

Planning & Zoning Commission
March 14th, 2018 Minutes
City Council Chambers

The regular meeting of the Planning and Zoning Commission was called to order at 6:04 p.m. by Vice-Chairman Matthew Long.

Upon roll call, the following were present:

Vice-Chairman M. Long
Commissioner K. Mackenzie-Chavez
Commissioner J. Dooley
Commissioner F. Pawlowski
Commissioner F. Kozeliski

Upon roll call, the following were absent:

Chairman K. Wilson
Commissioner L. Miller

Chairman Long asked if any Commissioner had a conflict of interest for any agenda item and if so to recuse him/herself prior to discussing the particular item.

Upon roll call, the following votes were:

Vice-Chairman M. Long (No)
Commissioner K. Mackenzie-Chavez (No)
Commissioner J. Dooley (No)
Commissioner F. Pawlowski (No)
Commissioner F. Kozeliski (No)

Presented to the Chairman and Commissioners for their approval were the minutes of the February 14th, 2018 meeting. Commissioner Pawlowski motioned for approval of the minutes as presented. Seconded by Commissioner Dooley. Motion Carried.

Upon roll call, the following votes were:

Commissioner F. Pawlowski (Yes)
Commissioner J. Dooley (Yes)
Commissioner K. Mackenzie-Chavez (Yes)
Commissioner F. Kozeliski (Yes)

Chairman Long administered the oath required by State Law for public forum.

Chairman Long stated anyone wishing to speak limit their comments to three minutes and not to duplicate a previous point; they will have one opportunity to testify.

ITEM ONE: CASE # 18-00700001: Request by USA RV Park/John Moore, property owner for a Conditional Use Permit to allow three (3) manufactured homes on a single lot in the Heavy Commercial District (C-3B). The property is located at 2925 West Highway 66, more particularly described as 13.8 Acs M/L in Sec. 24 & 25, T15 R19 K.O.A. Subdivision.

CB Strain began by explaining that the property owner wanted to replace the three (3) existing trailer houses on the single tract of land located at 2925 West Highway 66, which was currently operated under the USA RV Park. The trailer houses were placed on the property prior to the existing regulation. The current regulation doesn't allow single-family detached dwellings within commercial districts. CB explained that when a new code comes into place, the existing uses are categorized as non-conforming. CB referred to the City of Gallup Land Development Standards, Section 10-4I-1 and read aloud the regulation. If there's a nonconforming structure or nonconforming use it can remain until it's no longer there and can't be replaced. The only way to put something back is to be in conformance with the current standards. CB went on to state that the property owners were seeking a conditional use permit to allow for the replacement of the three (3) manufactured homes. In order for a use or structure to be considered for a conditional use permit, the code has to allow it as a conditional use within that specific district in the Use Table. CB referred to Section 10-4B-2B. He went on to state that single-family detached dwellings are only allowed for night watchman or caretaker dwellings on the premises of public parks or public schools. *(CB used the overhead projector to display the Use Table.)* CB read aloud Section 10-4D-3J2. Single-family detached dwellings, recreational vehicles and mobile homes are forbidden in the commercial districts. Findings of Fact and Conclusions of Law: Since the existing trailer houses were located on the property prior to the current regulation being adopted the three (3) existing trailer houses are classified as nonconforming. As mentioned in Section 10-4I-1A it specifically states that nonconformity shall not be enlarged upon, expanded, extended or replaced, nor be used as grounds for adding other structures or uses prohibited elsewhere in the same district. In order for a conditional use permit to be approved, the use must be permitted as a conditional use within the specific district it's in. The Use Table in the Land Development Standards does not permit manufactured homes or single-family dwellings within commercial districts, except on public parks and public schools. In Section 10-4D-3J2 it specifically forbids single-family detached dwellings and mobile homes in a commercial district for residential purposes. CB recommended denial of the request for a conditional use permit to allow for the replacement of three (3) single-family detached dwelling units on a single parcel of land located at 2925 West Highway 66, also known as the K.O.A. Subdivision.

Commissioner Pawlowski asked CB to clarify the size of the single parcel of land. CB responded that it was thirteen point eight (13.8) acres. *(CB used the overhead projector to display the Ariel imagery of the property.)* CB explained that it was one (1) lot that had three (3) existing trailer houses and various RV spaces. Commissioner Pawlowski asked CB if the property could be subdivided to cure the problem. CB stated that subdividing wouldn't cure the problem and explained the frontage requirement for a subdivision. If the property were to be subdivided using Highway 66 as their frontage, they would have a narrow lot, which wouldn't meet the dimensional requirements. Even if they did subdivide, it's still zoned as a commercial district whereas an RV park is still a forbidden use.

Commissioner Kozeliski commented that the mobile homes were already grandfathered in. Therefore he recommended the Commission to allow the replacement because it would look the same and wouldn't make a difference. CB acknowledged that the three (3) mobile homes were grandfathered in and can remain as is, however they cannot be removed or replaced. He went on to state that the Commission can't make exceptions to the law. Commissioner Kozeliski asked if the Commission would go to jail if they did make an exception. CB explained that municipalities have been sued for similar decisions. He went on stating that it would be illegal and the Commission would be breaking the law to allow a forbidden use in a district that it's not permitted. Chairman Long asked CB if a recreational vehicle park use was only permitted in the C-3B Heavy Commercial Zoning District. CB responded yes; recreational vehicle parks are only allowed in the C-3B Zoning District and only allowed as a conditional use. CB went on to state that the USA RV Park's current use was actually nonconforming because it never received a conditional use permit to operate. However, the use was in place prior to the regulation so it can remain and operate. If the USA RV Park were to shut down for six (6) months or more they would have to apply for a conditional use permit.

Commissioner Mackenzie-Chavez acknowledged the Commissioner's concerns about wanting to allow a residence on the property. She went on to state that the code does allow it, but it has to be within the principal structure and not the three (3) separate dwellings they're wanting. The issue is that single-family dwellings are not permitted in a commercial district. CB stated that was correct. CB went on to explain that they could replace the three (3) trailer houses by building three (3) apartments and an office into one (1) primary structure. Again, the problem is that they cannot have a single-family detached dwelling in a commercial district. CB stated that if the Commission were to allow it there they'd have to allow it in every single commercial district in the City whereas they couldn't deny a person.

Chairman Long asked if anyone wanted to speak in favor of the case to approach the podium and state their name. Patrick Moore approached the podium and introduced himself. He thanked the Commission for meeting with them this evening. Mr. Patrick Moore began by addressing the regulation that an RV park was only allowed to operate in a commercial zoning district. However, according to the Land Development Standards RV parks are also allowed in rural residential zoning districts. In Section 10-4D-2 Specific Residential Uses it outlines the uses in Subsection H for Recreational Vehicle Parks and Camps, which makes him feel that maybe the commercial zoning district was not the correct designation in the first place. He went on to state that the land module (Land Development Standards) update which was available online for land use for zoning regulations also allowed RV parks in rural residential zoning districts according to Section 10-4B5A draft Use Table. He still believes that a conditional use permit would be the best way to go because it would be the easiest way to fix the problem without rezoning and rehashing all the work that's already been done. Mr. Patrick Moore stated that according to State Law, State of New Mexico requires that the regulations and restrictions of the municipal zoning authority to be in accordance with a comprehensive plan or the City Master Plan for the City of Gallup. He continued by referencing the land use goals within the City Master Plan, which was updated in 2016 to promote progressive land use planning and regulations to protect the health, safety and general welfare of the residents and

visitors of the City. He stated that through their conditional use permit they would be able to continue to promote the health and safety; the safety at least of City visitors by continuing to be on the park 24/7. He spoke about the neighboring hotel shutting down and less than two (2) months later it was repeatedly broken into where a fence had to be installed. He spoke about how Gallup had a problem with housing options, giving the example of a five (5) year period from 2009 to 2014 where only eighty three (83) housing units were built. Mr. Patrick Moore referenced the housing goals of the City Master Plan and how the number of Gallup employees exceeds the population because there's not suitable, affordable housing. Asking them to get rid of their three (3) mobile homes is saying that they need to find three (3) different housing alternatives in an already difficult housing market. He spoke about the energy conservation goals within the City Master Plan and the various programs available to homeowners. He added that their three (3) new mobile homes would all be energy efficient, which would be more sustainable for the future. He went on to state that when the Gallup Task Force (GTF) was asked to comment on the conditional use permit they had no problem with it. Mr. Patrick Moore ended by stating that his biggest concern was that the City Master Plan wasn't in accordance with State Law regulations.

Commissioner Pawlowski asked Mr. Patrick Moore what the three (3) modular homes were used for. Mr. Patrick Moore stated that they were for employee housing for care taking purposes. He went on to state that they're also used in the day-to-day business operations, for example he does taxes in them and uses for storage.

Commissioner Dooley asked Mr. Patrick Moore for clarification on what he was contesting; the zoning as it stands within the City Master Plan? Mr. Patrick Moore stated yes because the State says that the zoning has to be in accordance with the City Master Plan and he doesn't believe it is, for this case.

Chairman Long wanted to address Mr. Patrick Moore's comments about zoning (their property) rural residential whereas that would be against State Law; they cannot spot zone. Mr. Patrick Moore stated that he found zero mention of spot zoning in State Law and it wouldn't be considered spot zoning considering the adjacent properties. He went on to list the surrounding zoning districts; commercial, mobile home park residential and rural holding zone.

Mr. Patrick Moore commented that there have been exceptions made to the zoning ordinance as recent as 2005. He gave the example of the City of Gallup's Municipal and Industrial Revenue Bond where two (2) hotel projects were exempt from the maximum height limitation described in subsection 10-4B-2D1 of the Land Development Standards. He emphasized that exceptions have made to the Land Development Standards; there's a history of that. Commissioner Dooley clarified that the exception was only for height and it was still attached. Mr. Patrick Moore stated right, but it was that the height was limited by the Land Development Standards and there was an exception made for two (2) motel properties to that specific Land Development Standard.

Commissioner Kozeliski asked Mr. Patrick Moore if they've considered the single-family house with attachments (that Commissioner Mackenzie-Chavez and CB mentioned). Mr. Patrick Moore stated that they have, but it would be an unnecessary hardship to incorporate living spaces into their current

office building. He went on to explain how the offices were setup having a swimming pool and cookout facility right outside. There's not a lot of room for expanding that current office space for the purpose of additional housing. Commissioner Kozeliski asked Mr. Patrick Moore to clarify what the three (3) trailer units were used for. Mr. Patrick Moore stated that they were all residences, but also used for office work. Commissioner Dooley asked what the primary use was. Mr. Patrick Moore responded that the primary use was for residence.

Chairman Long asked if anyone had questions of staff at this time. Commissioner Dooley stated that she would like staff to address Mr. Patrick Moore's comments.

CB wanted to clarify that the City was not requiring or asking the USA RV Park to remove their existing trailer houses; they're doing that on their own. However, if the nonconforming trailer houses are removed the code does not allow them to be replaced. CB stated that the City Growth Management Master Plan and City code (Land Development Standards) do coincide. Furthermore, the Master Plan does not recommend placing single-family dwellings on a commercial lot within a commercial zoning district. CB continued by explaining how the Master Plan lays out areas where different types of development are appropriate. CB acknowledged that Mr. Patrick Moore was correct in stating that the rural holding zone and rural residential districts do allow RV parks, however the USA RV Park is zoned as a commercial district. CB explained that the new zoning code available on the City website under Module 1 has since been revised. In the most current revision (not yet available online) RV parks have been removed from the rural holding zone and rural residential zoning district. CB stated that the Growth Management Master Plan was a long-range recommendation plan for the City; it's not a regulating document. CB went on to explain that the Growth Management Master Plan was updated every five (5) to seven (7) years because developments change. Commissioner Dooley asked CB if he thought the Master Plan and Land Development Standards were in compliance and complimentary to one another. CB responded absolutely. He spoke about how the consultants for the new code update look closely at the Master Plan to ensure that it coincides with the new zoning code. CB pointed out that the code didn't allow for one (1) single-family dwelling on a commercial lot whereas the USA RV Park was requesting for three (3). Nikki Lee asked CB to address Mr. Patrick Moore's comments about State Law not matching up with the Land Development Standards. CB stated that it does and they're in compliance with State Law. Zoning codes are different for each city and the State leaves to every city's discretion on what uses to allow and where.

Commissioner Pawlowski asked CB to explain the recourse that citizens have when coming before the Planning & Zoning Commission. CB explained that the Planning & Zoning Commission makes the final decision for a conditional use permit, but if the applicant doesn't like that decision they can appeal to City Council.

Commissioner Kozeliski commented that this would be a perfect grandfather situation and if the City Council were to approve the case, would they face court jurisdiction? CB explained that they could be sued by other business owners whom want to do the same thing whom we don't allow to do so.

John Moore, property owner approached the podium and introduced himself. He stated that the RV

Park was opened in September 1969 and next year it will have been there for fifty (50) years. He continued by explaining that the mobile homes were for family living only; they would never be sold for someone else to live in. Mr. John Moore told the Commissioners that they have to decide if they want to make an exception and they won't be breaking the law. His reasoning was that they would just be replacing what was already there. He spoke about the appearance and success of the USA RV Park. Mr. John Moore stated that their request meets all the requirements except that it's in a commercial zoning district. He and his wife live in the first trailer, his two (2) daughters live in the second trailer and his son Patrick lives in the third trailer. He emphasized that all three (3) trailers are used for offices. He spoke about how one (1) of the three (3) trailers was about to fall apart, which would mean that his son (Patrick) would have to move somewhere else. Mr. John Moore commented that mobile home parks can have RV's, but commercial properties can't put mobile homes in, which seems unfair. He spoke about vacant properties in their area and how they're getting broken into. In closing Mr. John Moore stated that they want to live at the RV park so they can take care of their customers and continue to prevent criminal activity.

Chairman Long asked if there were any further questions by Commissioners; there were none.

Chairman Long stated the hearing was closed.

Motion to approve or deny the request for Case Number 2018-00700001. Commissioner Mackenzie-Chavez motioned for denial of Item One. Seconded by Commissioner Dooley. Motion Carried.

Upon roll call, the following votes were:

Commissioner K. Mackenzie-Chavez (Yes)
Commissioner J. Dooley (Yes)
Commissioner F. Pawlowski (No)
Commissioner F. Kozeliski (No)
Chairman M. Long (Yes)

Chairman Long stated to the appellants that if they wished to appeal to please go through the process. Mr. John Moore stated that they would appeal and thanked the Commission.

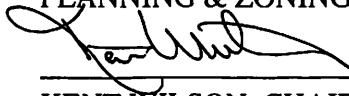
INFORMATION ITEMS

ITEM TWO: City Council Actions Taken

ITEM THREE: February 2018 Building Permit Activity Report

Commission Adjourned at 6:52 p.m.

PLANNING & ZONING COMMISSION



KENT WILSON, CHAIRMAN

ATTEST:



CLYDE (C.B.) STRAIN

SECRETARY TO PLANNING & ZONING COMMISSION