



AGENDA
CITY OF AUGUSTA
PLANNING COMMISSION
October 11, 2021
8:00am

“Augusta – Where the metro’s edge meets the prairie’s serenity offering the perfect blend of opportunity and proximity for living, commerce and culture.”

A. CALL TO ORDER

B. MINUTES

1. SEPTEMBER 27, 2021 MEETING MINUTES

Approval of minutes for the September 27, 2021 Planning Commission meeting.

a. Planning Commission Motion / Vote

C. BUSINESS

1. AMENDMENTS TO THE AUGUSTA ACTION ZONING REGULATIONS

Reconsider recommendations for certain zoning amendments previously submitted to the Augusta City Council

a. Staff Report

d. Planning Commission Motion / Vote

D. MATTERS FROM / FOR PLANNING COMMISSION

1. Preliminary Plat and Preliminary Master Drainage Plan for a three-lot subdivision proposed for 3521 North Ohio Street has been delayed indefinitely.

E. ADJOURN



Planning Commission Minutes

September 27, 2021

8:00am

Members Present: David Bisagno; David Chappell; Connie Thurman; Jim Keller; Diana Burress; Nick Hoefgen

Members Absent: Jake McClure

Staff Present: Cody Sims, Assistant City Manager
Susan Smith, Admin. Assistant

Visitors Present: (none)

Minutes: Thurman made a motion to approve the minutes from the September 13, 2021, meeting; Burress seconded the motion. Motion carried without opposition.

Business: 1) Amendments to the Augusta Action Zoning Regulations
Sims presented a staff report and discussed each amendment.
Final Approval for Conditional Use Permit
Per K.S.A. 2019 Supp. 12-757 we cannot eliminate 14-day grace period per City Attorney.
Hoefgen asked if City Council votes against the CUP-Where does it go? Back to Planning Commission or Board of Zoning Appeals?
Bisagno asked what Cities around Augusta does for CUP's. Sims replied that it is common to have final approval of CUP's go to the Council.

Deletion of Maximum Floor Area Requirements for Certain Accessory Buildings
Burress stated that there are too many layers for property owners to go through to get a building.

Items discussed on changing the floor area requirements: conform with neighborhood, and reviewing requests on a case-by-case basis.

Alternative Energy Uses

Commissioners do not want alternative energy uses allowed in City limits and the city should NOT restrict energy uses in the Planning Area (Growth Area).

Amortization of Shipping Containers and Similar portable Units/Vehicles as Storage Structures in Residential Districts

Resubmit Amendment as is. (No Changes)

Hoefgen made a motion to table the Amendments until the October 11, 2021 meeting; Thurman seconded the motion. Motion carried without opposition.

Matters From/For Commission:

- 1) Sims shared the Preliminary Plat for a proposed three-lot subdivision located at 3521 N Ohio St is tentatively planned for Planning Commission review on October 11, 2021.

Adjourn: Keller made a motion to adjourn at 9:39 AM; Chappell seconded the motion. Motion carried without opposition.

/s/Susan Smith, Secretary

DRAFT



**CITY OF AUGUSTA
PLANNING COMMISSION AGENDA REPORT**

Meeting Date: October 11, 2021

Department: Community Development – Planning & Zoning

Submitted By: Cody Sims, Assistant City Manager

Prepared By: Cody Sims, Assistant City Manager

Agenda Title: **Amendments to the Augusta Action Zoning Regulations**

RECOMMENDED ACTION:

Reconsider recommendations for certain zoning amendments previously submitted to the Augusta City Council.

BACKGROUND:

The Planning Commission authorized staff to pursue text amendments to the Zoning Regulations in February 2021. The Planning Commission conducted a series of workshops in March and April to formulate the desired amendments, and on April 26, 2021, the Planning Commission conducted a public hearing to take input on the proposed zoning amendments, pursuant to K.S.A. 12-747. At the conclusion of the public hearing the Planning Commission voted to recommend approval to the City Council.

On Monday, August 2, 2021, the Augusta City Council considered the Planning Commission’s recommendation to approve the zoning amendments. After a lengthy discussion, the City Council voted to return the recommended amendments to the Planning Commission for further consideration on four (4) separate issues:

1. Final approval for Conditional Use Permits.
2. Deletion of Maximum Floor Area Requirements for Certain Accessory Structures.
3. Alternative Energy Uses (Wind Energy Conversion Systems); and
4. Amortization of Shipping Containers and Similar Portable Units / Vehicles as Storage Structures in Residential Districts.

The Planning Commission began reconsideration of the zoning amendments on September 27, 2021; however, a recommendation back to the City Council was tabled pending further research and discussion on the issue of conditional use permits. Staff has since reviewed the defined process in the zoning regulations and conferred with the City Attorney to bring closure to this issue.

ANALYSIS:

Conditional Use Permit Decisions

Under the previous zoning regulations, approval for conditional use permits was under the authority of the Planning Commission. However, the Augusta Action zoning regulations (adopted by the City Council on October 24, 2020) changed the Planning Commission's role to advisory, ultimately giving final approval authority to the City Council. The Planning Commission's recommendation sought to reverse the shift in authority, thereby restoring the Planning Commission's authority for review and final approval for all conditional use permits. The intention was to streamline the process and eliminate extended waiting periods resulting from the protest period that must occur between the Planning Commission's public hearing and the City Council's final consideration. After much discussion, it is the Council's preference to retain final approval authority for conditional use permits; however, the City Council was agreeable to forego the fourteen (14) day protest period to eliminate some time spent waiting.

Staff reviewed the elimination of the protest period with the City Attorney to determine if that action was possible. Pursuant to the City Attorney's review, the law on the subject as interpreted by the courts makes it clear that the protest period set forth in K.S.A. 12-757 applies to the issuance of conditional use permits.

[A municipality's] power to change the zoning of a property – *which includes issuing conditional use permits* – may be exercised only in conformity with the statutes that authorize zoning. *Zimmerman v. Board of Wabaunsee County Comm'rs*, 289 Kan. 926, 939 (2009). A county's failure to follow the zoning procedures in state law renders its action invalid. 289 Kan. At 939.

Under K.S.A. 12-755(a)(5), [the] governing body may adopt zoning regulations that provide for issuing conditional use permits. However, K.S.A. 2019 Supp. 12-757 demands certain notice and hearing requirements for amending zoning regulations. **Although the statute does not explicitly mention conditional use permits, Kansas courts have consistently found that the procedures in K.S.A. 2019 Supp. 12-757 apply to conditional use and special use permits, thereby requiring the fourteen (14) day protest period.** As a result, eliminating the fourteen (14) day protest period for the issuance of conditional use permits would be inconsistent with the determination of the courts and likely be subject to judicial review pursuant to K.S.A. 12-760.

UPDATE FROM PREVIOUS MEETING

During the Planning Commission's discussion on September 27, 2021 the following questions were introduced, warranting further staff research:

- 1) What happens if the City Council denies a Planning Commission recommendation to approve a conditional use permit? What is the involvement of the Board of Zoning Appeals?
- 2) Can the Planning Commission provide final approval of a conditional use permit? What happens to the 14-day protest period?

Section 14.02.A of the adopted zoning regulations (shown on page 119) outlines the zoning approval process in Figure 14.1. If the Planning Commission recommends approval of a conditional use permit, the request enters a 14-day protest period before advancing to the City Council for final approval. If the City Council denies the Planning Commission's recommendation to approve, the applicant has three options.

1. The applicant can accept the City Council's denial of the request and the request dies.
2. The applicant can revise and resubmit their conditional use permit application and go back through the review process, addressing the specific reasons for denial.
3. The applicant can file a legal challenge in Butler County District Court via K.S.A. 12-760, at which time the district court ruling is final.

After discussing the issue further with the City Attorney, **the City Council must make the final decision on matters pertaining to approval of text amendments, map amendments, conditional use permits, final plats, and zoning district reclassifications**, which means the Planning Commission is an advisory body to the City Council on all planning matters except approval of preliminary plats and preliminary master drainage plans. As an advisory body, it is the Planning Commission's responsibility to research the issue, conduct public hearings as required by state statute, and make appropriate recommendations to the City Council. The work of the Planning Commission is vitally important to the development of the community, and the Planning Commission has always functioned as an advisory body to the City Council for all matters except conditional use permits. While the Planning Commission may see this as a removal of authority, it is important to understand this alignment will help the two bodies function and interact in the way government is intended to perform, that is, expand the democratic process across citizen advisory boards, and leave the decision making in the hands of the elected body.

The 14-day protest period is required in all situations. The Board of Zoning Appeals does not have any involvement in the review process of conditional use permits; however, the BZA is the final decision authority on matters pertaining to variance requests and appeals to the zoning administrator's decision.

Staff Recommendation:

Given the position taken by the Kansas courts to uphold the protest period requirements for conditional use permits pursuant to K.S.A. 2019 Supp. 12-757, and the City Attorney's position regarding the City Council's required involvement in the final approval of conditional use permits, Staff recommends the Planning Commission remove amendments pertaining to the conditional use permit process and maintain the existing regulations as they are currently adopted.

Maximum Floor Area Requirements

At the September 27, 2021 Planning Commission meeting, the commission tabled further discussion of this issue pending the City Attorney's direction regarding the approval authority for conditional use permits. In a previous recommendation, the Planning Commission voted to recommend an amendment that would eliminate the maximum floor area requirements, thereby relying on maximum lot coverage for each zoning district to prevent overdevelopment of individual lots. Upon consideration, the City Council returned the recommendation to the Planning Commission for further consideration due to the

concern that development of residential properties could become disproportionate, meaning a greater demand for large accessory structures and small houses. The following are provided for Planning Commission’s consideration:

1. The adopted zoning regulations do not specify a minimum or a maximum floor area for primary structures on site. Improvements are allowed so long as they are developed within the constraints of the established setbacks and do not exceed the maximum lot coverage. Overdevelopment of property is regulated by maximum lot coverage, which dictates what percentage of a lot can be covered by impervious surfaces (any surface that does not absorb storm water). Housing size should be a personal decision based on ability to pay and personal demand.

2. Private HOA covenants generally address specific details, such as minimum and maximum square footages requirements for primary and secondary structures to achieve a desired aesthetic standard. This regulation is more reasonably enforced via HOA covenant rather than a city-wide zoning regulation in order to prevent undue hardship on certain demographics, which can further lead to issues surrounding access to affordable housing and homogeneous development.

3. In the absence of minimum floor area requirements for single-family residential housing, what does disproportionate development look like, and who makes this determination? The previous zoning code did not have maximum floor area requirements for accessory structures, which would have easily supported disproportional development. While development trends and demands change over time, disproportional development patterns have not been a common or problematic occurrence throughout the community.

Since the maximum gross floor area requirement was implemented, Staff has received several requests for accessory/detached structures that surpass the maximum limitation. As such, Staff believes this needs to be examined by the Planning Commission and City Council to determine if our current regulations are warranted, and whether they add value to the development of our community. Is review on a case-by-case basis the best approach to development?

The table below shows the current limitations for gross floor area based on property area. Any proposal exceeding the maximum floor area requires a conditional use permit to proceed.

Lot Size (X = size of parcel; SF = Square Feet)	Maximum Gross Floor Area (SF = Square Feet)
X < 10,000 SF	Garages: 720 SF Carports: 500 SF
10,000 SF ≥ x < 3 Acres	Garages: 960 SF Carports: 600 SF
3 Acres ≥ x < 5 Acres	Garages: 1,250 SF Carports: 750 SF

X ≥ 5 Acres	Garages and Carports limited to 6,000 SF
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Staff Recommendation:

While there is always a possibility that demand for large accessory structures can become more frequent, the probability of this becoming problematic is low. Our residential housing subdivisions that are not yet at capacity could be potentially impacted; however, this is not likely due to HOA covenants that regulate the details of development. Size limitations did not exist under the previous zoning regulations, and the very concern we are trying to regulate never came to fruition in the past. Restrictions on maximum lot coverage are a sufficient means to regulate overdevelopment of private property without layering additional restrictions that limit utility of property ownership. Furthermore, without definitions of minimum area requirements for single-family residential houses, we have no definitive way to objectively determine when development becomes disproportionate. As such, Staff recommends the maximum gross floor area restriction be eliminated and rely upon maximum lot coverage to control overdevelopment.

Alternative Energy Uses

During the City Council review of the proposed zoning amendments on August 2nd, one issue the City Council requested reconsideration of from the Planning Commission pertained to alternative energy uses. Specifically, the City Council requested the Planning Commission consider the prohibition of wind energy conversion systems and wind energy generation structures within the city limits of Augusta, due to the potential for mechanical failure of windmills that could result in injury or death to individuals and/or damage to property. During the reconsideration on September 27th, the Planning Commission concurred with prohibition in the city limits and agreed that was the commission’s original intent. The Planning Commission did not want to make any limitations to the growth area.

Staff Recommendation:

The adopted zoning regulations are currently lacking substantive detail as it pertains to wind energy conversion systems and/or wind energy generation structures which is needed to accurately convey information to the public, especially in the growth area. As such, Staff recommends moving forward with provisions outlining wind energy conversion systems and wind energy generation structures that were originally outlined by the previous City Planner. However, in order to prohibit within the city limits, Staff recommends including the following provision in proposed *Section 10.45 Wind Energy Conversion Systems (WECS)*:

E. WECS shall be allowed only in A-1, R-R, C-2, C-3, and I-1 zoning districts, and shall be restricted to the Planning Area only.”

Amortization of Shipping Containers and Similar Portable Units/Vehicle as Storage Structures in Residential Districts

Uses of shipping containers as storage units is prohibited, under the adopted zoning regulations, from residential districts. However, the prior zoning regulations were silent on the matter, which resulted in approximately nine (9) instances throughout the community in residential districts. The former City

Planner had previously offered an amortization process to gradually eliminate those uses over eighteen months; however, the Planning Commission decided against such a process and it was not presented to the City Council as a proposed amendment. Upon review of the original amendment recommendations, the City Council requested the Planning Commission reconsider the amortization process. While researching this issue further, the City Attorney indicated for shipping containers to be considered “real property” they would have to be affixed to a permanent foundation (i.e., bolted to a concrete foundation) and that would have to be completed before the adoption of the current zoning regulations. At the September 27th Planning Commission meeting the Planning Commission determined they do not recommend removal of existing shipping container structures.

Staff Recommendation:

If the Planning Commission does not intend to change their stance on this position, no further action is required.

Zoning Administrator Approval Date:

Attachments *(list in packet assembly order):*

- 1.