

Draft

Fair Grove Planning and Zoning Special Meeting

81 S. Orchard

Fair Grove, MO

August 17, 2020

Roll call taken by Chairman Don Brite.

Dan Manning, Anthony Miller, Dennis Frame, Travis Lee, Mayor Steve Short, Dennis Roe, present.

Paul Foreman absent.

Meeting called to order at 6:31 pm.

City Attorney response to Commercial, Industrial zone codes pertaining to Fullerton project: Chairman Brite stated that based on the City Attorney's letter (attached) saying C-1 General Commercial does not allow for a meat Processing Plant, but M-1 Manufacturing does, it is his opinion the Commission cannot approve Fullerton's Site Plan as property is zoned C-1. If Fullerton rezones to M-1, the Commission goes by those codes and public comments at Public Hearing. Darren Fullerton stated it was over a year ago when he came to Planning and Zoning and everyone knew the zone then and when he brought in a site plan he's told no. He bought the land based on that. Brite stated it was in the minutes in 2018 that the zoning of the property was a concern. Frame stated it was not up to the Commission to rezone, it was up to the person who wants it rezoned but he would think the Commission would try to accommodate them. He said it looks like a good location. Manning agreed and wants us to have no regrets with decision. Manning stated it is going to be a different operation, an upgrade and makes all the difference. Roe stated can't change the codes and now have a legal opinion. Fullerton stated it seems you should know your own codes. Lori Fullerton stated we want Fair Grove to grow but you have to stop blocking land; people, landowners blocking land to where it cannot be sold. The Fullerton's left the meeting at this point. Miller stated he has concerns about future difficulties if Darren rezones. Manning stated the codes should be addressed concerning Processing Plants. Roe asked about any outdoor storage, Chris Kennard, Fullerton's builder, stated no outdoor storage, everything is 100% enclosed. Roe said there needs to be a good business case presented by Kennard and the Fullerton's with examples for how the Plant is set up. Manning asked where there are Plants like this. Kennard said St. Louis and in Arkansas. Kennard stated it cannot be USDA unless you go by what USDA says. Richard Icenhower, in audience, stated you can't control the smell of the truck that picks up. Roe stated the Aldermen make the final decision. Miller is concerned about this being drug out, rezone, and ending up where we are. Jeanie Icenhower said she understands the Fullerton's wanting to make a better business and is just sick about Darren's position. But the property is not the place for the Plant. The whole thing is a very difficult position but none of you can say you would want this in your backyard. Richard stated if he tried to sell his house and they saw a meat locker in the backyard, they wouldn't buy it and if rezoned it would be spot zoning. Brite said he lives in Northview Circle and can't say he is against it but have to look at the codes and go by them and not emotions. He does not think it will be approved M-1 and is afraid the Fullerton's will leave. Miller stated that should have been told to Darren tonight. Kennard asked for recommendation of other property since the Commission does not feel it will pass and added the Fullerton's will probably go to Dallas County. City attorney's letter and vacant property in the City were discussed.

Motion by Roe to deny Fullerton's Site Plan due to property being zoned incorrectly for a meat Processing Plant, based on City Attorney's recommendation dated 8-11-2020. Second Frame.

Discussion: Manning stated he feels bad about this and that it is unfortunate. Commission agreed.

Miller aye, Manning aye, Frame aye, Foreman absent, Lee aye, Mayor aye, Roe aye, Brite aye.

Motion to adjourn meeting by Roe. Second Lee.

All ayes. Adjourned at 7:14pm



CO-FOUNDER

THEODORE L. JOHNSON, III

MEMBERS

CRAIG F. LOWTHER

MICHAEL K. CULLY ¹

JOHN W. HOUSLEY

DAVID A. FIELDER

GLENN P. GREEN

THOMAS M. BENSON

RANDY J. REICHARD

LEE J. VIOREL

RUSSELL W. COOK ^{1,2}

MATHEW L. PLACZEK

AARON M. KLUSMEYER

KYLE HARMON

GREGGORY D. GROVES

ASSOCIATES

N. AUSTIN FAX

AIMEE L. MORRISON

MEGAN N. CRESON

KEVIN A. SCHARF

B. JACOB HASKINS

OFFICE ADMINISTRATOR

DEANA THOMLINSON

¹ ALSO ADMITTED IN ARKANSAS

² ALSO ADMITTED IN KANSAS

DIRECT EMAIL

JHOUSLEY@LOWTHERJOHNSON.COM

901 ST. LOUIS STREET

20TH FLOOR

SPRINGFIELD, MISSOURI

65806-2592

TELEPHONE :

(417) 866-7777 EXT

FACSIMILE :

(417) 866-1752

WEB

www.lowtherjohnson.com

August 11, 2020

Dara Justice

Via email to: courts@fairgrove.org

RE: **General**
Matter ID 21031-000

Dear Dara:

Pursuant to a request by the Planning and Zoning Commission, I have reviewed the zoning regulations for the City of Fair Grove pertaining to the request by Mr. Fullerton to locate and operate a USDA approved meat processing plant on property located within the City, which is currently zoned as a C-1 General Commercial District. It is also my understanding the meat processing plant to be operated on the subject property will slaughter animals and process the meat for various customers who will consume it themselves or subsequently sell the meat at retail to their customers. In addition, I understand Mr. Fullerton intends to sell some of the processed meat in packages with his own private label to the general public from a retail store located at the front of the premises. It is my understanding that Mr. Fullerton submitted a site plan to the City Planning and Zoning Commission and during their review of it on August 4th one member of the Commission voiced a concern that he does not believe an animal processing plant can be located in a commercial zoned district in the City, but that it should be in an industrial zoned district.

In looking at the City's Zoning Regulations, Chapter 405.302 specifically describes the uses permitted in a "C-1" General Commercial District. I would initially note the "permitted" uses listed for a C-1 District do not contain any reference to an animal processing facility. On the contrary, the first sentence of subparagraph A of Section 405.302 states permitted uses that are listed under C-1 General Commercial District shall not permit the "processing or treating of products other than that which is clearly essential and incidental to a retail business and where all such products are sold at retail on the premises."

In my opinion, a meat processing plant, as contemplated by Mr. Fullerton, would not satisfy the requirements of a permitted use in a C-1 district because it is primarily involved with the "processing" of products on the premises for



August 11, 2020

Page 2

commercial purposes and is not entirely devoted to the sale of meat at retail on the premises.

Further, the provisions of the zoning regulations related to a C-1 General Commercial District do not list a meat processing facility as a "conditional use". Accordingly, a meat processing facility which processes meat for a fee for others to use or resell, as opposed to Mr. Fullerton exclusively selling meat from the premises at retail, is not a permitted or conditional use that is allowed in a C-1 General Commercial District in the City of Fair Grove.

I have also reviewed Section 405.340 of the City's Zoning Regulations, which describe permitted uses in an "M-1" Industrial District. The permitted uses listed in an M-1 Industrial District include: "1. Warehousing and the manufacture, processing, assembly, packaging or treatment of goods and materials, provided that there shall be no offensive noise, dust, smoke, odors, heat or glare noticeable at or beyond the property line and not more than 10% of the lot is used for the open storage of products, materials, and equipment." The foregoing zoning regulations would permit a meat processing facility to be located in an M-1 Industrial District in the City of Fair Grove because it involves the processing, assembly and packaging of goods and materials. The only caveat is that a meat processing facility cannot emit beyond its property lines any offensive noise, dust, smoke, odors. If the meat processing facility contemplates any outdoor storage subparagraph C of the M-1 regulations provide that it must be at least 200 feet from any residence district and the storage outside the building must be screened from public streets and other property, except adjacent property which is located in an M-1 District.

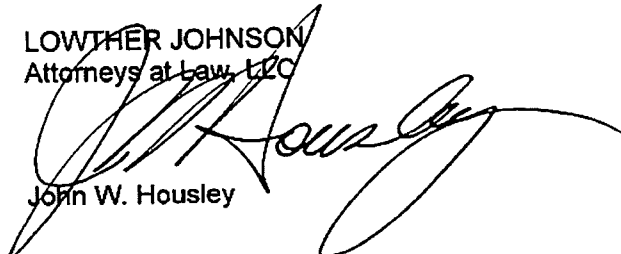
I have also reviewed the other provisions of the Zoning Regulations of the City of Fair Grove found in Chapter 405. I cannot find any designated zoning district regulations which would permit a meat processing facility in any district other than an "M-1" Industrial District. The meat processing facility proposed by Mr. Fullerton will not be limited to processing meat that will all be sold exclusively at retail on the premises. If the processing plant will receive income from processing meat for third parties on the premises, the plant is not a permitted or a conditional use in either a C-1 or a C-2 district.

Since a meat processing facility is only permitted in a M-1 Industrial District and Mr. Fullerton proposes to locate his processing facility on property currently zoned C-1 General Commercial District, he may need to file an application to rezone the property to M-1 Industrial District, which would allow a meat processing facility as a permitted use, assuming the Planning and Zoning Commission would approve such a rezoning request.

If you have any further questions, please call me.

Very truly yours,

LOWTHER JOHNSON
Attorneys at Law, LLC


JOHN W. HOUSLEY

JWH:kls