



City of Broken Arrow

Minutes Planning Commission

City Hall
220 S 1st Street
Broken Arrow OK
74012

Chairperson Lee Whelpley
Vice Chairperson Ricky Jones
Commission Member Fred Dorrell
Commission Member Jaylee Klempa
Commission Member Julea' Merriott

Thursday, December 17, 2020

Time 5:00 p.m.

Council Chambers

1. Call to Order

Chairperson Lee Whelpley called the meeting to order at approximately 5:00 p.m.

2. Roll Call

Present: 4 - Julea' Merriott, Jaylee Klempa, Ricky Jones, Lee Whelpley
Absent: 1 - Fred Dorrell

3. Old Business

There was no Old Business.

4. Consideration of Consent Agenda

Staff Planner Amanda Yamaguchi presented this Item.

- A. 20-1563** Approval of BAL-2106CB (Lot Combination), Broadway Lot Combination, 3 Lots, 0.48 acres, northwest corner of Broadway and 3rd Street
- B. 20-1564** Approval of BAL-2105 (Lot Split), Broadway Lot Split, 2 Lots, 0.48 acres, northwest corner of Broadway and 3rd Street
- C. 20-1553** Approval of PT20-117, Preliminary Plat, The Rose Quarter, 0.45 acres, DM (Downtown Mixed-Use) and Area 6 (DROD), northwest corner of 1st Street and Elgin Street
- D. 20-1555** Approval of PT20-118, Preliminary Plat, Foundations Church, 7.5 acres, 1 Lot, R-1 (Single-family Residential) to CG (Commercial General)/SP-297 (Specific Use Permit), southeast corner of Kenosha Street (71st Street) and Olive Avenue (129th E. Avenue)
- E. 20-1565** Approval of PT20-112, conditional final plat, The Lakes at Rabbit Run, 35.51 acres, 100 Lots, A-1 to PUD-316A/RS-4, one-quarter mile south of New Orleans Street (101st Street), east of Olive Avenue (129th E. Avenue)
- F. 20-1558** Approval of a modification to Section 4.1(n) of the Land Subdivision Code for James Wickham, 1 lot, approximately 3.5 acres, RE (Residential Estate), west of Oak Grove Road (273rd East Avenue), one-quarter mile south of Kenosha Street (71st Street) at 27040 East 75th Street

Chairperson Whelpley asked if there were any items to be removed from the Consent Agenda; there were none. He 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.

MOTION: A motion was made by Jaylee Klempa, seconded by Julea' Merriott.

Move to approve the Consent Agenda

The motion carried by the following vote:

Aye: 4 - Julea' Merriott, Jaylee Klempa, Ricky Jones, Lee Whelpley

Chairperson Whelpley indicated Item 4E would go before City Council on January 19, 2021.

Ms. Yamaguchi indicated Item 4F would go before City Council on January 5, 2021.

5. Consideration of Items Removed from Consent Agenda

There were no Items removed from the Consent Agenda; no action was taken or required.

6. Public Hearings

- A. 20-1550** Public hearing, consideration, and possible action regarding SP-299, Church on the Move, 7.55 acres, request for a Specific Use Permit for a Place of Assembly, south of Kenosha Street (71st Street), east of 9th Street (Lynn Lane/177th E. Avenue)
Senior Planner Brent Murphy reported SP-299 was a request for a Specific Use Permit for a "Place of Assembly" use on property presently zoned CG (Commercial General) located south of Kenosha Street (71st Street), east of 9th Street (Lynn Lane/177th E. Avenue). He stated a shopping center containing approximately 68,000 square feet was located on the 7.55-acre parcel. He indicated approximately 24,000 square feet on the northeast corner of the shopping center, which was previously used as a drug store and as a health fitness facility,

was vacant. He stated Place of Assembly required a Specific Use Permit in all agricultural, residential, and commercial zoning districts; Place of Assembly was a permitted use in the ON (Office Neighborhood district). He explained Church on the Move wanted to hold church services in the existing vacant space on the northeast corner of the shopping center, and as a result, submitted a request for a Specific Use Permit. He indicated Church on the Move planned to occupy all 24,000 square feet of tenant space; according to the applicant: "Regular services will be held on Saturdays at 6:00 p.m. and on Sundays at 9:00 a.m., 11:00 a.m., and 4:00 p.m. In addition, youth services and activities will be held on Wednesday at 7:00 p.m. The remainder of the week, the facility will be used for various services and outreach initiatives that Church on the Move provides to the Broken Arrow community." He stated according to the applicant, the church would bring approximately 500 - 700 members of the church to the area each Sunday. He noted the applicant also stated, "Businesses in the Center (i.e., Dollar General, White River Fish Market, Coney Islander, and Express Oil Change) and other businesses in the area, such as Walgreen's and Reasor's, and restaurants, such as Chick-fil-A, Raising Cane's, and Schlotzky's will benefit from the activity generated by the church members before and after services. White River Fish Market is currently closed on Sundays but has indicated that it would likely open for the Sunday lunch hour if Church on the Move is located in the Center." He reported according to information provided by the applicant, County Line Shopping Center had 377 parking spaces; the Church has agreed to provide an additional 14 parking spaces and be in compliance with parking requirements of the Zoning Ordinance.

He explained in making decisions on rezoning requests, including Specific Use Permits, the City of Broken Arrow placed heavy emphasis on what was contained in the Comprehensive Plan. He reported Policy LU1 of the Comprehensive Plan stated, "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." He stated dining establishments which received less than 50 percent of revenue from alcohol sales were not impacted by the proximity of religious facilities; however, liquor stores and establishments which received more than 50 percent of revenue from alcohol sales had to be located more than 300 feet from a religious facility or public/private school. He explained therefore, if SP-299 was approved, there would be an impact on applications for future liquor stores and facilities which derived 50 percent or more of their income from alcohol sales. He stated the municipalities in Oklahoma relied heavily on sales tax generated from retail sales to fund and provide the City services. He noted along these lines, Policy LU10 of the Comprehensive Plan stated, "The City shall protect commercial areas from the encroachment of non-commercial uses." He indicated the Place of Assembly proposed with SP-299 would be an encroachment of a non-commercial use into a commercial area.

Mr. Murphy stated as per Section 3.1.A.2.b of the Zoning Ordinance, an "S" designation in a given district did not constitute an authorization or an assurance such use would be permitted, rather, each specific use permit application should be evaluated as to its probable effect on adjacent properties and surrounding areas and may be approved or denied as the findings indicated appropriate. He stated in determining whether or not a change in zoning, including Specific Use Permits, was appropriate, much emphasis was placed on what was recommended by the Comprehensive Plan.

Mr. Murphy reported according to Section 6.5.C.8 of the Zoning Ordinance, a Specific Use Permit could be approved only if the City Council found all of the following criteria have been met. He noted seven provisions were listed and the first provision was: a. The proposed use is consistent with the comprehensive plan and all applicable provisions of this Ordinance and applicable state and federal regulations. He stated in Staff's opinion, SP-299 was not consistent with the Comprehensive Plan policies LU1 and LU10 and Staff did not recommend approval of SP-299. He stated if the Planning Commission wished to approve Item 6A, Staff requested this Item be continued until the January 14, 2021 Planning Commission Meeting to allow further consideration of potential conditions of approval.

Vice Chairperson Ricky Jones noted the Planning Commission reviewed a similar case one month ago. He asked if it was Staff's opinion this proposed Place of Assembly violated policy LU1 and LU10 of the Comprehensive Plan. Planning and Development Manager Jill Ferenc responded in the affirmative.

The applicant, Nathalie Cornett, with Eller and Detrich, address 2727 E. 21st Street Suite 200, Tulsa stated Staff provided a summary of the project details, and the operations of Church on the Move were provided in the materials submitted to the Planning Commission. She respectfully disagreed with Staff's assertion this would be an inappropriate use in this location. She indicated Church on the Move was currently in a temporary location holding services at the Broken Arrow Performing Arts Center with six months left in this location. She reported this facility would have 550 seats and three services on Sunday; currently approximately 300 adults attended the Church on the Move services in person (others

attended virtually). She reported there were seven permanent Staff members who would be working at this location. She noted Church on the Move would provide additional parking and landscaping to the shopping center. She indicated currently there was no landscaping in the parking area or street level. She reported there were continued maintenance obligations under the lease agreement, and there was a facility maintenance team which would attend to landscaping, parking lot trash, and sidewalk maintenance. She discussed Comprehensive Plan policy LU1. She displayed a map which illustrated what a 300-foot radius from this facility would look like noting this Church would not overly prohibit potential liquor stores and/or bars/restaurants from locating in the area. She discussed the positive effect 500 church congregants would have on the intersection. She noted the White River Fish Market indicated it would begin opening for lunch if the Church came into this location. She stated she believed the Comprehensive Plan supported this use through LU1. She further discussed the Comprehensive Plan policy H4 which listed a variety of uses, including churches, indicating churches should be located along arterial streets to prevent encroachment into residential areas. She stated this was the only place in the Comprehensive Plan which gave specific directions regarding where a church should be located. She discussed Comprehensive Plan action item Q13 which suggested the City of Broken Arrow should seek mixed use development opportunities at major intersections characterized by four corner retail (such as this corner). She noted brick and mortar retail was suffering; this suffering was exacerbated by COVID, and this proposed use would reinvigorate this area. She stated SP-299 was in compliance with the Comprehensive Plan. She discussed the Specific Use Permit case which was denied last month noting in that particular case there was a Small Area Plan in effect; this was not the case in this location, nor was there another church already located at this intersection. She stated she believed this use was in compliance with the Comprehensive Plan, satisfied the requirements of the Zoning Code, would add beautification features to the shopping center and an influx of people to the area; she requested approval of SP-299.

Vice Chairperson Ricky Jones commended Ms. Cornett for her presentation. He stated this application was not specifically for a church, it was specifically for a Place of Assembly. He stated the application was for the entire 7-acre site, not just the single leased unit. He explained, if approved, a Place of Assembly could be located anywhere on the 7 acres.

Assistant City Attorney Tammy Ewing stated if Planning Commission were inclined to recommend approval a maximum square footage could be associated with the allowed use.

Commissioner Jaylee Klempa asked if the Place of Assembly could be limited to a single leased unit. Assistant City Attorney Ewing responded in the affirmative.

Vice Chairperson Ricky Jones asked if Ms. Cornett believed SP-299 was not in violation of LU1 of the Comprehensive Plan. Ms. Cornett responded in the affirmative.

Vice Chairperson Ricky Jones noted Staff believed SP-299 was in violation LU1 of the Comprehensive Plan.

Chairperson Whelpley indicated no members of the public signed up to speak.

Chairperson Whelpley indicated Church on the Move was quite clear in its intentions, but Church on the Move would diminish the possibilities of incoming businesses.

Vice Chairperson Ricky Jones indicated he heavily valued the Comprehensive Plan. He noted he understood the applicant's position and belief SP-299 was in accordance with the Comprehensive Plan. He noted he could see this logic; however, he did not want to approve something Staff and the City believed violated the Comprehensive Plan. He stated, as a planner, he could see both sides. He indicated an old planner's rule was "do not allow a use which was inappropriate in lieu of no use at all." He stated he liked churches, attended church, and believed churches were an asset to the community.

Commissioner Julea' Merriott asked how long the location had been vacant. Mr. Curtis responded he believed the property had been vacant approximately six months; this was a relatively short amount of time.

Vice Chairperson Ricky Jones commented on the costly study performed for New Orleans Square noting the consultant did not recommend a place of assembly for the commercial corner of New Orleans Square. He stated a PUD was approved for a Place of Assembly (Home Church) in the old Hobby Lobby at New Orleans Square with the logic being the Place of Assembly also developed commercial spaces as well.

Mr. Curtis noted Home Church submitted a PUD; ordinance required different standards and requirements for SP versus PUD. He noted Home Church also brought in additional commercial development as a part of the PUD, provided landscaping and a site plan, provided guarantees, provided outparcels for development, etc. He indicated, also, at the

time the Home Church PUD was approved, the New Orleans Square Report had not been completed.

Assistant City Attorney Ewing noted a big consideration was the Home Church PUD did contain a large commercial element. She indicated LU10 stated the City should protect commercial areas from the encroachment of non-commercial uses. She stated the Planning Commission needed to decide whether SP-299 violated LU10.

Ms. Jill Ferenc indicated SP-299 was in Level 6 of the Comprehensive Plan, which was described as regional employment commercial, while last month's case was in Level 4 of the Comprehensive Plan which was commercial employment nodes. She noted there were different zoning districts considered compatible with each: Level 6 was all commercial zoning with the possibility of IL, while Level 4 allowed more of a variation between medium scale commercial to neighborhood mixed use.

Chairperson Whelpley stated he was concerned about the possibility of setting a precedent. He stated while every case was different, cases sometimes seemed similar and he did not want to begin setting precedents.

Mr. Curtis stated he understood; however, this was the reason the Comprehensive Plan had different Levels and each case should be considered accordingly.

Vice Chairperson Ricky Jones stated by the same token the Planning Commission could not be arbitrary and capricious in its decision making; there had to be rationale behind its decisions.

Assistant City Attorney Ewing stated "arbitrary and capricious" only applied to this application, it was not in comparison to what decisions were made during other public hearings. She noted Planning Commission could only ensure it was not being arbitrary and capricious in this specific case.

Mr. Curtis agreed. He noted the Planning Commission had the facts before it; it had the Comprehensive Plan before it. He stated this was why the Comprehensive Plan, Zoning Ordinance, Subdivision Regulations, etc., were in place, to guide the decisions of the Planning Commission.

Commissioner Klempa commented if Church on the Move applied via a PUD and included some commercial development it would change the parameters of the application.

Mr. Curtis agreed noting the only thing Planning Commission could consider was the application before it.

Mr. Murphy stated according to Zoning Ordinance each Specific Use Permit application should be evaluated as to its probable effect on adjacent properties and surrounding areas and could be approved or denied as findings indicated.

Vice Chairperson Ricky Jones noted the last case had been appealed to City Council and would be on the January 5, 2021 Agenda for City Council.

Assistant City Attorney Ewing noted anytime Planning Commission denied an application, the applicant had the right to make an appeal to City Council.

Mr. Curtis noted the only thing Planning Commission had complete authority over were lot splits.

Vice Chairperson Ricky Jones stated he was torn as he liked the use; however, he could not violate the Comprehensive Plan based on his personal feelings. He noted he could not be certain approval would not violate the Comprehensive Plan.

Commissioner Merriott commented, in general, businesses were downsizing; commercial real estate industry was moving slow. She noted she understood six months was not a very long time to be vacant in the business world; however, businesses were not choosing to expand now. She stated at the end of the day, she kept coming back to this was a vacant building which needed to be filled.

Mr. Curtis stated Staff worked side by side with the Economic Development team and the Chamber. He noted this was year one (hopefully the only year) of a unique situation in the Broken Arrow Community. He indicated the trend of the past several years has been in a different direction from big box retail, but this was approximately 24,000 square feet while big box space was typically around 50,000 square feet.

MOTION: A motion was made by Jaylee Klempa, seconded by Ricky Jones.

Move to deny Item 6A per Staff recommendation

The motion carried by the following vote:

Aye: **3 -** Jaylee Klempa, Ricky Jones, Lee Whelpley
Nay: **1 -** Julea' Merriott

Chairperson Whelpley noted this decision could be appealed. Mr. Curtis explained the applicant had fifteen days to appeal the decision of the Planning Commission and request a hearing before City Council.

B. 20-1557 Public hearing, consideration, and possible action regarding PUD-321 (Planned Unit Development) and BAZ-2072 (Rezoning), Senior Activity Center, 3.35 acres, CG (Commercial General), CH (Commercial Heavy), and R-1 (Single-family Residential) to DF (Downtown Fringe)/PUD-321, located east of South Main Street, one-eighth mile north of Washington Street (91st Street))

Ms. Jill Ferenc stated this Item had been withdrawn and the applicant would come before Planning Commission in the future with a new zoning request. She commented the new zoning request had been re-noticed and would be included on a future Agenda.

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)

Vice Chairperson Ricky Jones stated denying SP-299 and the previous church application broke his heart. He asked if it was possible the Comprehensive Plan was wrong.

Mr. Curtis responded in the negative; the Comprehensive Plan was not wrong. He stated this was the purpose of the Comprehensive Plan. He indicated it was impossible to forecast every possible situation, and it was simply coincidence two Place of Assembly applications came before Planning Commission in this one-month period.

Commissioner Merriott commented the Comprehensive Plan was created prior to the pandemic and this was uncharted territory.

Mr. Curtis stated he would be happy to discuss this with the Planning Commission Members individually following the meeting.

Assistant City Attorney Ewing stated she was comfortable defending the Planning Commission's decision. She indicated the Planning Commission should not be concerned about precedent. She stated the only thing the Planning Commission could do was evaluate applications case by case. She noted as long as the Planning Commission made a record which explained why a decision was made, she would defend said decision.

Chairperson Whelpley stated the Planning Commission would have to have an excellent reason to go against the Comprehensive Plan. He stated while this Comprehensive Plan had been in place since 2019, the prior Comprehensive Plan had been in place since 1997 with another before that and another before that. He stated it was not a matter of right or wrong, it was a matter of this was what was indicated by the Comprehensive Plan.

Mr. Curtis noted Broken Arrow was very much in tune with its Comprehensive Plan.

Vice Chairperson Ricky Jones asked if Staff had the ability to guide applicants and encourage applicants to comply with the Comprehensive Plan. Mr. Curtis responded in the affirmative; Staff exercised this ability regularly, providing guidance to applicants. Discussion ensued regarding the ample guidance provided by City Staff to applicants regarding best application options, Broken Arrow Code, Law, and Comprehensive Plan requirements, etc.

Chairperson Whelpley wished all a Merry Christmas. The Planning Commission wished all a Merry Christmas and a Happy New Year.

10. Adjournment

The meeting adjourned at approximately 5:41 p.m.

MOTION: A motion was made by Ricky Jones, seconded by Jaylee Klempa.

Move to adjourn

The motion carried by the following vote:

Aye: **4 -** Julea' Merriott, Jaylee Klempa, Ricky Jones, Lee Whelpley

Mayor

City Clerk