

ORDINANCE NO. 3291

AN ORDINANCE REZONING CERTAIN REAL PROPERTY LOCATED WITHIN THE CITY OF ABILENE, KANSAS FROM “R-3, HEAVY DENSITY RESIDENTIAL DISTRICT” TO “C-4, CENTRAL BUSINESS DISTRICT”

WHEREAS, the property owners of record have requested the City consider rezoning certain property generally described as 410 NW 4th Street from “R-3, Heavy Density Residential District” to “C-4, Central Business District”;

WHEREAS, the Planning Commission conducted a Public Hearing per Article 26 of the Zoning Regulations of the City of Abilene, Kansas, on March 8, 2016; and

WHEREAS, the Planning Commission recommended the Governing Body approve the rezoning of the above referenced property upon affirming the findings of fact provided in the Staff Report dated March 4, 2016 and attached hereto as **Exhibit A**.

THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF ABILENE, KANSAS:

SECTION ONE. Property Rezoned. That property legally described as follows is hereby rezoned from “R-3, Heavy Density Residential District” to “C-4, Central Business District”:

The south one hundred twenty-two (122) feet of lot thirty-seven (37), and the north thirty-two (32) feet of lot thirty-seven (37), and all lots thirty-nine (39) and forty-one (41), on northwest Fourth Street, Thompson and McCoy's Addition to the City of Abilene, Dickinson County, Kansas.

SECTION TWO. Zoning Map: Amended. That the Zoning Map of the City of Abilene, Kansas, as adopted by Ordinance No. 2796 and amendments thereto, is hereby amended to be consistent with the amendments described herein.

SECTION THREE. Effective Date. This Ordinance shall become effective and in full force from and after its passage, adoption and publication in the official City newspaper.

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PASSED AND APPROVED by the Governing Body of the City of Abilene, Kansas this 28th day of March, 2016.



CITY OF ABILENE, KANSAS

By:

Dennis P. Weishaar
Dennis P. Weishaar, Mayor

ATTEST:

Penny Soukup, CMC
Penny Soukup, CMC
City Clerk

EXHIBIT A

Staff Report PC-3

Requested Rezoning of 410 NW 4th Street

March 28, 2016

STAFF REPORT

TO: City Commission
FROM: David Dillner, City Manager
SUBJ: PC 16-3 Requested Rezoning of 410 NW 4th Street from "R-3, Heavy Density Residential" to "C-4, Central Business District"
DATE: March 10, 2016

PROPOSAL

The property owner of 410 NW 4th Street is requesting a rezoning from "R-3, Heavy Density Residential" to "C-4, Central Business District" to allow the property owner to operate a semi-formal restaurant on the property.

FACTORS TO BE CONSIDERED

An analysis of the factors to be considered as provided in Section 26-104(b) of the Zoning Regulations may be found in the Staff Report for PC 16-3, which has been included with this memorandum for the governing body's review.

STAFF RECOMMENDATION

Staff recommends approval of the rezoning request for the subject property based on the considerations outlined in the Staff Report as described in Article 26-108 of the Zoning Regulations.

PUBLIC HEARING

The Planning Commission conducting the Public Hearing on this item during its regular meeting on March 8, 2016. The Planning Commission received some comments concerning the rezoning request. Most of the concerns addressed parking and the use of the alley for deliveries. An relative of the property owner stated that deliveries would not be done in the alley, but would be done from NW 4th Street. All comments were generally positive and supportive of the request. The minutes of the proceeding have been included with this report for the City Commission's review.

PLANNING COMMISSION RECOMMENDATION

Following the public hearing, the Planning Commission unanimously recommended approval of the proposed ordinance to rezone the property as described. The ordinance is also included with this report for the governing body's review.

PROTEST PETITION

This request is subject to a protest petition as provided in Section 26-105 of the Zoning Regulations as follows:

"If a protest petition against such amendment is filed in the office of the City Clerk within fourteen days after the date of the conclusion of the public hearing pursuant to the publication notice, signed by the owners of twenty percent (20%) or more of any real property proposed to be rezoned or by the owners of record of twenty percent (20%) or more of the total area, excepting public streets and ways, which is located within the notification area described in Section 26-102, the ordinance adopting such amendment shall not be passed except by at least a three-fourths majority vote of all the members of the Governing Body."

The deadline to file a valid protest petition for this item is March 22, 2016.

GOVERNING BODY ACTION

Per Section 26-104(c) of the Zoning Regulations, the governing body has the following options with respect to this item:

1. Approve the Planning Commission's recommended ordinance without change.
2. Override the Planning Commission's recommendation by a two-thirds majority vote.
3. Return the recommendation to the Planning Commission with a statement specifying the basis for the Governing Body's failure to approve or disapprove. Upon return of a recommendation from the Planning Commission, the Governing Body may take whatever action it deems necessary.

STAFF REPORT

PC 16-3 Requested Rezoning of 410 NW 4th Street from “R-3, Heavy Density Residential District” to “C-4, Central Business District”

Date:	March 4, 2016
Owner:	Derek N. Lipson
Applicant:	Owner
Requested Action:	Rezoning from “R-3, High Density Residential” to “C-4, Central Business”
Purpose:	Use of property as a restaurant business
Location address:	410 NW 4 th Street
Comprehensive Plan:	Local Economy - Dining opportunities are essential for a sustainable tourism industry. Key Issue 11 – Conflicts between adjacent residential, commercial and industrial uses; Goal A – Minimize the negative impacts of adjacent incompatible land uses through required site improvements; and Goal D – Promote context-sensitive in-fill development.
Site’s Existing Zoning:	“R-3, High Density Residential District”
Surrounding Zoning and Land Use:	North: “R-3, High Density Residential District” South: “C-4, Central Business District” East: “C-4, Central Business District” West: “R-3 High Density Residential District”
Land Area:	Contains 19,200 square feet, more or less
Notice Date:	This project was published in the Abilene Reflector-Chronicle on February 15, 2016 and noticed by mail as required by Code.

COMMENTS

1. The property owner has submitted a business plan (included with this report) for the proposed restaurant for the Planning Commission’s information. The house, constructed between 1884 and 1887, will provide a venue for semi-formal and formal dining for dinner throughout the week. It is unclear from the business plan, but it seems that the property owner is looking at an occupancy of up to fifty people in three different dining rooms.
2. The Comprehensive Plan provides an emphasis on tourism-related industry, of which a restaurant could reasonably be considered part of since a percentage of patrons would be expected to be visitors.
3. The residence is listed on the Heritage Home Association’s list of historically significant houses in Abilene. The proposed use would continue to preserve this important asset to the community, while allowing it to be opened to the general public.



Subject Property of 410 NW 4th Street

RECOMMENDATION AND FINDINGS

Staff recommends approval of the rezoning request for the subject property based on the following considerations outlined in Article 26-108:

1. Whether the change in classification would be consistent with the intent and purpose of these regulations. It is intent of the Commercial Zoning Regulations, found in Article 9 of the Zoning Regulations, to provide for areas of compatible commercial and service businesses in the City. The proposed rezoning would make additional property available for commercial use within the downtown district.
2. The character and condition of the surrounding neighborhood and its effect on the proposed change. The surrounding properties are a mix of land uses to include single-family and multi-family residential as well as commercial, both in the form of retail and service business. The proposed change would modify the land use of an existing residential use to a commercial use, and would not likely negatively affect adjacent properties any more than adjacent existing uses.
3. Whether the proposed amendment is made necessary because of changed or changing conditions in the area affected, and if so, the nature of such changed or changing conditions. It is the opinion of staff that changing conditions in the area are not a contributing factor in this rezoning request.
4. The current zoning and uses of nearby properties, and the effect on existing nearby land uses upon such change in classification. As previously articulated, the existing land uses adjacent to the subject property are a mix of residential and commercial uses. It is not likely that the rezoning of the subject property will adversely affect adjacent properties any more than what is already present. The only exception to this may be the potential impact of the

proposed use on parking as the current use of the subject property does not have sufficient off-street parking to accommodate the proposed use and anticipated traffic.

Per Section 22-201 of the Zoning Regulations, off-street parking facilities shall not be required in the "C-4, Central Business District." Therefore, if the rezoning is approved, off-street parking will not be required of the applicant. Parking for the commercial use will be limited to available parking within in the public right-of-way adjacent and near the subject property. Staff has inventoried forty-two parking spots within the public right-of-way on NW 4th Street, and there are other parking spots on adjacent streets as well. It should also be noted that the parking lots to the south of the subject property are privately owned and not available for parking unless the property owners agree to allow such use.

5. Whether every use that would be permitted on the property as reclassified would be compatible with the uses permitted on other property in the immediate vicinity. The commercial uses listed in Table 9-1 of the Zoning Regulations provides some of the land uses that would be permitted by right in the "C-4, Central Business District." Staff has no reason to believe that any of the permitted uses would create an adverse effect on adjacent uses if the proposed use were to change to another use allowed by right. Many of these uses are already allowed within close proximity to the subject property as it is located on the edge of the existing "C-4, Central Business District."
6. The suitability of the applicant's property for the uses to which it has been restricted. The applicant has provided a business plan and has indicated that the Fire Chief has been through the structure and provided some guidance to bring the property into compliance with the applicable Fire Code for the proposed use. The business plan also provides a list of improvements that will need to be made to the property for restaurant operations.
7. The length of time the subject property has remained vacant or undeveloped as zoned. This point is not applicable to the request.
8. Whether adequate sewer and water facilities, and all other needed public services exist or can be provided to serve the uses that would be permitted on the property if it were reclassified. The subject property is presently on municipal water and sewer and other public utilities, and these public facilities have the capacity needed to serve the proposed use.
9. The general amount of vacant land that currently has the same zoning classification proposed for the subject property, and any special circumstances that make a substantial part of such vacant land available or not available for development. There are several tracts within the downtown district that are vacant and that have the same zoning as what is proposed for the subject property. Staff does not know the specific reasons for why these properties have not developed other than due to a lack of interest or capital on the part of the property owners.
10. Whether the proposed amendment would be in conformance to and further enhance the implementation of the Comprehensive Plan. The Comprehensive Plan shows the immediate area around the subject property to be residential and commercial in the Future Land Use Plan. The proposed amendment aligns with the long-term vision for this part of the community.

11. Whether the relative gain to the public health, safety, and general welfare outweighs the hardship imposed upon the applicant by not upgrading the value of the property by such reclassification. The general welfare to the public of the proposed is the opportunity for a new business and restaurant. While this may have a minimal impact on the surrounding properties, it is not likely to have a significant impact on public health or safety. Denying the request of the applicant would prevent the property owner from using the property in a productive manner other than as a residential use as either a primary residence or a rental. As a restaurant, the property has the potential of generating significantly more revenue for the property owner than if a rental unit.
12. The recommendations of professional staff and advisors. Staff does not see any major impediments to approving the request, and recommends its approval based on the aforementioned analysis and the fact that the property owner plans to make the necessary improvements to make the proposed use successful. If the restaurant does not work out, the property can easily be converted back to a residential use as explained by the property owner in the business plan.
13. Such other factors as the Planning Commission may deem relevant from the facts and evidence presented in the application.

Planning Commission Action

Per Section 26-104(a) of the Zoning Regulations, the Planning Commission has the following options with respect to this item:

1. Recommend to the governing body approval of the proposed ordinance that would rezone the subject property from "R-3, Heavy Density Residential" to "C-4, Central Business District."
2. Recommend to the governing body denial of the proposed ordinance that would rezone the subject property from "R-3, Heavy Density Residential" to "C-4, Central Business District."

All options will require the Planning Commission to include with its recommendation reasons for such recommendation to the governing body. If a motion for approval fails to gain approval for any reason, the application is deemed to have been denied and will be submitted to the governing body.