



Columbia Planning & Zoning Commission Meeting Recap

Council Chambers, Columbia City Hall
7:00 PM Thursday, June 6, 2019

CALL TO ORDER

(Members present: Loe, Burns, Carroll, Stanton, Strodtman, Toohey, Rushing, MacMann.)

(Members absent: Russell)

(Note: It should be noted that Valerie Carroll is a newly appointed member of the commission and both Tootie Burns and Lee Russell were reappointed to the commission after their previous terms expired. All were appointed to full four-year terms.)

APPROVAL OF AGENDA

(Case #131-2019 submitted a request for tabling. The agenda was amended to move this tabling request to the beginning of the meeting for consideration.)

APPROVAL OF MINUTES

([May 23, 2019](#) minutes approved as submitted.)

TABLING REQUEST

(This Item was moved from Public Hearings to the Tabling part of the agenda to consider a request for tabling until June 20.)

Case # 131-2019

A request by Crockett Engineering (agent) on behalf of Fifth Street Properties, LLC and the Broadway Office Park Condominium Association (owners) for a major amendment to the Lake Broadway Lot 4A PD Plan. Modifications to the plan include a newly-designed building on Lot 4A, redesigned parking areas and drive aisles, and an additional vehicular access point from Gary Street to the north. The subject site is located southeast of the intersection of Pershing Road and Gary Street, and contains 2.27 acres.

(Action: No one from the public spoke to this item. Staff reported that there were some problems with signatures on some documents that could be resolved by June 20.)

The motion to table until June 20 was approved unanimously.)

SUBDIVISION AND DESIGN ADJUSTMENT REQUESTS

Case # 82-2019

A request by Crockett Engineering (agent) on behalf of Seventh Street Properties of Columbia, LLC and Hulett Descendants, LLC (owners) for a two-lot final minor subdivision to be known as "My Backyard"

and design adjustments from Section 29.5.1(c)(7) and Appendix A pertaining to the dedication of right of way (ROW) and corner truncations for alleys and Section 29-5.1(g)(4) pertaining to the dedication of utility easements. Subject property is currently improved with "My House and My House- The Backyard", a bar and entertainment venue. The purpose of the replat is to allow a new structure to be built on the Sixth Street frontage. The site is zoned M-DT (Mixed-Use Downtown) and addressed 119 S. Seventh Street and 120 S. Sixth Street, is located with frontage on both Sixth and Seventh Streets south of the public alley between Cherry and Locust Streets.

(This item was tabled at the April 4, 2019 Planning Commission meeting).

(Action: The applicant is seeking approval to replat .32 acres of parts of the Original Town of Columbia, including parts of Lots 82, 83, and 84, into a two-lot final plat. The plat is required to bestow legal lot status in advance of future site redevelopment. The subject property is currently being used as the My House Nightclub and Sports Bar, addressed 119 S. Seventh Street, and My House -The Backyard, an outdoor entertainment facility addressed 120 S. Sixth Street which is proposed to be expanded with an outdoor stage and seating space in the area between the two structures.

Concerns regarding existing solid waste issues, including insufficient dumpster capacity for the existing use. Correspondence from Columbia College expresses concerns regarding dumpsters being in the alley, including uncontrolled refuse and rodents, and parking pressures on their parking lot. A solid waste management plan is required for development within the M-DT district. The applicant is working on such a plan.

Associated with this request are three design adjustments. The first two requests are from Section 29.5.1(c)(7) and Appendix A of the UDC and relate to right of way dedication and corner truncations. The first adjustment seeks a 2.5-foot waiver from the required 10-foot halfwidth dedication requirements for the adjoining east-west alley along the northern property. The existing alley is currently 15-feet wide and the required (non-M-DT) width is 20-feet. It should be noted that the pavement width of the existing alley is 1-foot short of the required 16- feet of paved surface. Should this design adjustment not be granted, and the additional ROW dedicated, the applicant will be required to extend the pavement width to the required 16-feet.

The preferred alley configuration recommends that construction of a new alley be located within a 24' right of way or easement. The alley in question; however, is existing; therefore, staff believes that a 20-foot wide alley right of way is most appropriate. This width would consistent with that required for any other non-M-DT alley and is in keeping with the spirit of Appendix A which states in part "due to the wide range of circumstances; however, the standards [of Appendix A] need to be applied with a certain amount of flexibility".

The second design adjustment seeks waiver from providing the required corner truncations where the alley intersects with S. Sixth and S. Seventh Streets. The UDC requires a corner truncation with a radius of not less than five feet in length. The preferred M-DT configuration for alleys recommends 10-15'. Again, staff believes the standard 5-foot truncation is most appropriate given the existing built environment; however, additional radii width would be desirable for enhanced visual interaction and safer turning movements for pedestrian and vehicular traffic.

The third design adjustment seeks waiver from the requirement to dedicate 10-foot utility easements along S. Sixth and S. Seventh Streets. The requested wavier is from Section 29- 5.1(g)(4) of the UDC, which describes that, TO THE EXTENT POSSIBLE, utilities shall be located in designated easements and not in the street right-of-way.

If these three design adjustments are not granted, parts of the existing My House building and existing retaining wall may encroach into the newly dedicated areas on the plat. The applicant may request a right of use permit from the City, if desired, to continue to encroach into the dedicated areas typically until such time as the right of way or easement area is needed for public improvements. The existing improvements would become legal non-conformities and would be allowed to remain; however, the current encroachments could NOT be expanded.

While plats are often viewed as a precursor to immediate or future development, the act of reserving right of way and easements upon that plat are, at times, of an equal if not greater importance than accommodating existing or proposed buildings on a single site. Simply put, waiving the right to reserve right of way or easements at the time of platting may have long-reaching consequences in the City's ability to serve its citizens and visitors with public infrastructure and utilities in a timely and cost-efficient manner now and into the future. This is especially true within the downtown where growth and development must consider the needs of pedestrians, automobiles, residents, visitors, and businesses alike in a dynamic system. Additionally, as noted above, this site has existing issues with waste collection and disposal, issues which will have fewer options for remediation if the sub-standard alley is allowed to persist in terms of maneuvering solid waste equipment and refuse through and away from the site. Additional development also requires additional utility provision to match the growth, and while capacity is acceptable at this time, the downtown area has had utility challenges in the recent past which would ideally be avoided in the future.

Therefore, following staff review of the requested design adjustments and in light of the five design adjustment criteria, **staff does not support the approval of any of the design adjustments.**

RECOMMENDATION

- 1. Denial of the requested design adjustments to Section 29.5.1(c)(7) and Appendix A pertaining to the dedication of right of way and corner truncations for alleys;**
- 2. Denial of the requested design adjustment to Section 29-5.1(g)(4) pertaining to the dedication of utility easements; and**
- 3. Denial of the final plat.**

Alternatively, if the Commission supports granting one or more of the design adjustments it may:

- 1. Make a motion to approve one or more of the requested design adjustments; and**
- 2. Make a motion to approve the final plat subject to correction of any unapproved design adjustments prior to forwarding this item to City Council for consideration.**

Rushing had a procedural question. She asked if the design adjustments are denied, can the plat move forward? Staff indicated that because the plat has not been presented in a workable form due to the design adjustments, it could not be approved tonight. You will have to act on the design adjustments and the plat as two actions, but if you deny the design adjustments, you will have to also deny the plat, but that can be appealed to the council and will require a 2/3 majority of council for any denied design adjustments.

The public hearing was opened.

An engineer for the applicant appeared. He noted that these were legal lots before the new UDC was adopted. Modifications had already been made, but a change in rules make this hearing necessary. He

addressed the fact that providing the additional alley area would put the existing building IN the right-of-way. He read the regulations and noted that the existing structures were legal, but if the code was enforced as written, they may have to encroach on existing structures, even if the current request is DENIED. On the corner truncation question, other variances of this type have been granted, and this should be considered with the same sense of fairness.

On the utility easement question, another request such as this was granted for Jefferson Junior. The new rule would REQUIRE a ten-foot utility easement, but another part of the rule says they would have to build within 2-feet of the property line – which they cannot do if they grant the easement.

The public hearing was closed. (Then reopened so the first speaker could respond to questions.)

MacMann asked how we resolved a similar case earlier. Burns indicated that at Tenth and Walnut there was another case, but she was not sure if the cases were equivalent. Loe asked the first speaker if there was a pending project. The speaker indicated that there was an ongoing project, that has already been added to, but now under the new rule it would not be in compliance. Burns asked for an alley picture to be shown. She said that there was a trash problem and that there were trash cans sitting in the alley. The speaker said that is a true situation and that we will not be allowed to put dumpsters in a substandard alley. That will have to be addressed before we can be permitted to do anything further.

There were no further public comments.

Loe asked for commissioner input.

Rushing indicated that she believed the applicant has not shown what was required and she will vote no. Burns thought the solid waste issues and public safety issues were problematic. MacMann thought there is just not enough room for this project and that maybe in the future we will need to address this in the code. Strodman thought that the existence of an existing building makes this a tough situation. We make accommodations for Jefferson Middle School; the alley dead ends; there is not a lot of use for this alley even though it is usable and serviceable, but it does not rise to the level of usefulness that something like Alley A is.

Stanton was looking for a win-win and did not think either side was trying to make this happen. I don't see it yet. I like the idea of development, but we have solid waste issues that are unresolved. Strodman said he thought solid waste would be addressed and that there are additional new rules for that and that that item may be outside of our purview.

Loe asked about applying these restrictions to an existing building, but this is triggered by some new construction, and you get stuck having these apply backwards. Staff further said that the combining of the lots, because we don't allow you to build across lots lines under the new rules, triggers the imposition of these additional requirements. The mere fact that a building exists is not the key. The changes are what trigger the rules, not the existence of the building. Tiger Tots was an example of where new improvements made the new rules come into play. We are straddling subdivision requirements and M-DT zoning requirements. The utilities as they exist today are in the public roadway. We need to look forward and secure future potential access. In the subdivision area, we need to acquire right-of-way when we can unless we pay a premium or we simply can't acquire those rights at all. We think that it is impractical to believe that there will ever be some need for this on one part of the alley,

but it does not mean that we shouldn't ask for improvements where no building currently exists. The city has to determine if the acquisition is warranted.

Rushing asked if we required the truncation and the width, but deny the application, will this affect the existing building if they do nothing else? Staff said that even though they are legal now, there is no guarantee that the city would not want that in the future, and they may have to apply for a right of use. We recognize that there is a significant change in elevation in the ally area. If you deny these requests, it can be appealed to city council. Staff cannot guarantee that they won't need them. Rushing asked if staff is saying that realistically the city probably won't need these areas, but the subdivision code does not allow the staff to waive the subdivision requirements, so we make our report based on the written rule? Staff replied that the P&Z and City Council have the right to waive rules. Staff does not. If we had that power, we would probably have made some concessions, but not on the part where there is not an existing structure. We did overlook the 2-foot requirement cited by the engineer and staff apologized for that oversight.

Loe said if this was not granted then the applicant would be required to extend the pavement in the alley by one foot. Staff said they WOULD have to do something, and it might be a half-width or maybe the full width of the deficit. Staff further explained that the pavement width would need to be extended to the edge of the building and then grant a right-of-use agreement for anything that still encroaches.

Tooney asked about the fact that the University owns the building to the south. If the University bought this property, could they do whatever they want? Staff said that the University is exempt so they would not be bound by the rules we are currently considering.

MacMann called the question on the adjustment relating to the substandard alley and moved approval of the first design adjustment.

The motion failed 5 to 3.

MacMann called the question on the issue of corner truncations. MacMann said he thought this is an unresolved issue and that voting yes would put the building in harms way, so he will vote no.

The motion failed 6 to 2.

MacMann called the question on the issue of utility easement grants on 6th and 7th streets.

The motion to approve the design adjustment resulted in a tie vote, so no recommendations was made.

MacMann made a motion to approve the final plat, then indicated that he will be voting no. Loe asked if they CAN approve this in its current form. Staff said it would need to be redone first, before approval could be granted. If you vote yes, you will be approving a non-compliant plat.

The motion to approve the plat was denied by a vote of 6 to 2.

PUBLIC HEARINGS

Case # 101-2019

A request by Brush & Associates (agent) on behalf of James & Gina Harris (owners) seeking to rezone two parcels (containing 3 lots) from PD (Planned District) to A (Agriculture). The subject parcels are located on the south side of St. Charles Road approximately 700 feet east of Dorado Drive. Parcel 1 (2 lots) contains 1.29 acres, and Parcel 2 (1 lot) contains 0.61, for a total of 1.70 acres.

(Action: The applicants are seeking to rezone two parcels of property (consisting of 3-lots) on the south side of St. Charles Road approximately 700 feet east of Dorado Drive from PD (Planned District) to A (Agriculture District). The request would result in the parcels being zoned consistently with the applicant's adjoining property to the south. The two parcels sought for rezoning are part of a larger 5-lot land acquisition that the applicants purchased for the purposes of building their private home. In July 2018, the southern 10 acres of the applicant's property, upon which the home is built, was annexed and zoned A (Agriculture). Concurrently with the annexation action, the stem providing access to the 10-acre parcel was rezoned from PD to A and subsequently combined via a platting action with the 10 acres to establish roadway frontage along St. Charles Road.

In addition to the desire to have consistent zoning across all their commonly owned lots, this request has been precipitated by the applicants being informed that the 10-acre parcel upon which the home has been constructed does not have direct access to a public sewer. The parcel to the northeast of the stem serving the homesite has an existing sewer main located upon it. To ensure compliance with City policies prohibiting the extension of a sewer lateral over an adjoining property, the applicants will be required to replat the parcel to the northeast and the 10-acre homesite into a single lot. The applicant, via separate action, is proposing that not only the parcel to northeast be combined with the homesite parcel, but also the parcel to west of the stem be combined. Such action would result in all commonly owned lots becoming a single parcel.

While a replat of the PD parcels and the 10-acre A-zoned land could be processed, such action would require amendment of the PD plan. However, the PD plan in question has expired meaning that any future development of the PD property as originally envisioned would necessitate full compliance with the existing UDC's standards.

The applicants have no intention of developing a multi-family project on the subject parcels. This lack of intention is supported by the fact that they seek A (Agriculture) zoning and have submitted a consolidation plat to combine all their adjoining lots. It should be noted that neither of the subject parcels meets the minimum 2.5 acres needed to rezone land to the A (Agriculture) district on their own. However, as noted above, the applicants have submitted a consolidation plat to combine all of the adjoining lots under their ownership. Given that the consolidation plat has been submitted and will be concurrently introduced to Council with this rezoning request, staff believes it is appropriate to take action on this matter. Staff finds the applicant's requested A (Agriculture) zoning is appropriate in this location.

The public hearing was opened.

An engineer appeared on behalf of the applicant and indicated he would be happy to answer questions about the request.

The public hearing was closed and no further discussion ensued.

The motion to approve the request was approved unanimously.)

Case # 122-2019

A request by Crockett Engineering (agent) on behalf of HJRJ Investments, LLC for a major amendment to the existing Copperstone Commercial C-P Plan to allow for a mixed-use development to include commercial, office and residential uses, to be known as the Copperstone Lot 102A PD Plan. The subject

property is located on the west side of Frontgate Drive, approximately 300 feet south of Vawter School Road, and is commonly addressed as 4015 Frontgate Drive.

(This case was tabled at the May 23, 2019 Planning and Zoning Commission meeting).

(Action: The applicant is seeking to develop the property located at the southwest corner of Frontgate Drive and Frontgate Lane, a private street. The proposed development will be on Lot 102A of Copperstone Commercial Plat 2.

The site has a current C-P plan, known as Copperstone Commercial, which was approved in 2007; however, the C-P plan did not include any improvements other than the private street that is located in the common lot to the north of this lot. The approved zoning for the site, which occurred in 1998, permitted all current C-1 uses, but did not include a SOI. Given the proposed development plan revisions, this request is considered to be a major amendment and required to comply with all current UDC standards, which includes the submission of a new Statement of Intent (SOI). The applicant is seeking approval of an amended PD development plan that will include the construction of two, one-story commercial/office structures and four attached single-family dwellings situated in a larger common lot, along with associated off-street parking in an amount that would accommodate the proposed uses. The northern commercial/office building would have 7,700 sq.ft. of GFA and the western building would have 9,250 sq.ft. of GFA.

Access to the site will be from both Frontgate Drive and Frontgate Lane (private). The single-family units do not front on actual right-of-way, which is generally required. In lieu of this direct connection, access will be provided across the commercial lot, which will require an access easement dedicated at time of final platting to ensure access is not compromised in the future. The site as a whole is considered a horizontal mixed development, with both office (and potentially retail or service uses) and residential uses. The single-family attached units, shown on future individual lots, provide additional housing opportunities in an area largely dominated by single-family detached dwellings. The location of the dwellings also provides a natural transition between the commercial structures on the site and the existing single-family detached dwellings to the south. The applicant is also requesting several modifications to the underlying zoning requirements, which would otherwise require BOA approval if not for the PD plan request.

The modifications are described as follows:

- Request to waive the requirement that “each principal building shall have one or more operating entry doors facing and visible from an adjacent public street”. The northern commercial/office building does not have an entrance along Frontgate Drive, which is the only public street frontage. The applicant has stated that grades on the site make providing an entrance challenging. Staff does not oppose this modification.
- Request to waive the requirement for an eight-foot tall screening device (e.g. fence or hedge), in this case along the south property line. a) Staff does not support this modification. Adequate justification to waive landscaping and screening has not been provided.
- Request to waive the requirement that the landscape buffer meet an 80 percent opacity factor at the time of planting. The requested waiver does not indicate what lesser opacity factor is desired; therefore, it appears that it would be a full waiver. a) Staff does not support this modification. The staff indicated that although residents seem to support this, they want something more objective, and that does not exist.
- Request to reduce the required front yard setback along Frontgate Drive from 25 feet to 20 feet. a) Staff does not oppose this modification; however, given the reduced setback for the building it may be appropriate to have a pedestrian entrance incorporated into the building’s eastern

facade since it is closer to the ROW. However, the applicant is requesting a waiver of this requirement.

- Request to reduce minimum lot size for attached single-family lots. a) Staff does not oppose this modification. The site is designed as a hybrid between single-family attached dwellings and condominiums. The residential lots' footprints will be smaller than the allowed minimum for single-family attached lots, but the surrounding common lot provides similar setbacks as would normally be required. The design also locates the individual lots toward the south property line, near the common open space along the south property, when typically they would require street frontage. However, it is important to note that as of now, the common space is owned by the Copperstone HOA, and the subject site is not a member of the HOA, which means future residents, may not have legal access to the common lot.

It is important to note that per the public information meetings and correspondence submitted to the City (which are attached), there is support within the residential neighborhood for the landscaping plan as submitted, which would include the reduction in landscaping and screening. This support appears to be based on a desire for the landscaping on the site to be consistent with landscaping within the residential neighborhood, which is understandable. However, there do not appear to be any other factors to support a reduction in the minimum buffering between uses, which is provided on developments that are not PD zoned.

It should be noted that the completion of Frontgate Lane is included in the requirements for this PD plan. Currently, Frontgate Lane does not extend to the western edge of the common lot (C103) in which it is located. The roadbed was graded at the time that the Addison's restaurant was developed to the north, and the owner of this site will complete the construction of the private street to facilitate its continuation onto the undeveloped property to the west at such time development plans are proposed. Staff has reviewed the proposed PD development plan and SOI and finds that they meet the technical requirements of the PD District and the UDC, except for the listed zoning exceptions.

In a disclosure of ex parte contact, Rushing said she had not any contact about this case, but she has heard complaints about Addison's Restaurant that is located in this area. MacMann asked about garage placement for the residential units. Staff indicated they are located to the rear. Carroll asked what the rationale for requiring the screening and landscaping was when the residents and the applicants support the landscaping plan? Staff said sometimes they evaluate criteria that residents don't and that sometimes they have to consider how this will affect the general public in the long run and how the code may be interpreted in the future. We want some substantial evidence that this could be exempted. Rushing asked if there will be a road or driveway along the southern border? Staff said there would be a pedway, but no road. Staff said there is a unique sidewalk plan in this area and that the pedway is a continuation of what already exists there.

Rushing said she thought the report says that the front of the residences faces south, but there is not a road there. Staff said that entrances will be from the rear where the garages are. Rushing asked if there will be a road from the north in the future? Staff said not that they were aware of, but there will be a driveway from Frontgate. On the undeveloped property, the staff cannot answer for sure. Another staff member indicated that there will be an extension westward of one existing road, and that there will be another termination on Vawter School Road that is right-in, right-out. Rushing asked if there will be a lot of commercial traffic coming into this residential area and wanted to know where future roads will go to accommodate commercial? Rushing asked if this would isolate one residential lot? Staff said that lot she is referring to is a common lot. Staff assured Rushing that there will be future road connectivity.

Loe asked about buffering and asked what level of buffering standard this would meet if they got a variance. Staff said they could not say for sure. They just know that there will be some landscaping as shown on the plan.

Public comment was opened.

An engineer appeared on behalf of the applicant. He clarified that the residential units will have aesthetically pleasing appearances from both sides, so there is not really a front or a back. He noted that Copperstone residential had not been built when this plan was initially approved. The owner is asking for design modifications due to a significant fall in elevation which would require significant retaining wall construction that is not desired. He noted that they do have a landscaping plan, and it includes elms but no wall. We are not skimping. We just don't want a fence or a hedge. We are also asking for a different setback. Various plans have shown various setbacks. We are asking for 20 feet, not 15 or 25.

We are also asking for smaller lot sizes, but because these are attached units, you end up with more open space than in a typical layout. My client has done a good job at listening to the neighbors and has conducted an outstanding outreach program. He has unanimous support from the neighboring HOA. This plan conforms with the original zoning and has broad support.

Toohey asked about the north and south landscaping. The speaker said that in that area there are a lot of evergreens, but it is not a solid, 80% opacity wall. Burns asked how many homes are currently in the Copperstone subdivision? The speaker did not know. MacMann said he had some concern about the buffers between kids, cars and existing homes. He said the city has to look out for residents. How are we going to protect a child? Convince me. The engineer said we don't want to build a fence and that this is a good landscaping option. People want openness and not hard landscaping. This includes a good number of trees but doesn't meet some technical requirements. MacMann asked about headlights. The engineer noted that it was on a different grade so lights should not be a problem. Strodman asked if there were any fences anywhere else in Copperstone? The speaker noted that was true except for some small, more decorative fences. Strodman asked if there will be aesthetically pleasing characteristics on the homes? The speaker said yes. Strodman asked if people who live there can get off their porches and how they will access the common areas? Sidewalks will be installed as will a pedway.

Another speaker appeared on behalf of the HOA. He noted that Copperstone is a friendly community and that they have good walking trails and walks. We have no barrier fences in this subdivision. We use trees that help us feel private. This fits perfectly. MacMann asked about traffic from Addison's. The speaker said that has not been bad. There could be some additional commercial here in the future, and the residential is what it is. Strodman asked about access to common lots and one cut off lot. The speaker said they have 40 acres of green space that they mow. This could come into the homeowner's association in the future, but it is not in there now. We support this application.

The next speaker said he owns a home that overlooks this. They also look at Addison's and they have no problem. We don't want fences. We don't have them in Copperstone.

The next speaker said that his house is just two houses down from this. He does not want to look at a fence. He thinks the landscaping is pretty good on this project. On the Addison's project, it's working out pretty well. Any problems have been at night and it's not bad really. Loe said that there does not have to be a fence. Staff is asking for an 80% opacity tree line. Are you comfortable with having less opacity in

the tree line? Yes. Except for the first two weeks, he has not had problems with Addison's. In some places there are no barriers at all, and he doesn't have a problem with that part either.

The next speaker said he is a resident of Copperstone and is 100% on board with this. The builder has hosted various meetings and done a good job. I don't want fences.

The final speaker indicated he lives just north of Copperstone. This developer has done a better job than Addison's. In my subdivision, we do have fences and I think they affect property values negatively when they are not well built or maintained.

The next speaker is in favor of this project. He has kids and they all live there and tonight is his wedding anniversary. He is the developer. He is meeting with the neighbors and wants a sustainable buffer. He wants trees there. Frankly, I can't please everyone. He has changed the plan several times. He is going to build this for people who want to stay. I am motivated to build this right. Loe asked about setting a precedent and asking if he has support in writing? He said yes and staff confirmed that support.

The public hearing was closed.

MacMann asked staff if we can meld precedent and make this work? Staff asked if he was asking if staff would change their recommendation? MacMann asked if they had more clarity could they do it differently. Staff said right now the only thing they can hang their hat on is the plan and that is not enough. The plan says the level of screening is level 3, but they don't want to have to live by the rule, except for the part where the plan comes in. Loe read the plan to the staff. Staff said they didn't interpret it as strong enough, and they don't want to commit to something. If they show it on a plan but ask for a waiver, then there is no need for the design modification.

The public hearing was reopened.

The engineer appeared again on behalf of the applicant. He noted that Level 3 screening requires both landscaping and fencing. By granting a variance, they are obligated to show what is on the plan, but don't have to build a fence. Staff said you have to do a 10-foot wide landscape buffer that is 80% opacity. The engineer said that the rules require both a fence and landscaping. Staff disagreed. The engineer said they will provide the landscaping but not the fence and that is what they are asking for. Staff said it is 80% opacity 8 feet tall in the buffer area. Another staff member indicated that a screen has to be built. The next part is a screen standard that talks about combinations of height for berms and landscape materials. He read various sections that show combinations. The applicant engineer said that the city arborist requires a design modification and the rest of the staff seems to be arguing that it can work.

MacMann asked if the staff needs something that can be enforced. Staff said they can enforce this, but they don't know what it is going to look like. MacMann said maybe it doesn't quite meet every described aspect of the rules, but it is enforceable as submitted. Stanton asked if they will achieve an 80% opacity barrier on landscaping. The engineer said he could, but that is not what the neighbors want. You have asked me for a win-win. Here it is and you won't accept it. Stanton said a win-win is putting him in a position to set a bad precedent. The engineer said that the rule is there to serve a purpose. If both sides agree, then the rule serves no purpose and that a variance is justified.

The next speaker appeared for a second time. He said this feels like Déjà vu. This same thing about precedents happened 5 years ago. But, when there are specific circumstances that have merits, will you not grant the variance when it has full support? We have the elements. I have worked hard for this. This is a win on every single level. The code is in place to protect us, and I am one of the neighbors. I think you can show this clearly in the future. MacMann asked about what happens in 10 years when there are different people on the HOA board. The speaker said he didn't think that would happen. Do you think in ten years I will have 100% of people against this? MacMann said he was simply posing this.

Public comment was closed.

Stanton said he was still concerned. If we say yes it will lead to more variances, like sidewalks. Strodman thought this was fair. Rushing thought this was consistent with the rest of the development. Their landscaping is not 80% opacity. And, there are no fences. This is consistent.

A motion to approve all aspects of the request was made and seconded.

The motion to approve passed unanimously, 8 -0.)

Case # 131-2019

A request by Crockett Engineering (agent) on behalf of Fifth Street Properties, LLC and the Broadway Office Park Condominium Association (owners) for a major amendment to the Lake Broadway Lot 4A PD Plan. Modifications to the plan include a newly-designed building on Lot 4A, redesigned parking areas and drive aisles, and an additional vehicular access point from Gary Street to the north. The subject site is located southeast of the intersection of Pershing Road and Gary Street, and contains 2.27 acres.

(Action: This item was tabled until June 20 at the request of the applicant. Apparently, there were some problems with having appropriate signatures on some required documents.)

Case # 136-2019

A request by Crockett Engineering (agent), on behalf of the Broadway Shops, LLC (owner), for a major amendment to the existing Broadway Shops Lot 1 C-P Plan. The revision includes an updated Statement of Intent to revise the list of permitted uses. The 7.32-acre site is zoned PD (planned development) and is generally located northeast of the intersection of E. Broadway and Trimble Road and is addressed 2703 E. Broadway.

(Action: The applicant is seeking a major amendment to the existing Broadway Shops Planned Development (PD) Plan to revise the Statement of Intent (SOI) governing uses on the property. The revision includes the addition of "medical marijuana dispensary", "light vehicle service or repair", and "artisan industry" as permitted uses. The amendment also ensures previously permitted uses are brought up to date to align with how they are defined and administered by the new UDC.

The adopted PD SOI permitted all uses within the C-3 district with some exceptions, including service stations. As there is an existing gas station on the eastern extent of the site, the revised SOI amendment as requested would provide a "clean-up" action to legally permit this use under the "light vehicle service or repair" use category, a permitted use in the M-C zone which generally replaced the C-3 district with the adoption of the UDC. The revised SOI proposes the addition of "artisan industry" which will allow some light, small-scale manufacturing and production activities to occur on the site. This use did not exist in 1996, but is presently allowed in the M-N, M-C, M-DT, M-BP and IG zones. Additionally, the

applicant seeks to add “medical marijuana dispensary” to the SOI. As with “artisan industry” this use did not exist at the time of the initial zoning.

A preliminary evaluation of the site has concluded that this use would be capable of being accommodated on the site and comply with all of the presently proposed use-specific standards relating to distance and separation from churches, day cares, and schools. A formal review of the site’s ability to meet the use-specific standards will be part of the business licensure process should a state-licensed operator seek to locate on the site. When evaluating the additional uses the proposed SOI amendment would allow, staff evaluated the surrounding land uses, the uses permitted and prohibited under the existing SOI, and the use-specific standards applicable (as proposed) to “medical marijuana dispensary” and “light vehicle service or repair” of the UDC. It should be noted the applicant is also requesting that the site be exempt from the use-specific standards for “Restaurants” and “Light Vehicle Sales or Rental”. Staff is supportive of these requests as the use-specific standards apply only to the M-N zone and the M-DT zone, and this site’s P-D zoning is generally consistent with the M-C zone. This vote will not guarantee that a medical marijuana facility can go in there. They will have to meet all other rules and regulations of the state and city first.

The previously exempted uses (halfway houses, commercial swimming pools, farm machinery sales and services, mortuaries, cellular phone towers or facilities and billboards) will remain exempt without any additional zoning action.

Staff recommends approval.

MacMann asked why this request had been expanded to include more than simply the marijuana dispensary? Staff said that as they looked at the case, they noticed some other aspects of the uses that could be cleaned up.

The public hearing was opened.

An engineer appeared and offered to answer questions. He noted that the applicant was also available for questions.

The public hearing was closed.

A motion to approve was made and seconded.

The motion was approved unanimously, 8 -0.)

PUBLIC COMMENTS

An engineer noted that there are still some things that are unclear in the new code. He thinks that there are conflicts in the code that will ask him to come back and ask for different permissions for something they don’t want. MacMann said he thought this is not a resolved issue and cannot approve something that is not resolved.

STAFF COMMENTS

At the next meeting on June 20, the following items are expected to be considered:

Gaslight Industrial Park Plat

Lake Broadway request that was tabled tonight will be back

McKee Street rezoning request
Auburn Hills commercial request near the new police station
Master Plan update for Columbia College

Staff welcomed new commissioner Valerie Carroll and rewelcomed Tootie Burns and Lee Russell to the commission. There will be two absences at the next meeting – Lee Russell and Rusty Strodman. Pat Zenner will be out of town until the 20th of June. There will be discussion of short-term rentals at the next work session. They will be working from the last active draft.

Staff further indicated that staff has limited leeway to reinterpret the rules as written, and they are required to apply it as they see best. We know that the application of rules will not suit everyone. We have limited flexibility.

COMMISSIONER COMMENTS

MacMann welcomed Dr. Carroll as a new commissioner as did Ms. Loe.

NEXT MEETING DATE - June 20, 2019 @ 7 pm

ADJOURNMENT

(Time: 9:47 PM)

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