

# PLANNING AND ZONING COMMISSION

## MINUTES OF THE MEETING OF DECEMBER 20, 2010

**MEMBERS PRESENT:** Mike Creel  
Francis DeMott  
Gary Falcetto  
Laura Klusener  
Frank Slapar  
Brian Sullivan

**MEMBERS ABSENT:** Roland Dalrymple  
Connie McGeorge, Vice Chairperson  
Joel VanBecelaere, Chairperson

**OTHERS PRESENT:** Hilario Andrade, 130 N Carthage, Mo 64836  
Alberto Oxlaj, unknown  
Jon Schwenker, 1144 S 220<sup>th</sup>, Pittsburg  
Jared Sharpe, 601 W. 4<sup>th</sup> Street, Pittsburg  
James R. Sharpe, R.R.1 Box 209, Idabel, OK  
Judy C. Sharpe, R.R.1 Box 209, Idabel, OK  
Danielle Sharpe, 601 W 4<sup>th</sup> Street, Pittsburg  
Loren Todd, 703 Elmwood Lane, Pittsburg  
Wm. K. Nelson, 612 Victorian Dr, Pittsburg  
Ruth Lemon, 110 East Carlton, Pittsburg  
Todd Kennemer, Assistant Director of Public Works  
Andrea Turner, Administrative Assistant to Public Works

The Pittsburg Planning and Zoning Commission met on Monday, December 20, 2010 at 7:00 p.m., in the Municipal Court Room of the Law Enforcement Center. Laura Klusener acted as Chairperson due to absence of Chairperson Joel VanBecelaere and Vice Chairperson Connie McGeorge. Laura Klusener led the flag salute and then called the meeting to order at 7:00 p.m. with six (6) members present.

**The first order of business was the approval of the minutes of the meetings of September 27, 2010 and October 25, 2010.** A portion of the September 27<sup>th</sup> meeting minutes was missing and have now been corrected and are being submitted for approval. Gary Falcetto indicated that the October 25<sup>th</sup> minutes reflected that he was completing his first term and was eligible to serve a second term and should have reflected Francis DeMott. Mike Creel moved, seconded by Frank Slapar, that both sets of minutes be approved as corrected. Motion carried unanimously.

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The first order of business under Presentation of Requests and Petitions was a **PUBLIC HEARING** to consider Case No. 10P-9, a request submitted by Hilario Andrade/Patterson Holdings for a Conditional Use under the provisions of Article 30 of the Pittsburg Zoning Ordinance to allow a church at 307 N. Broadway (formerly Pittsburg Art Supply). Acting Chairperson Laura Klusener opened the **PUBLIC HEARING** by stating the request and then asked the applicant to comment on behalf of said request. Hilario Andrade was present; however, due to a language barrier Todd Kennemer assisted Mr. Andrade in explaining his request. The request is for a Conditional Use Permit to meet as a church at 307 N. Broadway. The church will be meeting on Saturdays, Sundays and Wednesdays at 307 N. Broadway and currently has about 16 members.

Mike Creel inquired if there were restrooms and other facilities in the building that would allow for people to meet in the building. Mr. Kennemer explained that since the building was formerly the business, Pittsburg Art Supply, there are facilities that allow for the public to gather in the building.

Francis DeMott inquired if Mr. Andrade knew how long they would need the Conditional Use Permit for this building. Mr. Andrade stated that the church is actively looking for a place that would be more permanent but at this time they do not have such a place. Mr. Kennemer also stated he was assisting in the search for a permanent building for the church.

There was no one present to speak in opposition to the request; therefore, Acting Chairperson Laura Klusener closed the **PUBLIC HEARING** to allow for discussion amongst the Commission. The Planning and Zoning Commission then considered the following factors:

1. Character of the neighborhood. The property and surrounding area consist of commercial buildings. On the side of the block where church is to locate there are upstairs apartments in some of the buildings.
2. Zoning and uses of nearby properties. The property and the surrounding area is zoned CP-4 "Central Business District". There are a variety of businesses (as stated above) on the west side of Broadway within this block. The US Bank occupies the entire block on the east side of Broadway.

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3. Suitability of the subject property for the uses to which it is being considered. The property is suitable for commercial use.
4. Length of time the subject property has remained vacant as zoned. The property is not vacant. Church services have been conducted there since the art store has relocated.
5. The extent to which removal of the restrictions will detrimentally affect the nearby property. Many downtown redevelopment organizations state [paraphrased] ... "Shoppers walking along a sidewalk looking in retail storefront windows suddenly come across a non-retail use, they instinctively interpret that to mean they have reached the end of the retail district, and the odds are good that they will turn around, which obviously hurts retail businesses located beyond the non-retail storefront. The same problem occurs with professional offices (like insurance agencies and law offices) located in storefront spaces. It is best to locate non-retail uses in non-prime retail area." *"Why We Buy; The Science of Shopping". Author: Paco Underhill*

A recommendation made in the economic restructuring portion of the City of Pittsburg Downtown Revitalization Plan states..."Prohibit or restrict downtown businesses that will detract from the area and discourage people from visiting the area; such businesses include storefront churches and adult entertainment establishments"...

**HOWEVER:**

The Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA) specifically states that...

1. No government shall impose or implement a land use regulation in a manner that treats a religious assembly or institution on less than equal terms with non-religious assembly or institution.
2. No government shall implement a land use regulation that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution, unless the government demonstrated that imposition of the burden is in furtherance of a compelling governmental interest, AND is the least restrictive means of furthering that governmental interest.

The majority of the 300 block of N. Broadway is already populated with non-retail uses. The entire eastern half of the block is a bank with a drive through area. The western half is a mixture of retail and non-retail businesses.

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Because the majority of the block is already a mixture of retail and non-retail businesses, the storefront church will have no more detrimental effect on this block of the CBD than the existing non-retail businesses.

6. Relative gain to public health, safety, & welfare. HS&W of the public will not be affected.
7. Recommendation of professional staff. APPROVE
8. Conformance to Master Plan. This does not conform to the Downtown Plan as stated; however, if challenged the prohibition of storefront church in the Downtown Plan would probably be found unconstitutional and discriminatory for the following reasons:
  - a. Other non-retail businesses are located in prime retail space along Broadway. Religious and secular non-retail businesses must be treated on an equal basis.
  - b. Other non-profit organizations are allowed to operate in the same zoning district.
  - c. Other churches are located in the same zoning district.

Based on the above findings, Gary Falcetto moved, seconded by Mike Creel, that the Planning and Zoning Commission forward a recommendation to the Governing Body for **APPROVAL** of this Conditional Use request. Motion carried unanimously. This recommendation will be presented to the City Commission for their consideration on January 11, 2011.

**The second order of business under Presentation of Requests and Petitions was the review of site plan submitted by Jon Schwenker for the construction/location of an ice dispensing business located at 1313 S. Broadway.** Jon Schwenker was present representing the case. Mr. Schwenker presented his proposal for an eight (8) foot by twenty-four (24) foot automatic ice maker, which is a large ice vending machine that is anchored on a pier. This machine will make its own ice, will also dispense water and will be open 24 hours a day. Mr. Kennemer found information on another machine that is similar to the machine being proposed. He explained that the machine was located in Mississippi. Mr. Kennemer also recommended the request for the proposed machine be approved.

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Laura Klusener requested that Mr. Kennemer explain the need for this request to go before the Board of Zoning Appeals. Mr. Kennemer stated that for commercial properties there are setback requirements requiring setbacks of 30' front yard, 10' side yard and a 20' rear yard. Though this proposal meets the front and side yard setback requirements, due to the lot itself being in a triangle shape and being 75' wide and 150' long and having a total buildable area of (625 sq. ft.), a variance will need to be acquired through the Board of Zoning Appeals.

There being no further discussion, Mike Creel moved, seconded by Francis DeMott, that the site plan be approved with the condition the variance being requested is approved by the Board of Zoning Appeals. Motion carried unanimously. The Board of Zoning Appeals will consider the request for a variance at their January 3, 2011 meeting.

**The third order of business under Presentation of Requests and Petitions was the review of site plan submitted by Jared Sharpe for a Bar-be cue Stand located at 912 W. 4th Street.** Jarod Sharpe was present on behalf of the request. Mr. Sharpe stated he had a 16' by 20' custom made building that he wishes to place at the property at 912 West 4<sup>th</sup> Street for the purpose of a barbecue stand for delivery and carry-out only. He plans on building a 10' by 20' shed right next to the main building that will house the 8' commercial smoker on a trailer and his hickory. He stated this will be handicap accessible. The dumpster will be enclosed in a fence on the west side of the main building.

Laura Klusener asked Mr. Kennemer what he had to share concerning this proposal. Mr. Kennemer replied that the main building will set at the back of the property that supports West Fourth Liquor. It is a walk-up business only. The bar-b-que stand will basically have the same hours as the liquor store. The property is already zoned for commercial use, therefore, nothing will need to be done with zoning. The sign for the business will be attached to the main building for the stand.

There being no further discussion, Mike Creel moved, seconded by Frank Slapar, to approve the site plan as submitted. Motion carried unanimously.

**UNDER OTHER BUSINESS,** Todd Kennemer stated that Roland Dalrymple has reached the end of his second term and is, therefore, not eligible to serve another term on the Planning and Zoning Commission. Ron Close will be replacing Mr. Dalrymple. Mr. Kennemer also stated that at the next meeting it will be necessary to elect a new Chairperson and Vice Chairperson.

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**ALSO, UNDER OTHER BUSINESS** was consideration of the tentative Planning and Zoning Commission schedule for the 2011-2012 term. The proposed schedule is the same as in past years with the meetings to be held the 4<sup>th</sup> Monday of each month unless it is a holiday then the meetings will be held the 3<sup>rd</sup> Monday of the month. Mike Creel moved, seconded by Frank Slapar, that the tentative meeting scheduled be approved. Motion carried unanimously.

There being no other business, Francis DeMott moved, seconded by Frank Slapar, to adjourn. Motion carried unanimously and the meeting adjourned at 7:30 p.m.

The next Planning and Zoning Commission meeting is scheduled for January 24, 2011.

Respectfully submitted,



Todd Kennemer  
Assistant Director of Public Works