



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
Commission Member Pablo Aguirre

Thursday, May 23, 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 - Pablo Aguirre, Fred Dorrell, Lee Whelpley, Ricky Jones
Absent: 1 - Mark Jones

3. Old Business

A. 19-631 Public hearing, consideration, and possible action regarding the proposed modifications to Sections 5.7 (Signs) of the Broken Arrow Zoning Ordinance

Planner II Jane Wyrick reported Section 5.7 of the Zoning Ordinance was proposed to be modified to update sign code requirements. She noted the existing sign code was approved by City Council in January of 2008 and had been in effect since February 2008 with modifications and updates in preceding years. She reported in 2015 the Supreme Court ruled Gilbert, Arizona town sign regulations were content based and were an unconstitutional regulation of speech as the town sign regulations included different rules for different categories of signs. She explained if a sign code included content based language it was subject to strict scrutiny by the courts and a municipality must be able to demonstrate the language was included to further a compelling government interest. She noted a section outlining the purpose and intent of Broken Arrow sign ordinance was expanded in Section 5.7. She explained Broken Arrow was amending Section 5.7 of the Zoning Ordinance in response to the Supreme Court ruling. She explained other language was being adjusted to accommodate newer technology signage, included a new definitions section, and addressed signage within Area 7 of the DROD. She stated Staff recommended approval of the proposed modifications to Section 5.7 of the Broken Arrow Zoning Ordinance as presented and an Ordinance be drafted for City Council approval.

Chairperson Jones asked if signs which advertised a product not sold on location and were considered off premise advertising signs were included as content based signage. He asked if such signage would be prohibited. Acting Development Services Director Larry Curtis responded in the negative; for example, a billboard advertising pest control placed on property which was utilized to sell fast food was permitted.

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 Pablo Aguirre, seconded by Lee Whelpley.

Move to approve Item 3A, 19-631, per Staff recommendation

The motion carried by the following vote:

Aye: 4 - Pablo Aguirre, Fred Dorrell, Lee Whelpley, Ricky Jones

Chairperson Jones stated Item 3A would go before City Council on June 17, 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.

4. Consideration of Consent Agenda

Planner II Jane Wyrick presented the Consent Agenda.

A. 19-576 Approval of PT19-100, Conditional Final Plat, Independent School District No. 3 (Broken Arrow Public Schools, Elementary 16), 38.734 acres, 1 Lot, A-1, one-half mile north of New Orleans Street (101st Street), one-half mile west of Evans Road (225th E. Avenue)

Ms. Wyrick indicated the applicant and Staff agreed to remove Checklist Items 13 and 15 for this Item and she recommended the Planning Commission's motion reflect this adjustment.

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 Mark Jones.

Move to approve Consent Agenda Item 4A including removal of Checklist Items 13 and 15 per Staff recommendation

The motion carried by the following vote:

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

Chairperson Jones stated Item 4A would go before City Council on June 17, 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.

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. 19-547 Public hearing, consideration, and possible action regarding BAZ-2027, Callaway Project, 7.03 acres, A-1 to RD, one eighth mile south of Jasper Street (131st Street), east of Olive Avenue (129th E. Avenue)

Acting Development Services Manager Larry Curtis reported BAZ-2027 was a zoning request change from A-1 (agricultural) to RD (residential duplex). He explained the applicant proposed to sell the property associated with BAZ-2027 to residents who wished to build a 5,500 square foot detached single family home on the property. He explained the couple wished to split the property into two lots and sell the remaining parcel to an individual with the intent to build a single family detached home. He noted the property was currently zoned A-1 with a minimum lot size of 5 acres and a minimum frontage of 330 feet. He noted the property was designated as Level 3 in the Comprehensive Plan and RD zoning was in compliance with the Comprehensive Plan in Level 3. He explained whereas R-2 and R-3 zoning were also in compliance with the Comprehensive Plan, due to the limitation of lot size and the distance from other zoning districts with R-2 or R-3 classification, it was determined RD zoning was more appropriate in this area. He stated on April 26, 2019 the applicant mailed a letter to all property owners on the radius report list informing the property owners of his intent to divide the property into 3.5 acre lot estates with each lot containing a single family home. He reported the applicant indicated positive response. He stated based on the Comprehensive Plan, location of the property and the surrounding land uses, Staff recommended BAZ-2027 be approved subject to the property being platted. He explained Staff recommended platting be waived if the property was developed for single family homes, but platting be required if developed for a residential duplex type home. He noted the warranty deeds associated with the lot split would specify each property could only be used for a single family detached residence.

Chairperson Jones stated while platting was waived if the property was developed for a single family home, if RD zoning was approved development of the property into residential duplex type homes would be permitted. Mr. Curtis explained a self-imposed restriction would be placed on the lot split which indicated the property could only be used for single family development. He indicated to develop the property for multifamily purposes an applicant would be required to come before the Planning Commission and request to revoke the restriction prior to platting the property for duplex purposes.

The applicant, Mr. Cody Callaway, stated his address was 300 N. Main Street, Suite A, Broken Arrow, OK 74012. He stated he was in agreement with Staff recommendations. He explained the reasoning behind the request for RD zoning rather than R-1 or R-2 zoning, as R-1 or R-2 zoning would require a Comprehensive Plan change.

Commissioner Pablo Aguirre asked about the restriction clause. Mr. Curtis explained the language within the Deed Document stated “no additional split would be permissible without approval of the Planning Commission” and “only a single family home may be permissible on this lot” and “this use cannot be modified without approval of the Planning Commission.”

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 Pablo Aguirre, seconded by Lee Whelpley.

Move to approve Item 6A, 19-547, per Staff recommendation

The motion carried by the following vote:

Aye: 4 - Pablo Aguirre, Fred Dorrell, Lee Whelpley, Ricky Jones

Chairperson Jones stated Item 6A would go before City Council on June 17, 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.

B. 19-569 Public hearing, consideration, and possible action regarding BAZ-2028, Callaway Parking Lot, 0.72 acres, DROD Area 5 (Downtown Residential Overlay)/R-3 (Single

Family Residential), ON (Office Neighborhood), and PUD-242 (Planned Unit Development) to DROD Area 5 (Downtown Residential Overlay)/ON (Office Neighborhood), on the northeast corner of Detroit Street and First Street

Mr. Larry Curtis reported BAZ-2028 was a zoning change request from DROD Area 5/R-3 (single family residential) to DROD Area 5/ON (office neighborhood). He stated the property was platted as Lot 17 through Lot 15 of Block 17 in the original town of Broken Arrow. He noted Milestone a 4 story building with 31,000 square feet of commercial space on the ground floor and 3 levels of apartments containing 90 units was under construction immediately west of this property. He reported the applicant proposed to develop a covered parking lot with fencing and landscaping to be used by Milestone. He explained while a parking structure was not permitted in the R-3 Zoning District it was identified as a permitted use in Area 5 of the DROD; therefore, the applicant requested to keep DROD Area 5, but change the underlying zoning district from R-3 and ON/PUD-242 to ON which would revoke the underlying PUD-242. He stated the Comprehensive Plan showed this area designated as Level 5, and ON was identified as possible in the Comprehensive Plan in Level 5. He noted there was no height impact. He stated based on the Comprehensive Plan, location of the property and the surrounding land uses, Staff recommended approval of BAZ-2028. He stated Staff recommended platting be waived as the property was previously platted. He noted a site plan for the parking lot would be submitted and approved by staff prior to development. He noted the parking lot would be screened and landscaped in accordance with the Broken Arrow zoning code.

The Applicant Cody Callaway stated his address was 300 N. Main Street, Suite A, Broken Arrow, OK 74012. He stated he was in agreement with Staff recommendations. He stated he originally intended to develop an office building on this property, but once Milestone was underway he realized a parking lot would be more appropriate. He thanked Staff for being helpful during the process.

Chairperson Jones opened the Public Hearing for Item 6B. He asked if any present wished to speak regarding Item 6B.

Mr. Don Linley stated his address was 22629 E. 81st Street, Broken Arrow, OK. He stated he had lived at this address for 46 years and owned the property at 233 E. Elgin near the proposed zoning change. He stated he had no concerns with the zoning change. He asked if it was normal for a zoning change to be requested after development had begun as he noted the Milestone building was currently under construction. He stated he wondered whether he should proceed with his intended property improvements or if his property value might increase and be worth selling to a developer in the near future. He asked if his property would require a zoning change for this purpose. Mr. Curtis explained the Milestone property was unrelated to the property which was requesting a zoning change currently; therefore, the request was not being made after development had begun. He explained the zoning change would not affect Mr. Linley's property. He noted Staff would be happy to speak with Mr. Linley following the Planning Commission Meeting regarding whether his property would require a zoning change to be sold for the purpose of office building development.

Chairperson Jones stated the Milestone project had caused some concern to a church located south of the property regarding parking on church property by Milestone visitors. He noted this proposed parking development potentially could alleviate this concern.

Chairperson Jones asked if any others present wished to speak regarding Item 6B; hearing none he closed the Public Hearing.

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

Move to approve Item 6B, 19-569, per Staff recommendation

The motion carried by the following vote:

Aye: 4 - Pablo Aguirre, Fred Dorrell, Lee Whelpley, Ricky Jones

Chairperson Jones stated Item 6B would go before City Council on June 17, 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.

C. 19-578 Public hearing, consideration, and possible action regarding PUD-161H, a request for a major amendment to Planned Unit Development 161, Savvy Swimmers, 0.87 acres, PUD-161/CG, located one eighth mile west of Olive Avenue (129th E. Avenue), north of Kenosha Street (71st Street)

Ms. Jane Wyrick reported PUD-161H was a major amendment request to PUD-161. She reported the Design Statement indicated this project was planned as a scuba diving and swim instruction facility called Savvy Swimmers. She explained when PUD-161 was approved in 2005 the property was zoned C-2 (planned shopping center) which did not include commercial swimming pool as a permitted use. She noted the Zoning Ordinance was updated and C-2 zoning was converted to CG (commercial general) which did not include a designation for

commercial swimming pool, but included general indoor recreation use. She stated the applicant proposed to include general indoor recreation as a permitted use. She reported other requested amendments included a reduction of the rear setback from 50 feet to 25 feet, allowed a deviation in exterior building materials to include metal, glass and masonry, and amended the parking ratio to 1 space per 300 square feet. She reported in October of 2016 City Council approved PUD-161G on this property to reduce the rear setback from 50 feet to 23 feet, with a single story building, 8 foot high screening fence along the east boundary, installation of irrigation, and restaurant use prohibition with all other PUD-161 regulations remaining in effect. She noted PUD-161G was not vested; therefore, it never took effect. She noted the adjacent property to the south was included in PUD-143A, approved by the Planning Commission as a minor amendment in May of 2007, which allowed the rear setback to be reduced from 50 feet to 23 feet with several restrictions. She reported the renderings for the project showed two driveways and a drive isle which circled the back of the building. She noted the applicant indicated access was needed to the rear of the building for pickup and drop off of heavy scuba equipment; however, the drive isle would limit the width of the landscape buffer adjacent to the east property boundary. She stated Staff recommended a minimum 10 foot wide landscape buffer in this location. She explained the various zoning ordinance requirements regarding parking and noted the applicant requested modifying the parking requirement due to this being a pool facility; Staff agreed. She reviewed other PUD requirements which were in accordance with PUD-161. She noted a patio area was planned; Staff suggested hours of operation be applied to the project and amplified sound not be permitted in the patio area. She stated Staff recommended no second floor windows facing residential uses, along with a 35 foot height limit. She reported there was no flood plain on the property. She reported staff received four phone calls regarding this project: two asked about the nature of the project, one had a concern regarding noise, and one was opposed to the project. She stated based on the Comprehensive Plan, location of the property and the surrounding land uses, Staff recommended PUD-161H be approved with the included conditions.

Chairperson Jones asked if the individual who was opposed to the project indicated a reason. Ms. Wyrick responded in the negative; the individual only stated "that won't work."

Chairperson Jones asked if the applicant was present. Ms. Wyrick responded in the negative; the applicant's wife, the architect, instructor and realtor were present.

The applicant's wife, Mrs. Heidi Bailey, stated her address was 107 E. Main Street, Jenks, OK 74037. She stated she was mostly in agreement with Staff recommendations. She asked if it would be possible to play light coffee shop style background music on the patio as it was intended as a waiting place for parents during lessons. Chairperson Jones asked if Ms. Bailey would be in agreement with days and hours for music permission. He explained "light music" was a nebulous term and hard to enforce; therefore, unless Ms. Bailey could set decibel limitations, as well as hours of operation, residents would be concerned. He stated he was willing to permit Ms. Bailey or the architect to work with staff to determine an enforceable decibel level and operating hours for music. Ms. Bailey stated she understood and agreed. Ms. Wyrick noted the building could be moved forward 5 feet to provide an additional buffer in back of the property. Chairperson Jones stated he believed an accommodation could be reached, but he was unwilling to allow "light music" without establishing ground rules through Staff.

Commissioner Aguirre asked how many exceptions were being requested through the PUD. Ms. Wyrick responded essentially three exceptions and listed said exceptions.

Chairperson Jones asked if the applicant agreed with the remaining staff recommendations, such as the window restriction. Ms. Bailey responded in the affirmative. Chairperson Jones asked about Ms. Bailey's current facility which operated in Jenks. Ms. Bailey explained the facility in Jenks was a scuba school and had been in operation for three years. Mr. Curtis asked if Ms. Bailey intended to operate two schools or move the school to Broken Arrow. Ms. Bailey responded the school would be moving to Broken Arrow.

Vice Chairperson Whelpley asked if the patio would include surrounding materials to mute sound. Ms. Bailey stated her architect could better answer this question. The applicant's architect, Mr. Scott White, stated his address was 10410 E. 112th Place South. He stated there would be shrubbery, a privacy fence, and a 10 foot buffer zone with trees. He noted the back side of the patio would include a 5 foot wall, as well as shrubbery surrounding the patio. Chairperson Jones noted there were noise ordinances in place as well.

Commissioner Aguirre asked why the building had been moved back on the property. Mr. White responded there was an issue with the irregularly shaped lot, front setback, building size, and sidewalk requirements. He noted the building was now setback 35 feet from the rear of the property. Chairperson Jones noted parking would be along the side of the building. Mr. White concurred.

Chairperson Jones opened the Public Hearing for Item 6C. He asked if any present wished to

speaking regarding Item 6C.

Ms. Cindy Mayner stated her address was 1109 N. Kalanchoe Avenue, Broken Arrow, OK. She stated she owned the building next door to this proposed project. She stated she was thrilled with the proposed project and had no concerns regarding the patio. She stated she was concerned about potential overflow parking onto her property, as well as from her property onto Savvy Swimming property. She stated she wished to contact the Baileys regarding parking and the possibility of partnering with Savvy Swimming for parking space. Chairperson Jones noted a large portion of the building would be pool space which Staff felt would not need the same parking requirements as normal floor space parking requirements. He suggested Ms. Mayner contact Ms. Bailey following the meeting to discuss parking. Ms. Mayner agreed.

Chairperson Jones asked if any others present wished to speak regarding Item 6C; hearing none, he closed the Public Hearing.

Chairperson Jones stated Broken Arrow did not currently have a scuba/swim lesson facility and he approved of the project.

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

Move to approve Item 6C, 19-578, per Staff recommendation with the caveat the applicant can discuss with Staff a modification regarding patio music decibel level, and if an amenable compromise is reached the recommendation is to go on to City Council as noted.

The motion carried by the following vote:

Aye: 4 - Pablo Aguirre, Fred Dorrell, Lee Whelpley, Ricky Jones

Chairperson Jones stated Item 6C would go before City Council on June 17, 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

A. 19-633 **Consideration, discussion, and possible approval of modified Request to Appear forms and Guidelines for Planning Commission meetings**

Mr. Larry Curtis reported City Council recommended the Planning Commission and Board of Adjustment consider regulations regarding speaking time limits, as well as Request to Appear forms, similar to City Council regulations. He stated the City Clerk's office created a Request to Appear before the Planning Commission form and provided guidance as directed by City Council. He stated the Planning Commission should consider speaking time limits for applicants, as well as citizens. He explained these regulations allowed for orderly meetings, as well as provided documentation of individuals who appeared before the Planning Commission.

Chairperson Jones asked if there was a directive from City Council to implement this system. Assistant City Attorney Tammy Ewing responded in the negative. Chairperson Jones stated he felt the Planning Commission had operated successfully in the 16 years he had served without assigning time limits. He stated he believed the Planning Commission was cognizant enough to curb individual tangents which were unrelated to topic while allowing citizens to vent freely, especially as this was not permitted during City Council Meetings. He noted he appreciated the freedom to permit speakers as much time as needed when there were few speakers, while possibly implementing time limits when many were present to speak. Ms. Ewing stated asking citizens to sign up to speak was helpful for documentation purposes, improved accuracy of Meeting Minutes, became public record, and also enabled meeting attendees to indicate an "in support of" or "in opposition to" position without necessarily speaking. Discussion ensued regarding problems with these forms in the past, filing the forms with the City Clerk's Office, online sign-up, forms being available during the meeting, and concerns with time limits.

Commissioner Aguirre commented City Council had success with time limits and noted the forms would be beneficial as a means for data collection. Assistant City Attorney Ewing explained there were two separate issues: the form and the time limit. Commissioner Aguirre stated the future of the Planning Commission should be considered; while Chairperson Jones did an excellent job controlling the Planning Commission Meetings, he may not always be present. Discussion ensued regarding the current method of operation working smoothly, citizens getting angry with time restrictions, and City Council appreciating the Planning Commission allowing citizens to freely express opinions.

Vice Chairperson Whelpley stated he agreed the form which collected information would be beneficial; but he agreed Chairperson Jones did an excellent job steering speakers in the proper direction. Assistant City Attorney Ewing stated a lack of consistency of rules and regulations could lead to capricious arguments, especially if citizens felt unable to express themselves

simply because others had previously expressed similar opinions. Discussion ensued regarding Broken Arrow doing an excellent job running public hearings, neighboring municipalities, Planning Commissions versus City Councils, rules preventing chaos, and Planning Commission subject matter being less inflammatory than City Council subject matter.

Commissioner Fred Dorrell agreed with both Chairperson Jones and Commissioner Aguirre. He stated forms would be helpful, but were not necessary. He stated “grandstanding” was not an issue during Planning Commission Meetings and time limits could be both beneficial and problematic. Assistant City Attorney Ewing stated an agreement could be made to allow time limit extensions when desired via Planning Commission vote. Commissioner Dorrell stated he worried a time limit would promote filibustering to fill said time limit.

Discussion ensued regarding informing citizens the Planning Commission did not take property values into consideration, the narrow scope the Planning Commission was allowed to consider regarding recommendations, the possibility of including this type of information on the form, the possibility of standardized instructions for public hearings regarding speaker behavior, a blanket statement regarding the Planning Commission not considering property values possibly causing debate, being careful about phrasing of instructions and Planning Commission limitations, as well as Planning Commission Members being required to approve or deny requests regardless of personal feelings and opinions.

Chairperson Jones asked Staff for an opinion. Mr. Curtis stated Staff would like the form to help with record keeping. He stated Staff would like a time limit; however, he understood the Planning Commission acted as a sounding board regarding items which went before City Council. He indicated Staff was present to serve the Planning Commission; ultimately Staff would support whatever decision the Planning Commission made in this regard.

Commissioner Aguirre stated he approved of the form as it clarified who was permitted to speak and for how long. He noted he felt the suggested 5 minutes per public speaker, 10 minutes per applicant with an additional 5 minutes for a rebuttal was reasonable. He stated he believed the form should include a statement which clearly indicated the Planning Commission was not permitted to take property values into consideration in decision making, but in a nonabrasive manner.

Mr. Curtis suggested Staff was amenable to tabling this Item to allow the Planning Commission Members to consider this further individually and discuss again at a future Meeting. Planning Commission agreed to table Item 8A. Mr. Curtis indicated Staff would contact each Planning Commission Member individually to discuss opinions during the next two weeks. Assistant City Attorney Ewing asked Item 8A not be tabled or continued, but be put on a future Agenda as three separate Items, one being use of a sign-up form, two being guidelines and three being time limits. Mr. Curtis concurred. Commissioner Dorrell concurred.

Assistant City Attorney Ewing stated Chairperson Jones, as well as the other Planning Commission Members, did an excellent job running the Planning Commission Meetings. She stated she wanted him to understand the suggestion for new rules and regulations was not a negative reflection upon Chairperson Jones in any way. Chairperson Jones indicated he understood and commented the chairmanship was rotated regularly.

Discussion ensued regarding the benefits of requiring residents to fill out a form prior to the Meeting requesting to speak.

MOTION: A motion was made by Pablo Aguirre, seconded by Fred Dorrell.

Move to take no action regarding Item 8A

The motion carried by the following vote:

Aye: 4 - Pablo Aguirre, Fred Dorrell, Lee Whelpley, Ricky Jones

Commissioner Dorrell asked if this item would be placed back on the Agenda. Mr. Curtis responded in the affirmative.

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

Mr. Curtis asked for all present to be aware of the flooding conditions in south Broken Arrow and to be cautious.

Chairperson Jones stated he saw Mr. Norm Stephens while in Las Vegas at ICSC. He commended Mr. Stephens for an outstanding job representing and promoting the City of Broken Arrow.

Assistant City Attorney Ewing stated collectively the Planning Commission had more experience regarding the above discussed Item (Item 8A). She asked the Planning Commission Members to be creative and feel free to express any new ideas.

Special Projects Manager Farhad Daroga announced a joint work session with the Planning

Commission and City Council regarding the next Comprehensive Plan would be held on June 20, 2019 in the City Hall Main Conference Room at 5:00 p.m. He stated the Nazarene Meeting was rescheduled for Tuesday, June 18, 2019 at the Church of the Nazarene to review the Elm and New Orleans plan.

Assistant City Attorney Ewing reminded the Planning Commission of the Open Meetings Act requirement not to have discussions outside of Meetings regarding issues which might come before the Planning Commission.

10. Adjournment

The meeting adjourned at approximately 6:20 p.m.

MOTION: A motion was made by Pablo Aguirre, seconded by Fred Dorrell.

Move to adjourn

The motion carried by the following vote:

Aye: **4 -** Pablo Aguirre, Fred Dorrell, Lee Whelpley, Ricky Jones