



City of Broken Arrow

Request for Action

File #: 21-105, Version: 1

**Broken Arrow City Council
Meeting of: 01-05-2021**

Title:

Consideration, discussion, and possible action regarding SP-298, Living Rivers USA, Inc., 5.75 acres, request for a Specific Use Permit for a Place of Assembly, one-eighth mile south of New Orleans Street (101st Street), east of Elm Place (161st E. Avenue)

Background:

On November 19, 2020, the Planning Commission heard a request for a Specific Use Permit (SP-298) for a Place of Assembly on property presently zoned CG (Commercial General) that is located one-eighth mile south of New Orleans Street (101st Street), east of Elm Place (161st E. Avenue). There is a vacant building on the property that was previously used as a grocery store.

During the Public Hearing portion of the Specific Use Permit there were 10 people at the meeting who spoke in favor of the request and 1 who spoke in opposition. In addition, there were 104 forms that had been submitted, 52 in favor of the request and 52 in opposition. Of the 104 forms submitted, 72 contained comments that were read to the Planning Commission during the meeting. In summary, the comments in favor of the request for a Place of Assembly focused on providing information on the caring attributes of the church; how it would be an asset to the community by drawing more people to shop and dine in the immediate area and community; and, the planned remodel to improve the visual appeal of the area. Comments in opposition generally expressed concern with not needing another church in the area; a desire for retail and restaurants to support daytime traffic, jobs, and sales tax; and, the use does not align with the community's vision for the Elm Place and New Orleans Street intersection.

During the meeting, it was noted that the issue before the Planning Commission was whether or not a Place of Assembly was appropriate for this location, not whether or not a church was appropriate for this location. Based on the Staff report, information provided by the applicant, extensive public comments, policies contained in the 2019 Comprehensive Plan, and the New Orleans Square report recently accepted by the City Council, the Planning Commission voted 3-2 to deny SP-298 for a Place of Assembly. On November 30, 2020, the applicant submitted a request to appeal the Planning Commission decision to the City Council. On December 15, 2020, the City Council agreed to hear the appeal of the Planning Commission decision.

The Zoning Ordinance defines Place of Assembly as "A building or structure, or group of buildings or structures, intended primarily for the conduction of organized assembly. May include, but are not limited to religious facilities, assembly halls, and fraternal/social clubs. Accessory uses may include meeting rooms and childcare provided for persons while they are attending assembly functions." Place of Assembly requires a Specific Use Permit in all agricultural, residential, commercial zoning districts. Place of Assembly is a permitted use in the ON (Office Neighborhood district). Living Rivers USA, Inc. wants to hold church services in the existing vacant building and as a result, has submitted a request for a Specific Use Permit. According to the applicant, they will have up to 500 members in attendance on Sundays. Services on Sunday occur at 10:00

am and 6:00 pm. In addition, there are church activities that take place on Tuesday evenings.

According to information provided by the applicant, the building, which was used by former grocery stores, contains 71,993 square feet. The owner of the property commented during the Planning Commission meeting that Reasors vacated the building in June 2019. Since that time, they have been under contract with five different parties, but have been unable to finalize the contract.

As part of their Specific Use Permit, applicant is proposing that 24,820 square feet of the building be kept as retail space with only the church entrance on the west side of the building. The remaining 47,173 square feet would be used as Place of Assembly space for the church. This is similar to the concept used with the former K-Mart building immediately to the north that has retail and office uses on the north and west street sides of the building and mini storage in the interior east part of the building.

In making decisions on rezoning requests, including Specific Use Permits, the City of Broken Arrow places heavy emphasis on what is contained in the Comprehensive Plan. Policy LU1 of the Comprehensive Plan states, "The City shall refrain from approving requests for Specific Use Permits and PUD's for uses which could affect the ability to attract quality commercial dining or entertainment facilities within or immediately adjacent to existing or future commercial districts (Level 4 and Level 6 areas) as identified in the Future Development Guide." Dining establishments that receive less than 50 percent of their revenue from alcohol sales are not impacted by the proximity of religious facilities. However, liquor stores and establishments that receive more than 50 percent of their revenue from alcohol sales do have to be located more than 300 feet from a religious facility or public/private school. Therefore, if SP-298 is approved, there will be an impact on applications for future liquor stores and facilities that derive 50 percent or more of their income from alcohol sales.

The Comprehensive Plan shows the area associated with SP-298 as a "Special District Overlay". Policy LU2.1 states, "In the areas identified as special district overlays, the intent is for denser, walkable development with a mixture of retail, office, and residential uses. These special district intersections will have a different character than the traditional four-corner retail, so the standards should reflect it. Considerations should include walkability, community open space, consistent architectural facades, and appropriate ingress/egress."

Policy EP2.3 of the Comprehensive Plan states, "Mixed-use and lifestyle center developments, often featuring a concentration of specialized local and national retailers, are emerging as important economic development tools that cities are using to promote placemaking and their civic brands. These centers also have great potential to revitalize aging commercial areas, such as strip malls and big box stores, and ensure successful and sustainable nodal redevelopment that attracts higher-quality and higher yielding tenants."

Municipalities in Oklahoma rely heavily on sales tax generated from retail sales to fund and provide the City services. Along these lines, Policy LU10 of the Comprehensive Plan states, "The City shall protect commercial areas from the encroachment of non-commercial uses." The Place of Assembly proposed with SP-298 would be an encroachment of a non-commercial use into a commercial area. However, the interior, east part of the building that will be used by the church will be the most difficult to lease for retail uses. According to the applicant, the church has up to 500 people in attendance on Sundays. It is recognized that these 500 attendees may choose to eat at the nearby restaurants or shop at one of the retail stores in the area.

Policy D.1.2 of the Comprehensive Plan states, "Conduct special area plans for the special districts to create a vision for future development and redevelopment." In August 2017, the City Council approved an economic development feasibility study for the Elm Place and New Orleans shopping area. This initiative was in

response to increased building vacancies, aging infrastructure, and citizen concerns. On September 1, 2020, the City Council accepted the Final Report for New Orleans Square as presented by the Elm and New Orleans Advisory Committee. In this report it notes, “Creating a strong retail/mixed-use center within New Orleans Square will be an incremental process that relies heavily on the focuses of transportation, landscaping, infrastructure, and placemaking. Achieving this in the long-term will require a commitment by the city, Chamber of Commerce, and the merchants and property owners to cooperation and both public and private investment in the area. Guiding principles for collaboration should include: training existing businesses, attracting new and complementary business, enhancing private employment opportunities, incorporating a broader mix of public uses, and coordinating public and private investment.”

The New Orleans Square report also states, “Lack of maintenance and aging of the area is one of the most visible issues. Landscaping in the area is minimal and inconsistent from property to property. A majority of building facades need to be updated, and there is not a consistent set of materials or themes from building to building. The signage also lacks uniformity. Many of the parking lots are in disrepair and have an excessive number of parking spaces. This creates greater retail vacancy and contributes to lower retail and restaurant quality.”

Regarding proposed land use, the New Orleans Square report states, “Increased density and better mix of land uses will create sustainability, vibrancy, and economic growth. Clustering retail, dining, entertainment, office, and residential uses will foster greater utilization of multi-modal transportation and can create greater economic output. In addition, mixed-use creates greater operational efficiency for the city.”

As per Section 3.1.A.2.b of the Zoning Ordinance, an “S” designation in a given district does not constitute an authorization or an assurance that such use will be permitted. Rather, each specific use permit application shall be evaluated as to its probable effect on adjacent properties and surrounding areas and may be approved or denied as the findings indicated appropriate. In determining whether or not a change in zoning, including Specific Use Permits, is appropriate, a lot of emphasis is placed on what is recommended by the Comprehensive Plan.

The Comprehensive Plan that was adopted in 2019, as well as the previous Comprehensive Plan that was adopted in 1997, contained policies that stated that commercial areas shall be protected from the encroachment of non-commercial uses, and that the City shall refrain from approving requests for Specific Use Permits and PUD’s for uses which could affect the ability to attract quality commercial dining or entertainment facilities within or immediately adjacent to existing or future commercial districts (Level 4 and Level 6 areas) as identified in the Future Development Guide.”

Places of Assembly, including churches, are recognized as a permitted use in the ON district. In the Comprehensive Plan, the ON district is considered to be in accordance with the Comprehensive Plan in Level 3 - Transition Area. Place of Assembly uses such as churches serve as an excellent transition between Level 2 - Urban Residential and Level 4 - Commercial Employment Nodes. According to the Comprehensive Plan, “Level 4 represents the typical local commercial and office intensity of land use in Broken Arrow. The Level 4 classification generally designates commercial or office activities that have developed in nodes around arterial street intersections. Examples of uses would include free-standing commercial buildings, small-scale shopping center, and office development permitted in Level 3.” Places of Assembly in Level 4 areas can cause impacts (restrict uses permitted and parking conflicts) on the other businesses in the area.

While Places of Assembly can serve as a draw for people to patronize businesses and restaurants in the area, Staff concludes that the proposed use does not align with the Comprehensive Plan’s policies and the New

Orleans Square Report.

Cost: \$0

Funding Source: None

Requested By: Larry R. Curtis, Director of Community Development

Approved By: City Manager's Office

Attachments: Published Planning Commission staff report
Case map
Aerial photo
Comprehensive Plan
Information and exhibits provided by the applicant
Excerpt of policies from Comprehensive Plan
New Orleans Square report
Email from Shellie Love.11-05-2020
Picture from Google Earth looking southeast
Aerial from PUD-219A
Excerpts from PUD-219A design statement
PUD 219 site plan.
Request for appeal of Planning Commission denial of SP-298
Article from the Atlantic Daily
Comments submitted to Planning Commission

Recommendation:

Deny SP-298 as recommended by the Planning Commission and Staff. (Note: If the City Council desires to approve or approved with conditions, Staff recommends that SP-298 be sent back to the Planning Commission to consider potential conditions of approval.)