

## Eudora Planning Commission Meeting Minutes

May 1, 2019

Grant Martin, Chair	Present
Danielle Young	Present
Johnny Stewart, Vice Chair	Absent
Jason Hoover	Absent
Tim Pringle	Present
Dr. Ryan Rock	Present
Josh Harger	Present

### Additional Attendees:

Curt Baumann, Codes Administrator  
Barack Matite, City Manager  
Leslie Herring, Assistant City Manager  
Dave Knopick, Planning Consultant

Quorum for Planning Commission noted and posted.

Meeting called to order at 7:00 PM by Chairman Martin.

The pledge of allegiance was recited.

### General Business:

1. Nomination and election for the Planning Commission Secretary (non-member)-  
**Commissioner Rock made a motion to elect Eric Strimple as the Planning Commission Secretary**, Commissioner Pringle seconded, all ayes, motion carried, 5-0
2. Consider the minutes of the last regularly scheduled meeting (06 March 2019)-  
**Commissioner Harger made a motion to approve the March 6, 2019 meeting minutes as distributed**, Commissioner Young seconded, all ayes, motion carried, 5-0
3. Reports:
  - a. Codes Administrator- Codes Administrator Curt Baumann stated that there have been six new housing starts so far this year, which is slower than 2018, but things are picking up now that winter is over.

Baumann also stated that the senior facility, storage units on 15<sup>th</sup> and the Pinecrest remodel are all moving along.

- b. City Manager- City Manager Barack Matite stated that staff has been having conversations with the Douglas County Commissioners and they are working on their Horizon 2040 Comprehensive Plan update and there are some changes they would like to see to the Urban Growth Area (UGA) map for Eudora. The proposed changes will be presented as a work session at the June Planning Commission meeting.

Matite also stated that Dave Knopick, planning consultant for the city is working on an update to the Eudora Comprehensive Plan. The plan has not been updated since 2003.

He added that the City Commission approved Ordinance 1086 allowing staff to move to electronic notices for delinquent utility bills, and door hangers. He stated that the notifications would be sent either via email, text or phone call depending on how the customers choose to receive them.

Matite stated that, Leslie Herring, Asst. City Manager is working on changes to the storm water utility fee for non-residential customers and that the City is also working on a Community Development Block Grant to help the owners of 701 Main Street to rehabilitate the building.

Matite stated the City terminated the predevelopment agreement between the developer and the City for the Nottingham property. The City Commission approved moving forward with the demolition of the building on the property to make it more attractive for a developer to come in.

Other updates given to the Commission were that SB 59, a bill passed by the state establishing a library district, that Gary Scott retired as Parks and Recreation Director, and an invitation was extended to all Commissioners to attend a Chipotle lunch on May 9<sup>th</sup>, for Public Service Recognition Week.

4. Public Comment Period- None heard

5. Public Hearings:

- a. **Residential Single-Family District Text Amendment-** Dave Knopick, Planning Consultant for the City stated that the City of Eudora recently received an application requesting a variance from the front-yard setback requirements in the RS – Residential Single-Family District. The existing structure is setback approximately 15 feet; the proposed addition is required to be set back 25 feet per the RS district regulations; and, the applicant desired to build the addition in a manner that matches the front setback of the existing structure.

As part of the application review process staff found that numerous existing structures in the neighborhood have a front yard setback of less than 25 feet. As a result of that finding the applicant would not be able to meet one of the criteria necessary to receive a variance – uniqueness. Essentially, the inability to meet the setback requirement is not created by a unique property condition, in fact the established character and common context of the neighborhood is grounded in a building pattern in which a number of existing buildings have been built with a front yard setback of less than 25 feet.

Knopick added that variances are not intended to be freely granted but are intended to address unique circumstances thus alleviating the property owner from the strict application of the regulations because of physical conditions that create the inability to meet the regulations. According to state and local regulations in order to grant a variance the BZA must find that five criteria be met. If any one of the five criteria are not met the variance cannot be granted. The five criteria are paraphrased as follows:

- Uniqueness: the variance request arises from a condition that is unique to the property in question.
- Adjacent property: granting the variance cannot adversely affect the rights of adjacent property owners.
- Hardship: strict enforcement of the regulation constitutes an undue hardship on the property owner.
- Public Interest: granting the variance cannot adversely affect the public health, safety, morals, convenience, prosperity or general welfare of the public.
- Spirit and Intent: granting the variance is not opposed to the general spirit and intent of the zoning regulations.

Knopick added in circumstances where a request for a variance cannot meet these criteria another remedy may be considered. That remedy is amending the zoning regulations to address a common established development pattern or character context. This remedy does not apply in every case but in cases where a significant number of properties appear to be legally non-conforming due to a common occurrence the City may amend the zoning regulations accordingly. He stated in this case the staff review found that in the existing older Eudora neighborhoods (zoned RS) many structures have been built in a manner that does not meet the current front yard setback of 25 feet, thus each of those structures is considered a legal non-conforming structure per the following:

Section 16-801 (1) (b)

1. Nonconforming Structure: An existing structure which does not comply with the height or yard requirements which are applicable to new structures in the zoning district in which it is located.

This designation also places limitations on the ability of the property owner to make changes to such a structure per the following:

Section 16-801 (3) (b):

2. Enlargement, Repair, Alterations: Any nonconforming structure may be enlarged, maintained, repaired or remodeled; provided, however, no such enlargement, maintenance, repair or remodeling shall either create any additional nonconformity or increase the degree of existing nonconformity of all or any part of such structure; provided further, existing mobile home parks not meeting the requirements of this ordinance shall be declared nonconforming and shall not be permitted to add spaces or make any improvements inconsistent with the terms and conditions of this ordinance.

Such regulations while intended to address situations in which a non-conformity is associated with a use, structure or condition that may not be desirable (a use or structure or condition that does not fit the goal or vision of a particular area) can at the same time be a hinderance to reinvestment in a use, structure or condition that is desirable (a use, structure, or condition that promotes a goal or vision for a particular area).

Knopick stated staff believes that it is the desire of the City and its citizens to promote appropriate high quality reinvestment in established residential neighborhoods, and that the character and context of many of these established neighborhoods is set by the existing development pattern and framework created by factors such as the roadway network and building locations in such neighborhoods. Additionally, staff believes that the appropriate way to support such reinvestment is not through the granting of variances or through the creation of more zoning districts that attempt to address all the possible variations that exist in relation to the application of setbacks in each neighborhood.

Instead the appropriate remedy appears to be a code amendment that recognizes the variation of front yard setbacks that exists within Eudora's neighborhoods; reinforces the existing character /context of each of the neighborhoods; and, allows for reinvestment in property in those neighborhoods in the form of appropriate high quality additions to existing residential structures and properties that are maintained in good condition.

Knopick stated staff recommends the following proposed amendment to the RS District be considered and approved by the Planning Commission and City Commission:

Section 16-302 (4) on page 22 add the following additional language:

In the case of rehabilitation / remodeling / retrofitting / adding to existing structures, with a setback less than the required setbacks listed in Table I of this Article, the required front yard setback may be modified to correspond with the setback established by the existing structure and/or by the predominate setback established by the existing buildings on the block face. Such modification is intended to reinforce the existing character of the established neighborhood and may not create a situation that would adversely affect the rights of adjacent property owners or residents, or adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare.

Add an \* to Table 1: Property Restrictions on page 165 in the box correlating to the RS – Residential Single-Family row and Front column with an associated note at the bottom of the table that states:

\* Administrative modification of this setback requirement may be allowed per Section 16-302 (4) of this Article.

Chairman Martin opened the floor for public comments. No public present or comments heard. Chairman Martin brought the item back to the Commission for questions and comments.

Commissioner Rock asked who would make the call in the end. Baumann stated he would because it would be a building permit situation.

Commissioner Pringle asked if there was anywhere else in town besides Church Street that this would affect? Baumann stated that most of the old original part of town would fall under the change since most properties were built closer than the now required 25' front yard setback.

Commissioner Pringle asked how far the property that originally made the variance request is setback. Knopick stated that it was approximately 15' back.

Commissioner Harger asked if there was any reason to look at adding the rear setback to the changes. Baumann stated that he has historically not had issues with rear setbacks. Herring feels if one came up that it would be a variance request situation.

6. New Business:

- a. Discussion of Residential Single-Family District Text Amendment- Chairman Martin stated that he felt like the proposed changes were a smart move and that it was nice to see homeowners wanting to better their properties.

Commissioner Young added she agrees with Chairman Martin's statements.

Commissioner Rock made a motion to amend the RS District as follows and forward the recommendation to the City Commission for approval:

Section 16-302 (4) on page 22 add the following additional language:

In the case of rehabilitation / remodeling / retrofitting / adding to existing structures, with a setback less than the required setbacks listed in Table I of this Article, the required front yard setback may be modified to correspond with the setback established by the existing structure and/or by the predominate setback established by the existing buildings on the block face. Such modification is intended to reinforce the existing character of the established neighborhood and may not create a situation that would adversely affect the rights of adjacent property owners or residents, or adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare.

Add an \* to Table 1: Property Restrictions on page 165 in the box correlating to the RS – Residential Single-Family row and Front column with an associated note at the bottom of the table that states:

\* Administrative modification of this setback requirement may be allowed per Section 16-302 (4) of this Article.

Commissioner Harger seconded, all ayes, motion carried, 5-0.

- b. **Discussion of Text Amendment to Section 7 – Special Conditions of the Zoning Regulations relating to home-based occupations and used vehicle sales or rental-** Assistant City Manager Herring stated that the City is currently considering changes and additions to how it regulates, tracks, and licenses certain types of businesses within the city limits. To work on this undertaking, an internal working group of City staff was formed; this group includes: The City Manager’s Office, Police Department, Fire Department, Codes Division, City Clerk’s Office, and the City’s contract planning consultant, Dave Knopick. This group has created draft language and proposals for City Commission discussion that includes certain modifications to the City’s zoning regulations relating to: (1) massage therapy and where it can occur and (2) used vehicle sales and rentals and where and how those activities can occur.

Herring added the City Commission provided guidance to staff to create a program to license massage businesses and massage therapists. Part of staff’s approach to this conversation has been to evaluate the current conditions and operations of businesses operating in our community and to provide recommendations and processes that would support and guide business owners while minimizing disruption to business operations while achieving the desired outcomes.

She stated staff presented to the City Commission recommendations for how the City could regulate massage businesses and therapists operating within the city limits. Part of that recommendation impacts the City's zoning regulations and, therefore, comes under the purview of the Planning Commission for consideration and recommendation of action to the City Commission.

Staff acknowledges that at times massage therapists operate as a home-based business and has created recommendations within the licensing program for how to license, inspect, and regulate both the massage business and massage therapists that are home-based. If home-based massage services are allowed by the City to continue occurring, staff would require the same license of those businesses and therapists as it does of businesses operating in a commercial environment; all application, inspection, and operational requirements would need to be met to be in good standing with the City and these home-based businesses would be held to the same standard and level of scrutiny as businesses in a typical commercial setting.

Herring stated to allow this type of home-based business requires an addition be made to the list of approved uses within the Special Conditions section of the City's zoning regulations.

Herring stated that staff is also proposing to specifically regulate used vehicle sales occurring within the city limits. Specifically, the recommendation from staff is to permit this type of business activity to occur only within the Commercial zone and only with a Planning Commission-approved Use Permitted Upon Review (UPUR). This change would be an addition to the zoning regulations and staff believes that its adoption will aid in efforts to protect the character of the City's neighborhoods and will provide an additional level of Planning Commission/City involvement when these types of land and traffic-intensive businesses are interested in operating in our community.

Herring stated the proposed change to Section 7 Special Conditions, 16-701 (5)(l) is the addition of the following as a home-based business:

- Massage therapy as defined and regulated by Section \_\_\_ of the Municipal Code. The applicant shall hold a license through the City of Eudora and comply with such requirements.

And Section 7 Special Conditions, 16-701 (8)

- Used vehicle sales or rental. For the purposes of this Article used vehicle sales or rental shall be defined as follows – AN establishment engaged in the

retail or wholesale sale or rental, from the premises, of the used motorized vehicles, along with incidental service or maintenance. Such uses are only allowed in the C – Commercial District with a Use Permitted Upon Review (UPUR) Permit. Such UPUR permit when issued will enable a specific business owner at a specific location. Any change of ownership or location will trigger the need for a new UPUR.

In addition to conditions or stipulations that may be placed on the UPUR Permit through the UPUR process provided in Section 6 USES PERMITTED UPON REVIEW of this Article, used vehicle sales or rental uses are subject to the following requirements of this section.

- a. Used vehicle sales or rental establishments shall provide proof of appropriate State of Kansas Vehicle Sales Permit/Licensure; Certificate of Good Standing; and Sales Tax ID.
- b. The overall use of the property will be in compliance with allowed uses and accessory uses within the C – Commercial zoning district, as well as all other site design/development, signage, property maintenance, nuisance and other applicable regulations.
- c. No outdoor storage/display/sales of parts, accessories or service-related materials are allowed.
- d. No major mechanical services or auto body/paint or collision or towing services or general tire sales will be provided.
- e. Incidental service activities must occur within an enclosed structure; are to be secondary to vehicle sales; and, limited to minor/routine maintenance activities taking one hour or less to complete; and are limited to detailing, cleaning and other minor service activities related to vehicle preparation for sales and delivery to the purchaser. Such minor services may include; lubrication and oil changes, auto accessory installation, cleaning or detailing, tire repair/rotation, battery installation, glass repair and installation, and engine diagnosis and tune-up.
- f. Vehicle sales and service hours shall only be allowed between 8am and 7pm.

Dave Knopick added that the Planning Commission would have the ability to add stipulations to the used car sales and not be restricted to just A-F listed.

Chairman brought the item back to the commission for discussion. Commissioner Pringle asked if there has been an issue with massage therapy in Eudora with people doing it out of their homes. Herring stated that the massage therapy discussion began because of a massage business that was involved in illicit activity. Because of this the City decided to establish regulations for therapists going forward.



Commissioner Pringle asked if all home-based businesses would be required to carry a license through the City like massage therapy would. Herring stated that no because the massage therapy has the possibility of abusing the regulations, unlike the other occupations.

Commissioner Pringle asked what type of licenses will be required. Herring stated that the therapist will be required to have a license based off their education along with the city license. Commissioner Pringle asked if the state required a license. Herring stated, no.

Commissioner Pringle stated that he was concerned from a legal standpoint because it seems that massage therapy is being singled out. Herring stated that the City attorney has reviewed the proposed guidelines and gave his approval with the proposed changes.

Knopick added that neighboring communities have much more stringent guidelines than the proposed guidelines for Eudora.

Commissioner Young stated that it may be good to require licensing for massage therapist since you would be going into someone's home. Knowing that it had been inspected could put individuals at ease some. Young added that she is aware of massage therapists already doing massages out of their home in town.

Commissioner Pringle asked if traveling massage therapists coming in from out of town would be required to be licensed or would it only be limited to the therapists living in Eudora. Herring stated that there wouldn't be a way for the City to manage that.

Knopick added since the appointments would be in and out appointments it would be tough to manage that.

Commissioner Pringle stated that he was ok with massage therapy being under home based businesses, but he doesn't like it stating that a license is required. He feels it should be elsewhere.

Knopick stated that just having it read massage therapy would be ok because the extra verbiage was added as a cross reference only.

Commissioner Pringle stated that it should read "Massage therapy as defined and regulated by Section \_\_\_ of the Municipal Code." The other commissioners agreed as a whole.

Herring asked if there were any concerns about the language to the car sales portion of the proposed code. Chairman Martin stated that he read through it and liked it as proposed and that if there was a sale of the business that they would have to conform to the rules.

Commissioner Pringle asked if they were talking about one car lot on Main. Herring stated that there are currently two in town and added that they would have to come before the Commission for a UPUR if either business sold.


Commissioner Rock asked how the car sales proposal will work at a home if they do multiple car sales over a period. Knopick stated it would be more of a complaint driven situation.


**Commissioner Rock made a motion to set a Public Hearing for June 5, 2019 to discuss text changes to Section 7 of City Code,** Commissioner Young, seconded, all ayes, motion carried, 5-0.

7. Old Business- None heard

**Commissioner Rock made a motion to adjourn the meeting,** Commissioner Pringle seconded, all ayes, motion carried, 5-0.

Meeting adjourned 8:24 PM.

  
\_\_\_\_\_  
Grant Martin, Chairman

  
\_\_\_\_\_  
Eric Strimple, Secretary