Apke's comment to list Commissioner Apke as the voting member instead of Commissioner Maxwell on the vote to table The Rabbit Hole SUP Request.

There were no additional questions or comments.

D (3) PUBLIC HEARING: Rezone Town Center to Town Center- Medical Overlay District

Planner Ducay explained that the owners of 1200 and 1220 Keller Parkway are requesting to rezone to the Town Center Medical Overlay District to allow medical uses to be utilized at these locations. He also mentioned that on July 21st a workshop was held with City Council to discuss potentially expanding the overlay to the subject properties and presented four different options to City Council. After this workshop, City Council gave the direction to Staff to expand the overlay to these two parcels.

Chairperson Ponder asked if the Commission had any additional questions or comments.

Commissioner Osgood asked to if the City Council agreed that the overlay should be expanded.

PSD Zais stated that Legacy ER built that structure in 2014 and closed the business due to close proximity of another Legacy ER business. They felt this specific business was impacting their North Richland Hills branch extensively. She stated that in 2015, the City took out all medical uses from Town Center which prevented the ability for any new medical uses to occupy this building that was specifically made for an Emergency Clinic.

PSD Zais stated that this was brought forward to City Council to gauge the amount of interest in expanding the overlay district. She stated the first option was to keep the existing zoning as Town Center, the second option was to redraw the Town Center boundary, the third option was to add medical back to Town Center, and the last option was to expand the overlay district to incorporate

these properties. She mentioned that after all the pros and cons of all these options were discussed, City Council collectively stated that expanding the Medical Overlay District presented the best option. She also stated that this option did have the drawback of the tendency to creep and expand. She also mentioned that the property owner to the east (Frost Bank) had already conveyed interest in expanding the overlay to his property in the near future.

Commissioner Osgood thanked PSD Zais for the answer and also stated that the public expects the Commission to be consistent and predictable with the policy decisions made. He pointed out that in July or August of 2019, it was decided that an expansion would not happen and asked if this was a major change.

PSD Zais confirmed that it was a major change but also pointed out this position had changed back and forth a few times over the last five to six years.

Commissioner Osgood asked if the City Council was not open to reverting back to incorporating medical uses into the Town Center zoning district.

PSD Zais responded that some of the cons associated with this option that were discussed included potentially decreasing the balance sheet with the addition of medical uses and the decrease of retail or restaurant uses.

Commissioner Osgood asked if the Jason's Deli building owners requested medical to be incorporated so they could also occupy within the building.

PSD Zais confirmed they had.

Commissioner Osgood asked if City Council would not consider the option of adding the medical use in the Town Center zoning district or redrawing the boundary.

PSD Zais stated that the ripple effect from those two options were more significant than the option that was chosen.

Commissioner Osgood stated he found it interesting that City Council had already taken a position prior to the Public Hearings at the Planning and Zoning meeting and City Council meeting.

PSD Zais responded that City Council was gave to Staff direction to move forward and explore the possibility of expanding the district.

Commissioner Osgood stated that he believed it was very important to be as consistent and predictable as possible regarding policy decisions.

Commissioner Thompson concurred with Commissioner Osgood's statement regarding consistency and predictability. He also asked what the economic tertiary impact of adding medical would do for the City.

PSD Zais responded that it was a balancing game, because medical use generates the day-time population to support retail and restaurant. She also explained if there was too much restaurant and retail then there might not be enough day-time population to support these uses.

Commissioner Thompson stated that if these businesses fail then there is no sales tax to retain.

PSD Zais agreed and also mentioned that with medical uses, those employees often have higher wages which hopefully result in more money spent within the community.

Commissioner Thompson stated that the judiciary responsibility for the Commission is to the highest and best use for now and also the foreseeable future. He also stated that Keller can create a strong medical zoning district to help support day-time restaurant uses.

PSD Zais stated that last year there was a lot of discussion regarding market saturation and she mentioned that Staff was happy to provide the data. However, decisions like these are ultimately made by the Commission and City Council.

Commissioner Thompson mentioned that medical districts when first instituted work really well. However, later on they have the tendency to fall into chaos and impact surrounding areas.

PSD Zais stated that City Council was aware of the political pendulum and it was one of the reasons they chose this option.

Commissioner Osgood stated that he was not opposed to medical at all in the community but was trying to be consistent.

Chairperson Ponder stated there were two other medical proposals to Town Center and it was voted against. He also mentioned that he agreed with Commissioner Thompson regarding balance and preserving the original intent of Town Center.

Chairperson Ponder also stated that he had the same concern that this was opening the door to continue expanding the overlay district throughout Town Center. He also mentioned that coming into this meeting he had predetermined he would vote to preserve the Town Center vision. After the presentation, he had not heard any other information that would change his mind.

Commissioner Dawson asked if the building owner of the subject property was the sole driver of the day-use surgery and also asked how day-surgery was defined.

PSD Zais responded that it was partially because of the applicants but it was also because of the existing building which was designed specifically for a medical use. She also stated that the day-surgery use was already defined in the UDC and would confirm the definition before the meeting.

Commissioner Dawson asked if the occupancy rate would be impacted if the overlay were expanded to the north or south and what the comparisons would look like.

PSD Zais responded that the north or south side did not play a role regarding the occupancy rate but since 1220 Keller Parkway is a single-occupant building they would not be impacted.

Commissioner Dawson asked if 1200 Keller Parkway occupancy rate was below 50%.

PSD Zais confirmed the occupancy rate was currently below 50%.

Commissioner Sagar asked if 1220 Keller Parkway was built prior to the 2015 update as an urgent care facility. She also asked if Dr. Bestawrous built the 1200 Keller Parkway building specifically with medical in mind and also before 2015.

PSD Zais answered both of the questions in the affirmative and added that there were also two grandfathered uses located in the building currently.

Commissioner Sagar noted the rules changed after these buildings had been constructed for the purpose of medical uses. She also stated that she had no problem with expanding the overlay district because of the history of the property.

There were no additional comments or questions from Commissioners.

D. ADJOURN

Chairperson Gary Ponder adjourned the Pre-Meeting at 7:00 P.M.

REGULAR MEETING 7:00 P.M.

A. CALL TO ORDER – Chairperson Gary Ponder

Chairperson Gary Ponder called the meeting to order at 7:00 P.M.

Chairperson Ponder expressed his gratitude to Staff, Sean Vreeland, Brent Rankin, Mark Hafner, the Mayor and City Council for granting the request of the Planning and Zoning Commission to have meetings virtually.

B. PERSONS TO BE HEARD

PSD Trina Zias informed listeners that items D4, D5 and D6 from the agenda had been withdrawn.

No one came forward.

C. OLD BUSINESS

[1. Consider a request for a Specific Use Permit \(SUP\) for a retail store to include sales of used goods, for The Rabbit Hole, proposed in an approximately 1,600 square-foot building, on approximately 11- acre property, located on the east side of South Main Street, approximately 425](#)

[feet southeast of the intersection of South Main Street and E. Vine Street, being Block 9, Lot 14, KELLER CITY ADDITION, zoned Old Town Keller \(OTK\), located at 130 E. Vine Street Suite B. Geneva Cox, Owner. Maria Halley, Applicant. \(SUP-20-0013\)](#)

Commissioner Thompson motioned to remove the tabled Item C (1), seconded by Commissioner Sagar. The motion carried unanimously.

Planner Smithers gave a brief presentation on Item C (1).

In 2014, Divine Junque, a used goods store, obtained a Certificate of Occupancy for this location. They left the property in late 2018, and the property has since remained vacant. The Applicant for the Rabbit Hole planned to occupy 800 square-feet within the 1,600 square-foot building and proposed to sell used merchandise. Because used merchandise required an SUP in the OTK zoning district, she was requesting the requisite SUP.

Commissioner Thompson thanked the Applicant for coming to Town Center to answer some questions for the Commission. He asked her to describe her store with an overview including what types of items she would sell.

The Applicant stated there would be an area of the store she would rent to an additional tenant for their used goods. She described items she would sale as a mixture of antiques, kitchen wares, toys, nostalgic items, and other miscellaneous items. The Applicant stated it was not her intention to have a “junk” store. She also noted she would not have gun or knife sales other than collectibles. The Applicant also said that as her business grew, she would like to integrate new items in her stock.

Commissioner Thompson apologized to the Applicant for tabling the item twice before but felt it was important to have their questions answered.

The Applicant stated it was her intention to have a “fun store” with items changing regularly.

Commissioner Alvarado stated his position of support from the initial Planning and Zoning Meeting regarding this SUP.

Commissioner Sagar asked the Applicant if she was going to only occupy the center portion of the building.

The Applicant explained that there was only a Suite A & B in this building.

Commissioner Sagar asked if Devine Junque and the Shaved Ice Shop were vacant.

The Applicant said yes.

Commissioner Sagar inquired if the Applicant would be doing any upgrades to the property.

The Applicant stated the existing signs on the building would come down and she would like to paint. Eventually she said she would like to have her own business sign. She had requested a temporary sign that would be placed next to the window on the front side of the building. The Applicant also stated there was a grassy area on the east side of the building that she would also maintain.

Commissioner Sagar stated she was in support.

Commissioner Osgood asked the Applicant why she was starting the business.

The Applicant stated she had worked in this type of business for many years and had always wanted to have her own shop. She mentioned what had brought her to Keller for this venture was the other resale shops in the area.

Commissioner Osgood congratulated the Applicant.

The Applicant explained if the shop were successful, she did have the option to take over the whole building including the barber shop space.

Commissioner Apke stated he considered what types of product mix she would have. He also expressed his support.

Chairperson Ponder stated he was encouraged by the letter the Applicant had submitted in July. He asked the Applicant what her "man cave" section would include.

The Applicant responded that she would have many collectibles such as hats, tools and knives.

Chairperson Ponder asked if the Commission had any additional questions or comments.

Commissioner Thompson made a motion to approve Item C (1), seconded by Commissioner Apke. The motion carried unanimously.

D. NEW BUSINESS

[1. Consider approval of the Planning and Zoning Commission Meeting Minutes on July 14, 2020.](#)

Commissioner Apke made a motion to approve Item D (1) as amended, seconded by Commissioner Sagar. The motion carried unanimously.

[2. Consider approval of the Planning and Zoning Commission Meeting Minutes on July 28, 2020.](#)

Commissioner Alvarado made a motion to approve Item D (2) as amended, seconded by Commissioner Sagar. The motion carried unanimously.

[3. PUBLIC HEARING: Consider a request to rezone from Town Center \(TC\) to Town Center- Medical Overlay District, on an approximately 2.82-acre property, being Lot 5, Block B and Lot 10, Block B situated in Keller Town Center Addition, located on the south side of Keller Parkway, located 500-feet southwest from the intersection of Country Brook Drive and Keller Parkway, addressed as 1200 and 1220 Keller Parkway. City of Keller, Applicant. \(Z-20-0004\).](#)

Planner Ducay gave a brief presentation on Item D (3). He stated on December 3, 2019, the City Council unanimously approved an ordinance to add the Town Center Medical overlay district to the following properties: 1135, 1139, 1141, 1149, and 1151 Keller Parkway.

Staff had received several inquiries from the property owners of 1200 and 1220 Keller Parkway to include their properties and rezone them to the Town Center Medical overlay district. The subject

properties were immediately adjacent to the previously approved Town Center Medical overlay district.

On July 21, 2020, at a City Council workshop, Staff was given direction to pursue the Medical Overlay District expansion.

1220 Keller Parkway had been vacant for approximately four years and was formerly used as a Medical Emergency Clinic. The property owners of 1220 Keller Parkway had a potential tenant that was classified as “Surgical Outpatient Facility” ready to occupy the space immediately. However, the UDC did not permit this type of use in Town Center or the Town Center- Medical overlay district.

If this request was approved by City Council, then the staff would bring forward, on behalf of the Applicant, an amendment that defined and permitted a “Surgical Outpatient Facility” use in the Medical Overlay District with a SUP. The applicant would also be requesting such a SUP for the building at this location.

1200 Keller Parkway had two grandfathered “Medical Office” uses occupying the building, being a medical office and pharmacy. However, the property owner had been required to turn away potential tenants, because Medical Offices were not permitted in the Town Center Zoning District.

Chairperson Ponder opened the Public Hearing.

Richard Cole, Representative of 1220 Keller Parkway, called in to the meeting. He stated the building was built in 2014 with medical use in mind. They had a new tenant interested for use as a medical day surgery center.

No additional persons spoke.

Commissioner Sagar made a motion to close the Public Hearing for Item D (3), seconded by Commissioner Alvarado. The motion carried unanimously.

Commissioner Dawson asked Staff to describe more about how this would proceed.

Planner Ducay stated it would be a day surgery center. He said the Applicant was looking for a tenant for this type of use.

Commissioner Apke commented there had been many pros and cons to this item. He said the building was built for medical use before the changes that would not allow medical in this zoning. He also stated that creating a medical overlay district would be beneficial to add to the day-time population to help support the restaurant and retail businesses.

Chairperson Ponder asked if the Commission had any additional questions or comments.

Commissioner Thompson asked the applicant if this building was constructed in 2014.

Richard Cole, the representative for 1220 Keller Parkway, stated the previous occupant was urgent and emergency care. He said the building was constructed with the medical gas ability throughout, emergency generator, imaging rooms and lead walls.

Commissioner Thompson asked the Representative to confirm the cost of this type of medical finish-out as compared to a regular business finish-out.

Richard Cole responded that while a normal business square-foot finish out cost would be between \$75-100 per square-foot; a medical finish out would be around \$250.00 per square-foot.

Commissioner Thompson asked if this building was constructed to conform to code.

Richard Cole confirmed this question and mentioned that an SUP was approved for this building as well.

Commissioner Thompson stated that predictability and consistency were significant to attracting developments; however, due to a lack of consistency and predictability this use was taken away. He also stated that he did not like opening the door to continue expanding the overlay district and was sympathetic to both sides.

Commissioner Thompson stated that because the subject properties are contiguous with the overlay he had no problem expanding it in this situation. He also mentioned that with the aging population a strong medical zoning district could be something for the City to build.

Commissioner Alvarado stated that consistency was key when deciding past cases and had been the reason that the Commission pushed for changes related to some aspects of the code. He believed the occupation of this building could bring some synergy to Town Center and the other businesses could be positively impacted.

Commissioner Osgood asked if the 1200 Keller Parkway building was not included in this rezone, would this be spot zoning.

PSD Zais affirmed this would be spot zoning.

Commissioner Osgood brought up the point of creep and the potential impact for other tenants that would like to join this overlay. He also stated that the City should discuss the plan for Town Center and stick with it.

Commissioner Sagar stated that she had no problem with 1220 Keller Parkway since it was built in 2014 and also pointed out that 1200 Keller Parkway was also built as a medical office in 2006. She stated if these two buildings were not built solely for medical then this would be a different conversation.

Chairperson Ponder asked about the term “grandfathered”; specifically what was grandfathered in this situation.

PSD Zais responded that grandfathered is a misnomer and it essentially means legal non-conforming. She explained that if a use were to be legal at one point in time and the rules change to where some aspect of either the building or the use become non-conforming, then it becomes a legal-nonconforming use. Once that use stops operating, the grandfathered status would be lost and only legal uses would be permitted to occupy the space.

Chairperson Ponder asked about the history of occupancy since 2014 for 1220 Keller Parkway.

Richard Cole stated that E-Care sold the business to Legacy ER in 2015 and the tenant has since leased the building.

PSD Zais reiterated that urgent care use is still available in the Town Center zoning district.

Chairperson Ponder asked if there were any additional questions or comments.

Commissioner Sagar made a motion to approve Item D (3), seconded by Commissioner Thompson. The motion was approved by a vote of 5-2.

AYE: Commissioner Sagar, Commissioner Alvarado, Commissioner Dawson, Commissioner Apke, Commissioner Thompson.

NAY: Vice-Chairperson Osgood, Chairperson Ponder.

D. ADJOURN

Chairperson Gary Ponder adjourned the meeting at 8:38 P.M.

Chairperson

Staff Liaison