

MINUTES OF A SPECIAL MEETING  
OF THE BOARD OF ADJUSTMENT  
OCTOBER 19, 2017

The Board of Adjustment held a special meeting on Thursday, October 19, 2017, at 5:30 p.m. in the City Hall council chamber.

Members present:           Kennith White  
                                  Diana Biggs  
                                  David L. Everett  
                                  Hope Gilley  
                                  Jackie Hampton  
                                  Charles Johnson  
                                  Terry Shelton  
                                  Barney Walker

Members absent:           Cleveland Ellison\*  
                                  Will Flynt, Jr.\*

Staff present:             Kelly K. Stultz, Planning Director

Others present:           Kenneth Davis, Applicant  
                                  Sherry Morgan, Tenant at old Belk's building  
                                  Brad Powell, Owner of old Belk's building

\*Excused absence.

The meeting was called to order by Board Vice Chair, Kennith White. The roll was called and it was determined that a quorum was present.

APPROVAL OF MINUTES OF A SPECIAL MEETING ON MARCH 2, 2017.

The minutes of the regular meeting on March 2, 2017, were presented to the Board. David Everett made a motion that the minutes be approved as submitted. Terry Shelton seconded the motion. Motion carried unanimously.

UNFINISHED BUSINESS: NONE

ITEMS FROM STAFF: NONE

**SPECIAL USE PERMIT                           201 E. MEADOW ROAD                           SU-17-02**  
CONSIDERATION OF A SPECIAL USE PERMIT FOR A FLEA MARKET AS ALLOWED  
FOR IN SECTION 11.26(C)(3)(C)(13), THE SPECIAL USE REQUIREMENTS OF THE  
BOARD OF ADJUSTMENT SECTION OF THE CITY OF EDEN ZONING ORDINANCE  
AS REQUESTED BY KENNETH DAVIS, MALL MANAGER.

Kennith White swore in the persons that planned to speak during the hearing: Kelly K. Stultz, Kenneth Davis, Sherry Morgan and Brad Powell.

Mrs. Stultz presented the Staff Report which included the Findings of Fact and Staff Analysis and Staff Conclusion as follows:

FINDINGS OF FACT:

- (a) That the use will not materially endanger the public health or safety if located where proposed and developed according to the plan as submitted;
- (b) That the use meets all required conditions and specifications;
- (c) That the use will not substantially injure the value of the adjoining or abutting properties, or that the use is a public necessity;
- (d) That the location and character of the use, if developed according to the plan as submitted, will be in harmony with the area in which it is to be located and in general conformity with the plan of development for Eden and its environs.

STAFF ANALYSIS:

With respect to the findings of fact, staff provides the following analysis:

- (a) The applicant has submitted an application to have a flea market in the common area of the Eden Mall. There is ample off-street parking on the property. Staff is of the opinion that the use will not materially endanger the public health or safety if located where proposed.
- (b) The use must adhere to all applicable district requirements including, but not limited to, maximum lot coverage, minimum yard requirements, height limitations, sign regulations and development standards, except as specifically stated elsewhere. The use must also adhere to all local building and fire codes. The facility is an existing structure and the exterior of the building and the property will not be altered. Therefore, the development plans as submitted adhere to all district regulations.
- (c) Consideration has been given to the location of the facility with respect to adjacent properties. The proposal is to use the existing structure and parking areas. Staff is of the opinion that the proposed use will not create any conditions which would injure the value of the adjoining or abutting properties.
- (d) Staff is of the opinion that maintaining the appearance of the existing structure and the property with respect to the surrounding neighborhood is appropriate. Staff is of the opinion that the proposed use would not adversely affect the surrounding area, and that the use is in keeping with the development plan for the City.

In addition to these findings of fact, staff recommends the following conditions be implemented as a part of the special use permit:

- (1) The special use must adhere to all requirements of Section 11.26(c)(3)(c)(15) of the City of Eden Zoning Ordinance.
- (2) All parking shall be located on the property;
- (3) The use shall adhere to all land use regulations of the City of Eden;

- (4) The use shall adhere to all building codes and fire codes of the City of Eden;
- (5) The flea market shall only operate during normal business hours of operation of the Eden Mall;
- (6) No signage – temporary or permanent – may be erected other than normal signage permitted by the Sign Ordinance for the BSC zoning district. Any such signage must obtain required permits and adhere to all requirements of the Sign Ordinance.
- (7) The flea market must be entirely indoors; no outside sales or display shall be allowed.

Staff recommended approval of the Special Use Permit.

Charles Johnson – What are the normal business hours there now?

Kelly Stultz – My supposition is that it would be from 9 or 10 in the morning until 8 or 9 at night.

Kelly Stultz offered as a comment and not as evidence that the owner of the former K-Mart building and some of the outparcels had called and were against this application.

Charles Johnson ask if they could have a yard sale outside? Kelly replied that calling it something else did not change the fact that it was a flea market outside and that was specifically prohibited.

Charles ask if, for instance, Morehead High School wanted to have a yard sale to raise money for a project, could they do that outside the mall? Kelly responded that if she were riding by on a Saturday morning and saw it she would stop to see what was going on and contact the owner.

The flea market can only operate inside the mall in the public areas but nothing can be sold outside on tables.

Brad Powell recently purchased the Belk building at the mall and was disappointed other owners at the mall were not present. The mall is in good shape. The doors which adjoin the mall have been closed. The mall is owned by several people. He wants to see the mall rejuvenated. His building is a consignment shop which includes a restaurant. He does not want the complete mall to be a flea market. The other side of the mall does not have heating and air conditioning and that is why he does not open his doors to the mall. He provided pictures of his building.

Kelly reminded the board members that this is a quasi-judicial proceeding and he needs to provide evidence about the business in question.

Mr. Powell explained that the mall itself is in bad shape and there are aquariums catching the water from a leaking roof. He is trying to have a meeting of the other owners to try to improve the mall and bring new businesses. Eden already has a flea market and doesn't think this is a viable use for the mall.

Kenneth Davis – Manager of the Mall. The mall is in better shape than it has been in 9 years. The roof has been patched but it will probably never be replaced. They are trying to keep it clean. All the money from renters has not been put back into the mall. It has needed a lot of work and will try make repairs as they can. When Mr. Wise left in October, he had the electricity turned off. It took months to get it turned on again. They have cleaned outside and inside.

Kelly Stultz – Please remember that all of the building, electrical, plumbing, mechanical codes and non-residential building codes will have to be met. My office enforces those and will have to be met before any business goes into the mall. The codes do not change with owners. Special Use Permits are always a risk and that's why special requirements are put on the permit. Mr. Wise did try to do this when he was there but never would come in to make the application.

Charles Johnson – Is there a time frame?

Kelly informed the board that there is. It has to be open and operational within six months. Bob and Josh are very familiar with the conditions of the mall.

Kennith White – If we approve this permit tonight, does he has to prove all of the fire codes and everything meets requirements?

Kelly Stultz told him yes. There will be an inspection.

Ken Davis told the board that he had a list from the Fire Marshal of things that needed to be done before they opened.

Sherry Morgan – Rents the Total Vintage Marketplace in the former Belk building. Citizens seem to like the store and how it looks. Having a flea market beside of her business will be confusing to people coming to the mall. A flea market will be a conflict to her business.

Hope Gilley made a motion that the request be approved as submitted and with the recommended conditions. A second was made by Charles Johnson and the motion carried unanimously.

**ADJOURNMENT:**

There being no further business to come before the Board, a motion and a second was made for adjournment. Motion carried unanimously.

Respectfully submitted,

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Kelly K. Stultz, Administrative Assistant to  
the Board of Adjustment

ATTEST:

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Cleveland Ellison, Chairman