



City of Broken Arrow

Minutes Planning Commission

City Hall
220 S 1st Street
Broken Arrow OK
74012

Chairperson Ricky Jones
Vice Chairperson Lee Whelpley
Commission Member Fred Dorrell
Commission Member Mark Jones

Thursday, June 13, 2019

Time 5:00 p.m.

Council Chambers

1. Call to Order

Chairperson Ricky Jones called the meeting to order at approximately 5:00 p.m.

2. Roll Call

Present: 4 - Mark Jones, Fred Dorrell, Lee Whelpley, Ricky Jones

Chairperson Jones stated Commission Member Pablo Aguirre was leaving the Planning Commission. He presented Mr. Aguirre with a Plaque of Appreciation in “recognition and appreciation of his continued support and involvement on the City of Broken Arrow Planning Commission, February 2, 2018 to June 5, 2019.” He thanked Mr. Aguirre for his help and support on the Planning Commission, as well as the Board of Adjustment.

3. Old Business

A. 19-763

Public hearing, consideration, and possible action regarding the proposed modifications to Table 3.1-1; Section 3.2.C and 3.3.D; Table 5.4.1; and Section 10.3.D.11.a of the Broken Arrow Zoning Ordinance

Acting Development Services Director Larry Curtis reported these were modifications to the Zoning Ordinance proposed in regards to bed and breakfast facilities. He explained the modifications would bring the Zoning Ordinance in line with the modern take on bed and breakfasts to accommodate such entities as Air B&B. He stated currently bed and breakfasts were only permissible in commercially zoned and agricultural districts with a Specific Use Permit. He explained the modifications would create three different types of bed and breakfast facilities within the City of Broken Arrow. He discussed each type and relayed what was permitted for each type including in which district each type was permitted, owner in residence requirements, number of guests, cooking facilities, parking, architectural requirements, lighting and signage, permitting, etc. He reported 1) Type 1 was permitted in agricultural residential districts and in the Downtown Residential Overlay District in Areas 1, 2, 3, 4, and 5; Type 1 required an annual City Permit. 2) Type 2 was permitted by Specific Use Permit in agricultural, RE, RS-1, R-1, RD and RM zoning districts and by Specific Use Permit in the Downtown Residential Overlay District in Areas 1, 2, 3, 4 and 5, and was permitted in the Downtown Residential Overlay District in Area 6. 3) Type 3 was permitted by Specific Use Permit in the NM (neighborhood mixed use), CM (commercial mixed use), and DF (downtown fringe), and permitted by right in the agricultural, downtown mixed use, commercial general, commercial heavy, and permitted by right in the Downtown Residential Overlay District in Area 6. He reported Type 3 must collect hotel/motel tax and remit these taxes to the City of Broken Arrow. He noted these Ordinances were stricter than in other areas. He reported currently in the City of Broken Arrow there were approximately 120 such facilities operating illegally. He noted Code Enforcement had been sent out in relation to some of these facilities, some had come forward wishing to become compliant with City Code, and Broken Arrow wished to bring Code into alignment for these type of facilities.

Chairperson Jones stated he had reviewed other city’s codes; he appreciated how Broken Arrow divided the bed and breakfasts into three different categories, and that Type 2 and Type 3 required a Specific Use Permit. He reported last week he was in Water Color, Florida which was a community of Air B&B type facilities and was very successful.

Mr. Curtis stated Staff understood the concerns Citizens had in regards to these facilities and felt requiring facilities to be permitted enabled the City to be aware of the location of the facilities, and requiring Type 1 owners to be in residence encouraged the owner to take responsibility for the visitors. Vice Chairperson Whelpley asked if the Specific Use Permits had time limits. Mr. Curtis responded the Specific Use Permits could include time limits or the Planning Commission could add a caveat to the Ordinance clearly stating Planning Commission had the right to add a time limit if it so chose.

Chairperson Jones opened the Public Hearing for Item 3A. He noted if any present wished to speak said individual was required to sign up. He indicated he had several citizens signed up to speak.

Ms. Paula Fricke stated her address was 4005 S. Birch Place, Broken Arrow, OK 74011. She stated she loved Broken Arrow. She noted she was worried about possible traffic increase, noise increase, and “stranger danger.” She asked if these areas were being rezoned as business or commercial. Chairperson Jones responded the areas were not being rezoned. He explained the Zoning Ordinance was being amended to permit bed and breakfasts under certain conditions. Ms. Fricke stated she had friends who lived near Air B&B homes and had to deal with increased street traffic with multiple cars being parked on the street daily. She stated she worried about emergency vehicle access. She asked if there were plans regarding parking for the Air B&B’s. Mr. Curtis responded in the affirmative; he explained in the Type 1 instance one parking space was required for the owners in residence, as well as one parking space for each room (up to two rooms). He explained this meant the owner was required to provide parking spaces in a driveway on-site; on-street parking was not permitted. Ms. Fricke stated driveway parking in residential areas was limited; most driveways could not accommodate three cars. Mr. Curtis noted putting these regulations into place would enable to the City to enforce said parking regulations; without regulations in place there was nothing to enforce. Ms. Fricke asked if anyone with any house could host a bed and breakfast. Mr. Curtis responded in the negative; there were building codes in place for short term stay facilities and homes would be inspected annually to ensure compliance. Chairperson Jones stated the bed and breakfasts were also required to comply with other ordinances, such as the Noise Ordinance. Ms. Fricke asked about home owners associations. Mr. Curtis explained HOAs were private agreements between property owners and were not enforceable by the City. He noted if an HOA did not allow a home to be used as a bed and breakfast then the HOA needed to act. Ms. Fricke asked how food service would be regulated in the bed and breakfasts. Mr. Curtis responded the Health Department regulated food service. Ms. Fricke asked about insurance requirements. Chairperson Jones stated the City did not regulate insurance; it was the owner’s responsibility to acquire proper insurance. Ms. Fricke noted her biggest concern was the possibility of a bed and breakfast or Air B&B bringing her property value down. Chairperson Jones stated he understood her concern, but explained the Planning Commission did not regulate property values.

Mr. James Frere stated his address was 907 S. Willow Avenue, Broken Arrow, OK 74012. He stated he had similar concerns to Ms. Fricke. He indicated his HOA specifically ruled out any kind of commercial business in the neighborhood. He stated he worried there would be no recourse if his neighbor filed for a permit with the City of Broken Arrow and the HOA was unaware. Chairperson Jones explained the City could not enforce HOA rules and guidelines; enforcement of such rules was incumbent upon the homeowners. He stated his HOA regulated the color of shingles, and while the City might issue a permit for blue shingles it was incumbent upon the property owners to enforce the HOA covenant. Mr. Frere stated he was worried the City could issue a permit and the HOA had no way of knowing the permit was issued. He stated he felt if the City was going to allow bed and breakfasts to be run out of any neighborhood the City should be responsible for informing HOAs of permit acquisition. Assistant City Attorney Tammy Ewing stated the City was required to be consistent in how it conducted business. She explained there was a list of home occupations which were allowed within the City, while an HOA may not permit such businesses. She stated the City could not notify all HOAs whenever a home business came into existence. Mr. Frere disagreed. He believed if the City were to sign a permit it was the City’s obligation to inform the neighborhood of the permit. Assistant City Attorney Ewing stated all Specific Use Permit applications were advertised in the newspaper and on the City web site. Mr. Curtis explained a Type 2 or a Type 3 bed and breakfast which required a Specific Use Permit, required notification via public newspaper, residents within a 300 foot radius of the property would be notified by mail, and a sign would be posted on the property regarding the Public Hearing for the Specific Use Permit. He stated a Type 1 would not require a Specific Use Permit, only a permit from the City. Mr. Frere stated this was what concerned him. He stated he did not want his neighborhood to be filled with Air B&B’s which did not have enough driveway parking. He stated he believed the City should inform residents when Air B&B permits were issued. He asked when he would know if his request was being honored. Chairperson Jones explained the Planning Commission process. He explained the Planning Commission was a recommending body only; City Council would make the final decision.

Mr. Spencer Gainey stated his address was 2115 E. 36th Street, Tulsa OK. He stated he represented the Greater Tulsa Association of Realtors (GTAR). He stated the GTAR shared many of the same concerns such as security and property values. He asked if an individual applied for a Type 2 Specific Use Permit was required to go through the application process annually. Mr. Curtis responded this was what Vice Chairperson Whelpley was asking earlier: would there be a Specific Use Permit time limit. He stated he believed the Planning Commission would discuss this issue in a moment. Mr. Gainey stated he understood it was a vigorous process, which he approved of, as this helped with security. He stated he believed acquisition of a house through Air B&B or VRBO ensured homes would not be trashed due to information requirements, which included name, address, credit card information, etc. He stated he was concerned the notice in the newspaper could cause security issues by informing others there would be a home which would be unoccupied full time, such as Type 2 homes in

which the owner was not on the property. He stated he was also concerned about the illegal operation of bed and breakfasts. He asked if home owners would be allowed to continue to rent out homes through VRBO and Air B&B if not registered with the City. He stated he worried if the process to gain a permit was too vigorous residents would be deterred from applying for a permit. He noted Type 2 bed and breakfasts were routinely well-maintained due to rental competition; if the home was not beautiful, clean and well-maintained it would not rent. He stated as a result he believed short term rentals actually increased property values. He noted there was a difference between an Air B&B home and a fully operational bed and breakfast. He stated GTAR would love to sit down with the Planning Commission and City Staff to discuss Air B&B and VRBO.

Mr. Curtis asked if Mr. Gainey had witnessed any security issues which arose from public notice regarding Special Use Permits. Mr. Gainey responded in the negative; it was a concern, but he had no hard data. He stated he believed neighborhood residents should be made aware, but maybe in a manner different than a sign posted in the front yard and announcement in the public newspaper. He stated in response to Mr. Frere's HOA concerns HOAs superseded City permit issuance.

He asked if any others present wished to speak regarding Item 3A; hearing none, he closed the Public Hearing.

Commissioner Dorrell asked, for purposes of clarification, how the zoning ordinance modifications would change what was happening currently with Air B&B and VRBO. He noted there were 120 bed and breakfasts/Air B&B's in operation currently over which there was no control. He asked how the modifications would help. Mr. Curtis responded the modifications would enable the City to track the rental properties, all three types. Commissioner Dorrell stated he understood the concerns about an Air B&B in the neighborhood and he felt the modifications were beneficial as the Air B&B would have to be publicized which gave the home owner's association and the neighbors the opportunity to come before Planning Commission with concerns. He stated he felt there should be a time limit applied to the Specific Use Permits.

Mr. Curtis stated the City wished to be more diligent regarding these types of facilities, and having these regulations in place, which included fire codes, safety codes, permitting, etc., enabled the City to enforce the regulations. He stated the City of Broken Arrow was known for its PUD use. He noted these zoning modifications would not affect any PUDs in the City; PUDs superseded the zoning modifications. He explained this meant if a development had a PUD which prohibited this type of facility the PUD would require modification by the Planning Commission and City Council prior to allowing this type of facility, which again required public notification. Chairperson Jones noted most of the residential developments in Broken Arrow had a PUD. Discussion ensued regarding HOAs, HOAs policing themselves, HOAs never being aware of violations prior to the violation, and HOAs being reactive in enforcement.

Vice Chairperson Whelpley asked why a Specific Use Permit was not required for a Type 1 bed and breakfast. Mr. Curtis responded Type 2 facilities did not require the presence of the home owner. He explained Type 1 facilities required the home owner's presence in the home, and as such the owner was present and accountable; therefore, Staff did not feel a Specific Use Permit was needed. Chairperson Jones agreed this was sensible; as a homeowner he felt he had the right to rent a room in his house if he wished. Mr. Curtis reported Staff conducted extensive research regarding the zoning modifications and the various types of bed and breakfast facilities and what was being done in other communities. Chairperson Jones stated Specific Use Permits stayed with the land unless a time limit was in place. Mr. Curtis asked if a change of ownership condition could be applied to a Specific Use Permit. Assistant City Attorney Ewing stated a change of ownership could be applied to a Specific Use Permit, but she was unsure if it could be written into the ordinance. Chairperson Jones stated he believed a time limit clause would be a better regulator than a change of ownership clause.

Vice Chairperson Whelpley noted there was concern about parking. He explained the ordinance required one parking spot per room be provided, which meant if a husband and wife rented a room and brought two cars, one of the cars would be required to be parked elsewhere, not in the street.

Discussion ensued regarding the police being notified if cars were parked in the street as this was an ordinance violation, on-site parking being required, the permit not being issued unless the applicant showed how parking was provided properly, the City inspecting the property prior to permit issuance for Type 1, 2 and 3, the permit for Type 1 having a one year time limit with annual reapplication and annual re-inspection being required, and the permit granting the City the right to inspect a property if a health or safety complaint were filed at any time throughout the year.

Chairperson Jones stated he felt Staff had done due diligence and the zoning modifications seemed well reasoned. Vice Chairperson Whelpley asked if the permits were standard or if Broken Arrow had drafted the permits. Mr. Curtis responded if this were approved by City Council, City Staff would draft the applications and could present the applications to the Planning Commission.

Commissioner Dorrell asked if he rented a room out to a friend would a Type 1 permit be required. Mr. Curtis responded in the negative; this was a short term rental permit. He explained long term rentals had different regulations.

Commissioner Jones made a motion to approve Item 3A 19-763 per Staff recommendation. The motion was seconded by Chairperson Jones. Vice Chairperson Whelpley made a motion to amend Commissioner Jones’s motion relating to the Specific Use Permit time limits not to exceed one year. Commissioner Dorrell seconded the motion. Discussion ensued regarding the amendment.

MOTION: A motion was made by Lee Whelpley, seconded by Fred Dorrell.

Move to amend the motion to approve Item 3A, 19-763, per Staff recommendation

The motion carried by the following vote:

Aye: 4 - Mark Jones, Fred Dorrell, Lee Whelpley, Ricky Jones

Chairperson Jones restated the amended motion for purposes of clarity: Move to approve Item 3A 19-763, per Staff recommendation, with the additional condition Type 2 and Type 3 Specific Use Permits were valid up to one year.

MOTION: A motion was made by Mark Jones, seconded by Lee Whelpley.

Move to approve Item 3A, 19-763, per Staff recommendation, with the additional condition Type 2 and Type 3 Specific Use Permits be valid up to one year

The motion carried by the following vote:

Aye: 4 - Mark Jones, Fred Dorrell, Lee Whelpley, Ricky Jones

Chairperson Jones explained the Planning Commission was a recommending body only; City Council would approve or deny this Item. He stated Item 3A would go before City Council on July 16, 2019 at 6:30 p.m. He explained if any individual desired to speak regarding this Item, said individual was required to fill out a Request to Appear before City Council form in advance. He thanked the individuals who came forward to speak. Commissioner Dorrell encouraged the public to go before City Council and speak regarding this Item.

4. Consideration of Consent Agenda

Staff Planner Amanda Yamaguchi presented the Consent Agenda.

- A. 19-643 Approval of Planning Commission meeting minutes of May 09, 2019**
- B. 19-723 Approval of Planning Commission meeting minutes of May 23, 2019**
- C. 19-705 Approval of PT19-109, Preliminary Plat, Highland 55 at Mission Hills, 19.63 acres, 1 Lot, PUD-189 (Planned Unit Development)/RM (Residential Multifamily) to PUD-189C/RM, north of Albany Street (61st Street), one-third mile west of 9th Street (Lynn Lane)**
- D. 19-644 Approval of PT19-107, Conditional Final Plat, Creek Center, a replat of a part of Possum Run Addition, 1.05 acres, 1 Lot, A-1 (Agricultural) to CG (Commercial General), west of the southwest corner of Kenosha Street (71st Street) and 51st Street (Evans Road)**
- E. 19-710 Approval of request to deviate from masonry exterior building materials, ST19-111 (Site Plan), Tulsa Urology, 0.87 acres, PUD (Planned Unit Development) 130B/CH (Commercial Heavy) and RM (Residential Multi-family), 850 W. Mission Street (one-quarter mile north of Albany Street, west of Elm Place)**

Chairperson Jones explained the Consent Agenda consisted of routine items, minor in nature, and was approved in its entirety with a single motion and a single vote, unless an item was removed for discussion. He asked if there were any items to be removed from the Consent Agenda; there were none.

MOTION: A motion was made by Fred Dorrell, seconded by Lee Whelpley.

Move to approve Consent Agenda Item 4A through Item 4E per Staff recommendation

The motion carried by the following vote:

Aye: 4 - Mark Jones, Fred Dorrell, Lee Whelpley, Ricky Jones

5. Consideration of Items Removed from Consent Agenda

No Items were removed from the Consent Agenda. No action was taken or required.

6. Public Hearings

- A. 19-650 Public hearing, consideration, and possible action regarding BAZ-2029, Doyle Rezoning, 5.10 acres, A-RE to RE, one-third mile north of New Orleans Street (101st**

Street), one-quarter mile west of 23rd Street (193rd E. Avenue/County Line Road)

Planner II Jane Wyrick reported BAZ-2029 was a zoning designation request to change from A-RE (annexed residential estate) to RE (residential estate). She stated the applicant proposed to sell a 2 acre portion of the property and submitted a lot split and lot consolidation request in conjunction with BAZ-2029. She reported the property currently consisted of two 2.55 acre lots; with the lost split 0.55 of an acre would be split from the south parcel and consolidated with the north parcel, resulting in a 3.1 acre parcel and a 2.0 acre parcel. She stated the property was assigned annexed residential estate (A-RE) zoning when it was annexed into the City of Broken Arrow in 2000. She noted in the RE zoning district minimum lot size was 24,000 square feet with a minimum lot frontage of 175 square feet. She reported the current lots and resulting lots met the minimum lot size and lot frontage requirements for the RE district. She stated as part of the lot split process utility easements would be designated along the street frontages in accordance with Subdivision Regulations. She noted there was one error in the Staff report which stated both right-of-way and utility easements were required, but right-of-way was not required. She reported three other properties within the neighborhood had been rezoned from A-RE to RE between 2007 and 2016. She stated the Future Development Guide for the Comprehensive Plan showed the site to be in Level 1 and RE zoning was considered to be in accordance with the Comprehensive Plan in Level 1. She stated based on the Comprehensive Plan, location of the property and the surrounding land uses, Staff recommended BAZ-2029 be approved, platting be waived, and be subject to a 17.5 foot utility easement being recorded along the street frontage prior to the warranty deeds being stamped.

Chairperson Jones noted the applicant was in agreement with Staff recommendations.

Chairperson Jones opened the Public Hearing for Item 6A. He asked if any present wished to speak regarding Item 6A; hearing none, he closed the Public Hearing.

MOTION: A motion was made by Mark Jones, seconded by Lee Whelpley.

Move to approve Item 6A, BAZ-2029, per Staff recommendation

The motion carried by the following vote:

Aye: 4 - Mark Jones, Fred Dorrell, Lee Whelpley, Ricky Jones

Chairperson Jones stated Item 6A would go before City Council on July 16, 2019 at 6:30 p.m. He recommended the applicant attend this City Council Meeting. He explained if any individual desired to speak regarding this Item, said individual was required to fill out a Request to Appear before City Council form in advance.

7. Appeals

There were no Appeals.

8. General Commission Business

There was no General Commission Business.

9. Remarks, Inquiries and Comments by Planning Commission and Staff (No Action)

Mr. Farhad Daroga announced on June 18, 2019 the Elm and New Orleans Special Study Public Meeting would be held at 7:00 p.m. at the Nazarene Church on New Orleans, just east of Elm. He stated Catalyst Consultants would make a presentation. He invited all to attend. Chairperson Jones asked if the presentation was different from the draft presentation he had a copy of. Mr. Daroga responded in the negative; after hearing public input during the Meeting the draft would be adjusted and presented to the Planning Commission and then City Council.

Mr. Daroga announced a Comprehensive Plan Joint Work Session would be held Thursday, June 20, 2019 at 5:00 p.m. in City Hall in the Conference Room. He stated the consultants would be in attendance and a new draft would be created upon hearing input from Planning Commission, City Council and Staff. He stated the Comprehensive Plan Public Hearing would take place in July.

Assistant City Attorney Ewing noted Specific Use Permits and Special Use Permits were two different permits with separate applications. She explained why a motion and second was always required and why a motion to amend was required. Discussion ensued regarding motion and second requirements.

10. Adjournment

The meeting adjourned at approximately 6:08 p.m.

MOTION: A motion was made by Mark Jones, seconded by Fred Dorrell.

Move to adjourn

The motion carried by the following vote:

Aye: 4 - Mark Jones, Fred Dorrell, Lee Whelpley, Ricky Jones