

TERM OF COMMISSION: August Session of the August Adjourned Term

PLACE OF MEETING: Boone County Government Center Commission Chambers

PRESENT WERE: Presiding Commissioner Don Stamper  
District I Commissioner Karen M. Miller  
County Attorney John Patton  
Deputy County Clerk Shawna Victor

The meeting was called to order at 9:37 a.m.

**Subject: Discussion of Building Heights in NewTown**

Commissioner Stamper stated that the county had rezoned property and approved Final Plan A for a development known as NewTown. There was a question raised by the developer this week concerning an item listed on the Final Plan of the proposed development which listed Lots 1-31 as single family townhouses; 2 story residences and Lots 32-62 as single family detached; two story residences. The purpose of this discussion is to hear comments and concerns on behalf of the developer.

Stan Shawver, Director of Planning and Building Inspection Department, stated that this property was originally zoned A-2 and located on south Route K, near the Gateway South area. In 1998, the Planning and Zoning Commission and the County Commission heard a request to rezone this property from A-2 to R-S (PRD). The concept would be to have a planned development with approximately 12 acres of residential, with a mix of townhouses and single family residences. The rest of the property would be open space or park area. There were also several commercial tracts planned. Mr. Shawver stated that like any change in zoning from agriculture to residential, there was opposition. The Planning and Zoning Commission approved the Review Plan and the County Commission approved it also. Over a period of time, subdivision plats and a final development plan were received. Mr. Shawver stated that the Commissioners had copies of Plan A (residential) and Plan B (commercial). There was also a number of variances approved by the Board of Adjustment and the Road and Bridge Advisory Commission.

Stan Shawver stated that the question that came up by the developer was about changing the development. All the residences will be two-story structures, as noted on the final plan. The developer wants to change that to single story structures. The plan calls for detached garages and the developer wants to one-story with attached garages. Mr. Shawver stated that he thought that this was a substantial change from the intent of the approved review plan.

Commissioner Stamper stated that the developer could request an interpretation from the Board of Adjustment.

Stan Shawver stated that the regulations state from the Zoning Ordinance for Boone County,

Missouri, Boone County Planning and Zoning Commission, Section 6. Planned Developments; Residential, Commercial and Industrial, A. General Regulations. Applicable to All Planned Developments, (5) Minor Change in Plans. From time to time during the construction the proponent may make minor changes to the approved Final Plan so long as such changes have been approved by the Director of Planning, or upon denial by the Director with the approval of the Commission. Any change in proposed use, any increase in proposed density shall not be considered at minor change. Any dimensional variation greater than ten (10%) percent shall not be considered a minor change.

Stan Shawver stated that this indicates that he has certain authority over regulations. He stated that if in a change of plan, in his opinion is a minor change, he could approve the change. Anything that he does not see as a minor change can be appealed to the Planning and Zoning Commission. County Council, John Patton, stated that the regulations allow an appeal to go to Planning and Zoning Commission because they are the ones approving the plan. Also, there is a Zoning Board of Adjustment, which statutes state that if there is a dispute on what the director or anyone else who is in charge of the regulations, interpretations differently, then the dispute can be taken to the Zoning Board of Adjustments. There is also the process of revising the plan.

Mr. Shawver stated that the next Planning and Zoning Commission meeting is on August 16, 2001. He stated that if the applicants want to appeal, then this item can be placed on the agenda for that evening. Mr. Shawver does not think that this is a minor change.

Commissioner Stamper asked Stan Shawver if the Planning and Zoning Commission was the commission discussed in the "Minor Change in Plans" subsection of the Zoning Ordinance and if they were the final authority. Mr. Shawver stated that yes, it is the Planning and Zoning Commission that is being referred to and that they are the ones who have the final authority.

Commissioner Stamper asked Mr. Shawver if it was his interpretation that this is represents more than a 10% change. Mr. Shawver stated that he sees it as more than a 10% change and as a change in the character of the development, going from detached to attached garages. The changes from two-story to one-story is a substantial change.

Commissioner Stamper invited Nick Peckham and Tom Trabue, of Peckham and Wright Architects, Inc., to join the discussion.

Nick Peckham stated that he had received the minutes from the meeting in which this issue was first discussed and he has reviewed the minutes. He stated that the only place in the minutes that he could find any reference to the building height is a Board of Adjustments meeting where they were getting approval of lot sizes. At the Board of Adjustments meeting, Mr. Peckham stated that the project was to have townhouses in a walkable community, this is the reason for the lots being narrower. It also stated that townhouses could have zero lot lines and in the alleys, there would be some garages.

Mr. Peckham stated that it has been his intention to have that the two-story and the two and one

half-story would be a maximum not a requirement.

Mr. Peckham stated that this project has been on the market for over a year now and has been listed with Susan Horak, realtor. He also stated that because of the location, time, and place, that perhaps the development is not addressing the market needs at this time. A contract was presented to Mr. Peckham from Susan Horak and Tom Dieters for the purchase of residential lots. When it was time for closing on July 26, a question was raised about the building heights. Tom Dieters spoke with Thad Yonke about this issue and Mr. Yonke told Mr. Dieters that the two-story was a requirement not a maximum.

Mr. Peckham stated that his son had checked with the building department on the progress of the restaurant that is scheduled to go on lot C-2. Mr. Peckham's son was informed that subject to the outcome of this meeting that the project was on hold for review.

Nick Peckham stated that he requests the commissions interpretation on the NewTown planned commercial and planned residential to permit one story, or two story or anything below the maximum that were intended when the drawings were presented.

Tom Trabue stated that it was their belief and intent to have two-story residential and two and one half story commercial buildings would be the maximum. These were put on to give a general indication of what the development would be. This was done because of the response of the neighbors and their concerns over this development. Mr. Trabue stated that he and Mr. Peckham believed that two-story units are a maximum not a requirement of this project.

John Patton, County Counselor, asked what stage this issue was at. Commissioner Stamper stated that the Final Plan had been approved in 1998. Mr. Patton asked if the issue was changing this from two-story to one-story and if it was a minor change or if this was a dimensional change greater than 10%. Mr. Shawver stated that it was their intent that the two-story residential would be a maximum.

Mr. Peckham stated that his hope for today's meeting is that the phrase on the plat that says two-story residences and two and one half-story commercial be viewed as the upper limit, not a requirement.

Mr. Patton stated he did not know if the regulation was sufficient enough to make judgment. He stated that the process on page 26 under the minor change in plans paragraph states that if the director denies the change then it is the planning and zoning commission that renders the final judgment.

Gary Oxenhandler, Attorney for NewTown, stated that he was present at the meeting in 1998 when this issue was discussed and has recently looked over the minutes from that meeting. He stated that if one was looking at the plans or even the decision of the commission, it is stated that all the property shall be two and one half-stories. Mr. Oxenhandler stated that his belief is whether or not the one line on the plan that says two and one half-stories is a maximum and that

there is not a 10% differential.

He stated that in the minutes from the meeting, there was no discussion of height requirement, sizes or anything else. The concerns of the neighbors were the environmental issues. A plan that is being requested to go forth with now is in line with what was previously discussed and approved by Commission.

Commissioner Miller stated that she listened to the tapes of the meeting. She asked Stan Shawver to give her a definition of a townhouse. Commissioner Miller stated that a townhouse is a two to three-story home. Even though it might not say two-story, from this perspective of townhouses, lots 1-31 which are single family townhouses (which are two- to three-story houses) and two-story residences, this was the intention. She stated that her biggest concern has been that there were a lot of concessions given to this development through the Board of Adjustment. She states that this needs to go through the proper process.

Commissioner Stamper asked Stan Shawver if Mr. Peckham's designs on the rest of the property, or if he had 1,500 square feet on one level and 1,500 square feet in the basement, and had less than 150 square feet on the top level, that this would be less than a 10% change in dimension. Stan Shawver stated that this was correct.

Commissioner Stamper asked if the more than 10% change in dimension is an issue with Mr. Shawver, Mr. Peckham could propose a design with a less than 10% change in dimension and request the authority of a minor change based upon that. Mr. Shawver stated that this was also correct.

Commissioner Stamper asked Mr. Shawver if anything like this has ever happened before. Mr. Shawver stated that he could not recall a disagreement like this one before.

Commissioner Stamper asked Mr. Shawver if it was typical in the platting process to have the two-story versus one-story reflected on the plat. Mr. Shawver stated that with a planned development, for the county's sake, the more information that is on the plan the better it is for everybody. Mr. Shawver stated that it was not requested for the notes to be on the plat.

Commissioner Miller stated that the minutes from the meeting are not verbatim and that is why she listened to the tapes of the meeting. She stated that she is not opposed to changing this but the process needs to be followed.

Nick Peckham asked the Commission that because of the financial dimension of this decision, he would like a clarification about how fast this issue could be moved along through the process. Commissioner Stamper stated that the Commission's influence in this matter is with the Director of Planning. Commissioner Stamper stated that if Mr. Shawver is not willing to adjust his interpretation of 10%, then this will need to be an issue at the next Planning and Zoning Commission on August 16. The Planning and Zoning Commission's decision is final.

Gary Oxenhandler asked the Commission if the issues presented to Planning and Zoning Commission would be if Mr. Shawver exercised proper decision making. Commissioner Stamper stated that in the wording of the regulation, there is a right to appeal a decision made by the director of Planning and Zoning. Mr. Oxenhandler asked if the Commission is stuck with the 10% rule.

Tom Trabue stated that the issue of 10% change is not why Mr. Shawver had denied this plan because there is no indication of square footage of the buildings.

John Patton stated that one could change the square footage without interfering with the 10% restriction. The intent when this was adopted was to prohibit significant changes of a development without going through the review process. Mr. Patton stated that this issue should be taken up at the Planning and Zoning Commission meeting and they would be the final judge of this issue.

Stan Shawver stated that he does not feel like this is a minor change. This is based on the fact that the plans do not say maximum two-story. This is not necessarily an issue over dimension but a character issue about the development. The plans call for two-story and people have an expectation that two-story buildings will be the requirement.

Nick Peckham stated that the author of the drawing has testified at this meeting that this (two-story) is a maximum. Tom Trabue stated that the interpretation that is being made is that a one and one half story home does not meet the requirements. He also stated that he thought this clearly meet the requirements that were brought out in the Planning and Zoning Commission and Commission meetings.

Commissioner Miller asked Mr. Peckham of lots 1-31, if it was his intention, if they do get the variance, to have zero lot lines, single story homes. In addition, she stated if these buildings would be townhouses, single story attached. Mr. Peckham stated that if the county would understand the two-story phrase to be maximum, then there would be a mixture with one-story the minimum and two-story being the maximum.

Commissioner Stamper stated that the authority in this matter is the director of Planning and Zoning or with the Planning and Zoning Commission.

**Subject: Sheriff’s Department – Second Reading and Approval of Budget Amendment for K-9 Program**

Commissioner Stamper moved to approve the following budget amendment:

<b>Account</b>	<b>Amount Increasing</b>
2523-92300	\$4,600.00

Said budget amendment is for the Sheriff’s K-9 Program.

Commissioner Miller seconded the motion.

There was no discussion.

The motion passed 2-0. **Order 361-2001**

**Subject: Second Reading to Dispose of Computer Equipment**

Commissioner Stamper moved to authorize the Commission to reassign the attached county assets to the Columbia Housing Authority to use at Blind Boone and Bear Creek Community Facilities for youth and adult activities.

Commissioner Miller seconded the motion.

There was no discussion.

The motion passed 2-0. **Order 362-2001**

There was no public comments.

Meeting was adjourned at 10:22 a.m.

Attest:

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Don Stamper  
Presiding Commissioner

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Wendy S. Noren  
Clerk of the County Commission

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Karen M. Miller  
District I Commissioner

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Skip Elkin  
District II Commissioner