

**CITY OF DERBY
PLANNING COMMISSION MINUTES
March 3, 2011 6:30 PM**

WJ *CSB*

MEMBERS PRESENT: Anne Nelson, Randy White, Eric Tauer, Keith Volz, Justin Smith and Brad Ward

MEMBERS ABSENT: Kelly Farber, Shawn Riley, Patrick Baer, Tasha Brackeen

CITY STAFF PRESENT: Bud Newberry, City Planner; Stephanie Cox, Recording Secretary

CONSIDERATION OF MINUTES:

Minutes of February 3, 2011 Planning Commission Meeting.

MOTION: Brad Ward motioned to approve the minutes.

SECOND: Anne Nelson

VOTE: 5-0-1, Randy White abstained.

**Chairman Tauer Opened the Public Forum
Chairman Tauer Closed the Public Forum**

AGENDA ITEM NO: 1

DESCRIPTION: (Final) Zone Change Request from R-1 "Residential District" to the PUD "Residential Planned Unit Development District" (Public Hearing)

GENERAL LOCATION: Approximately 600' North of Derby Industrial Park 2nd Addition on the East side of McIntosh Road

APPLICANT: Edna N. Sander Living Trust c/o George Sander

AGENT: Baughman Company, P.A.

REASON FOR REQUEST: Construct new home and greenhouse

BACKGROUND INFORMATION:

- This property is located between K-15 highway and McIntosh Road just south of Easton Sod Farms, Inc.
- Presently, this site is in the Derby city limits and is zoned R-1 "Single Family Residential".
- The parcel is approximately 2.7 acres in size and has not been platted.

- The parcel is approximately 2.7 acres in size and has not been platted.
- When this property was annexed into the city it was automatically zoned as “R-1” Single Family Residential as prescribed in the city’s Zoning Ordinance. At that time the property also included the lot to the north of this site which contained a nursery business with a sales building, greenhouse and miscellaneous structures used in the business. That property was sold to Easton Sod Farms, Inc. several years ago.
- Mr. Sander, the current owner of the subject property, is requesting that this property be re-zoned to a zoning district that will accommodate both the existing residential use and a greenhouse for his personal use. Since the greenhouse use is allowed in the R-1B “Low Density Single Family Residential District” as a conditional use, and the PUD regulations allow “any residential use, including conditional and special uses” to be listed as uses in a PUD, Mr. Sander is requesting that his property be zoned as a Residential PUD.
- The procedure outlined in the Derby Zoning Ordinance for the establishment of a Residential PUD requires that the Planning Commission review and approve both a Preliminary and a Final Residential PUD. A Public Notice in the newspaper and written notices to nearby property owners is required for both the Preliminary and Final hearings before the commission.
- The Preliminary PUD was presented to the Planning Commission on January 20, 2011, and was approved by the vote of 6-0.
- The notice for this second Public Hearing required for Final Approval was published in the Derby Informer and notices were sent to neighboring property owners as prescribed by state law. The official ownership list is on file at City Hall.
- To date, City staff has not received any verbal or written comments, positive or negative, concerning this case.
- This property must be platted within one year of City Council approval of this request for the zoning to become permanent.

Surrounding Land Uses and Zoning

- This subject has been thoroughly discussed in the Findings of Fact.

Comprehensive Plan

- Derby’s adopted Comprehensive Plan has this property shown as being in a Long-term growth area for development as Low Density Residential. This request is considered by staff to be in compliance with this designation.

Municipal Services

- Streets: This site is adjacent to McIntosh Road, a local residential access street built to suburban design standards without curb and gutter and with ditches for drainage. A project to rebuild McIntosh from K-15 to Madison Avenue is listed in

the CIP for future construction although no date has been assigned for this project yet.

- Water: Although water service has been extended through this site, the current residence receives water from Rural Water District #3.
- Drainage: Any drainage issues will be addressed during the platting process utilizing the City's Storm Water Management Criteria.
- Sanitary Sewers: An existing 8" Sanitary Sewer line is located along the west side of McIntosh and also crosses this property east to west approximately where Woodland Drive intersects McIntosh providing opportunities for extension of sewer service to this site.
- Zoning: Zoning of this property to PUD "Planned Unit Development" will not only allow the owners to replace the existing residence with a new one, it will also grant them the authority to construct a greenhouse on the same lot.

FINDINGS OF FACT

Section 1100(I) of the Zoning Regulations provides the guidelines for the development of Findings of Fact which act to support the Planning Commission's recommendation of this rezoning case. The Planning Commission may find that not all factors will be relevant to this zone change request. Factors determined to be relevant by the Commission should be given consideration relative to both positive and negative findings. In order to properly make a recommendation to the City Council, whether to approve or deny the request, the Planning Commission must make specific and substantiated Findings of Fact supporting its recommendation. Should the Commission recommend approval, such approval should require the site to be platted within one year of the City Council's approval.

The following are the rezoning factors that the Planning Commission must consider, a brief explanation of each factor, and staff's opinion of findings (*in italics*) of each factor:

1. THE ZONING, USES AND CHARACTER OF THE NEIGHBORHOOD:

(Factual description of the application area and surrounding property as to existing zoning, land uses, general condition, age of structures, etc.)

This property is 2.7 acres, more or less, and lies east of McIntosh Road between Easton Sod Farms, Inc. and Derby Industrial Park 2nd Addition. There are two similar parcels of property zoned R-1 between this site and the industrial park. The subject property is currently zoned as R-1 "Single Family Residential" by the City of Derby. This tract contains one existing residential structure and a garage, both of which will be removed with the construction of a new home. Large numbers of mature trees are scattered throughout this entire lot.

This parcel of land abuts a residential property on the south which contains one older single family residence and is also very heavily treed. Easton Sod Farms, Inc., a commercial sod company is located to the north on property which was rezoned from R-1 to B-5 several years ago to make the commercial use legal.

The BNSF Railroad right-of-way lies along the entire east property line of the application area. To the west is Woodland Valley Addition, a fully built out residential subdivision platted in 1983.

Although they are not being utilized at this time, water and wastewater services are readily available to this property.

2. THE SUITABILITY OF THE SUBJECT PROPERTY FOR THE USES TO WHICH IT HAS BEEN RESTRICTED:

(How is the property currently zoned and what uses are allowed on the property? Are these uses suitable given surrounding zoning and site criteria? Are the current allowed uses the only ones that might be appropriate for this property?)

This parcel of land has been utilized for residential use for many years. Given the property's location and site characteristics, its use as a large lot residential site has been very appropriate. Approval of this requested change will not change the use significantly. With its present R-1 "Residential" zoning, the property is restricted to one family residence and agricultural uses. If the PUD is approved, the owner will be able to continue using the property primarily for residential use but it will also allow for the construction of a greenhouse for the owners personal use. Uses that will be allowed with the requested PUD seem appropriate for this location.

3. EXTENT TO WHICH REMOVAL OF THE RESTRICTIONS WILL DETRIMENTALLY AFFECT NEARBY PROPERTY:

(Can the uses allowed in the requested district be good neighbors to existing development? This is a subjective question. The focus should be on facts, not fears, and should be based on issues that zoning can address (e.g. allowed uses, minimum lot size, height, setbacks, traffic generation, landscaping and screening, use limitations, etc.)

There are several factors that must be considered in determining if the proposed use would be detrimental to the surrounding neighborhood. First, the present residential use of the property will continue to be the primary use following conversion to the PUD requested. Secondly, the location for placement of the greenhouse is such that it will not be visible to the residential neighborhood located to the west. Large numbers of existing mature trees located on the lot are going to be left to screen this new structure. Lastly, this is a large lot, and the greenhouse is set near the back lot line, making this an ideal location for the proposed use.

4. LENGTH OF TIME SUBJECT PROPERTY HAS REMAINED VACANT AS ZONED:

(Factual information, but its importance may be somewhat subjective. A property may be vacant because the current zoning is unsuitable, but there may be other reasons not related to zoning. Some examples might be a glut of available property of the same zoning district, financing problems, land speculation, fragmented ownership, lack of available public services or other development problems).

Since the existing residential structure located on this lot was constructed at least 50 to 75 years ago, this property has been used for residential use for many years. The greenhouses located on the lot north of this site used to be part of this property prior to being separated with the approval of a lot split several years ago. Consequently, this property has been used for both residential and greenhouse use for many years, both while located in the county and following annexation into the city.

5. RELATIVE GAIN TO THE PUBLIC HEALTH, SAFETY AND WELFARE AS COMPARED TO THE LOSS IN VALUE OR THE HARDSHIP IMPOSED UPON THE APPLICANT:

(The protection of public health, safety and welfare is the primary basis for zoning. The relationship between the property owner's right to use and obtain value from their property and the City's responsibility to its citizens should be weighed).

The re-zoning of the subject property from R-1 "Single Family Residential" to PUD "Residential Planned Unit Development" should have no negative impact on the community's health, safety, or welfare. Infrastructure is located nearby to adequately serve this area if requested and municipal and emergency services are currently being provided.

6. CONFORMANCE OF THE REQUESTED CHANGE TO THE ADOPTED OR RECOGNIZED COMPREHENSIVE PLAN:

(Does the request agree with the adopted plan recommendations? If not, is the plan out-of-date or are there mitigating circumstances which speak to the nonconformity?)

This property is shown in the Comprehensive Plan as Low Density Residential, which will be the primary use with the approval of this PUD. Staff does not feel that the addition of the proposed greenhouse will significantly change the use of this site.

7. IMPACT OF THE PROPOSED DEVELOPMENT ON COMMUNITY FACILITIES:

(Are water and sewer available for extension? How are roads impacted? Can other community facilities (e.g. police, fire, parks, libraries, and schools) handle the increased development? Should be based on factual information referencing standards used to make the determination).

More than adequate water and wastewater services are located on, or adjacent to this property. Staff does not know at this time if the applicant intends to use city services following construction of the new home or greenhouse, nor would that decision affect the recommendation made by staff. There should not be any impact on schools or the Library with the approval of this request.

8. OPPOSITION OR SUPPORT OF NEIGHBORHOOD RESIDENTS:

(This is just one of the factors to be considered and by itself is not sufficient reason to approve or deny a request).

City staff has not received any comments, either positive or negative, from the adjacent property owners.

9. RECOMMENDATION OF PROFESSIONAL STAFF:

(Should be based on the preceding eight factors, adopted plans and policies, other technical reports (e.g. Capital Improvement Program, facility master plans, etc.) which speak to the topic and staff's best professional judgment).

Based on the preceding factors provided, City staff supports the requested zone change from R-1 "Single Family Residential District" to PUD "Residential Planned Unit Development District".

RECOMMENDATION:

Move to approve the Residential Planned Unit Development zoning for Sander Addition as shown on the Final PUD drawing, based on Findings of Fact included in the staff report and subject to staff comments, and recommend said zoning for City Council consideration.

DISCUSSION:

No discussion was held.

PUBLIC HEARING OPENED

PUBLIC HEARING CLOSED

MOTION: Keith Volz motioned to approve the findings of fact and to approve the Residential Planned Unit Development zoning for Sander Addition as shown on the final PUD drawings, based on Finding of Fact and subject to staff comments and recommend said zoning for City Council consideration.

SECOND: Anne Nelson

VOTE: 6-0, unanimous

AGENDA ITEM NO: 2

CASE DESCRIPTION: Preliminary Plat – Sander Addition

GENERAL LOCATION: Approximately 600' North of Derby Industrial Park 2nd Addition on the East side of McIntosh Road

APPLICANT: Edna N. Sander Living Trust c/o George Sander

AGENT: Baughman Company, P.A.

REASON FOR REQUEST: Construct new home and greenhouse

BACKGROUND INFORMATION:

- This property is approximately 2.7 acres in size and is located between the BNSF Railroad right-of-way and McIntosh Road.
- Easton Sod Farms, Inc., a business that grows and sells grass sod is located on the property north of this site and is zoned B-5 "Restricted Commercial, Warehousing and Limited Manufacturing District".
- Across McIntosh Road to the west are several single family residences in the Woodland Valley Addition.
- South of this site is a single family residence where the homeowner also has a home occupation business making custom furniture.
- The BNSF right-of-way runs the entire length of the east property line of the subject site.
- Presently, this site is in the Derby city limits and is zoned R-1 "Single Family Residential" but is in the process of having the zoning changed to a PUD "Residential Planned Unit Development".
- Mr. Sander, the owner of the subject property, requested the change of zoning to allow for the construction of a greenhouse on this property in addition to the residential use.
- This property must be platted within one year of City Council approval of the PUD zoning for it to become permanent.

STAFF COMMENTS:

1. Lots. This plat creates one lot. There is no minimum or maximum lot size requirement in the PUD district.
2. Streets/Rights-of-Way. This site is adjacent to McIntosh Road, a local residential access street built to rural design standards without curb and gutter and with open ditches for drainage. A project to rebuild McIntosh from K-15 to Madison Avenue to urban standards with curb and gutter is identified in the CIP for future construction, although no date has been assigned for this project yet. Staff does not know if additional right-of-way will be needed to accommodate this improvement, but is checking with the designer of the project and will know prior to consideration of the Final Plat if additional right-of-way will be required.
3. Easements. A twenty foot wide utility easement is shown platted across this site from east to west near the middle of the lot to accommodate placement of water and sanitary sewer main distribution lines. There is also a fifteen foot wide easement platted along the west property line from the southwest corner of the lot going north approximately 270 feet containing a 12" water main line providing service to the west and north. A drainage easement approximately 110 feet in width occupies most of the south one-fourth of the site. No additional easements are being requested by staff and none have been requested by the utility companies.
4. Setbacks. A twenty-five foot building setback line is shown along McIntosh Road, which meets the requirement. Additional side and rear yard requirements are established by the PUD.
5. Access. One existing access point is shown on the plat adjacent to the existing residence with no control established. Access needs to be determined and noted on the Final Plat.
6. Drainage. A Drainage Concept Plan has been submitted and approved by the City Engineer without on-site detention required.
7. Public Improvements. Since all public improvements except for sidewalks are already located either on or adjacent to this site, it was not necessary for the applicant to provide a utility plan or petitions for the construction of new utilities.
8. Sidewalks. There are no sidewalks located along McIntosh at this time but will be placed when the street is rebuilt in the future. It will be the responsibility of the applicant to submit a petition to cover the cost of a 5' wide sidewalk adjacent to the west property line of this site with the final plat.

9. Developers Agreement. A Developers Agreement was not required without a petition for the sidewalks.
10. Plat Binder. A Plat Binder has also been submitted and is being reviewed by city staff to insure all property interests and encumbrances are addressed.

RECOMMENDATION:

Approve the Preliminary Plat of Sander Addition subject to staff comments and authorize the applicant to proceed with the preparation of the Final Plat.

DISCUSSION:

Kris Rose, Baughman Company, Engineer for the Applicant – we agree with staff comments except for item #8, sidewalks. We are talking about 600' of frontage for a 5' wide sidewalk and when we started running some engineering numbers we came up with a total cost for that petition of \$17,000.00 which would be about \$134.00 per month for specials for 15 years. We feel that is excessive for a sidewalk and were looking at trying to figure something else out and come up with a different number. If you compare this with Quail Run addition, the average cost per lot for side walk along Webb Road is \$145.00 or \$12.00 per month. So we looked at some numbers based on bidding the job separately and estimated \$12,000.00 or \$95.00 per month and in my opinion is still pretty high for a sidewalk running along that frontage. We figured a \$3,000.00 petition for sidewalks would be more reasonable. There aren't any existing sidewalks on either side of McIntosh, and everything on the west side is rural lots and the city will be picking up the cost of the sidewalk improvement for all of those properties when the McIntosh Road improvement project is built.

Chairman Tauer asked are you proposing that the City would pick up more of the cost for your sidewalk or would you not want to have a sidewalk at all?

Kris Rose the owner would prefer not to have a sidewalk. There really is no benefit to having one in that location. All I would say is, since the City has already planned on this project and they already have money figured in for sidewalk, we just don't want to have to pay more than our fair share on it. We would prefer not to have any sidewalk cost at all.

Keith Volz stated this is basically an industrial area on the east and north sides, and it almost seems like this sidewalk would be going nowhere in this case. This is not really a residential area as I see it. I don't personally see that sidewalk should be a requirement. Now if this was a normal residential type of neighborhood all along each side of McIntosh, I would understand.

Chairman Tauer asked why aren't the other properties being assessed for the sidewalk? Is it because they are not platted?

Bud Newberry replied no. The plan to rebuild McIntosh includes placing sidewalks along both sides of the street, and none of this cost will be assessed to the adjacent property owners. When the city goes in and rebuilds an existing street, that cost is borne by the city at large. Yes, we are improving it, but they are replacing an existing street and we do not go back and place special assessments on the properties adjoining that project. Now, if another property were to plat between now and the time that the street project was done, we would ask them to do the same thing.

Chairman Tauer stated so since they are platting their property in advance of the street project, they are being singled out to pay for their sidewalk?

Bud Newberry replied yes. Since they are requesting to be platted prior to the construction project, we are asking them to pay for their sidewalk.

Chairman Tauer stated I don't think it should be a requirement in this specific case based on current use and level of foot traffic. There aren't any sidewalks there now and the cost to put them in is not going to be charged to everyone else when they are put there.

Keith Volz stated I don't see a need for sidewalks in any of that area except for the area adjacent to that residential development on the west side. And I don't think it's fair to ask this owner to pay for their sidewalks if no one else is going to.

Brad Ward asked do they have sidewalks running through that residential area to the west?

Bud Newberry replied I don't believe there are any sidewalks anywhere out in this area.

Randy White stated I just want to verify that the city is planning to put sidewalks on both sides of this road and are we in a position to make a recommendation to not put sidewalks in with this project?

Bud Newberry replied you can make that recommendation. However, this project will be designed and built without coming to the Planning Commission for approval. And yes, it is my understanding that sidewalk is planned for both sides of McIntosh.

Randy White asked does the Commission have the ability to waive the sidewalk requirement in this case?

Chairman Tauer replied I think we can make a recommendation to the City Council to remove the requirement in this case.

Bud Newberry agreed with Chairman Tauer. You certainly can make that recommendation.

Randy White stated I agree with everyone else that it doesn't seem right. In this ½ mile stretch on one side of the road we are going to charge one person \$17,000.00 and nothing to everyone else. Has anyone given any thought to putting a bike path along the west side of this road?

Bud Newberry replied not that I am aware of. I will pass that thought along to my boss.

PUBLIC HEARING OPENED

PUBLIC HEARING CLOSED

MOTION: Keith Volz motioned to approve the preliminary plat of Sander Addition subject to staff comments and recommend that the council exempt this property from the sidewalk petition requirement and authorize applicant to proceed with the final plat.

SECOND: Brad Ward

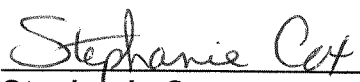
VOTE: 6-0, unanimous

MOTION TO ADJOURN: Chairman Tauer motioned to adjourn.


SECOND: Keith Volz

VOTE: 6-0, unanimous

Meeting adjourned at 7:15 PM.



Stephanie Cox
Recording Secretary



Eric Tauer
Chairman