

## APPROVED MINUTES

### MINUTES OF THE BROOKLYN PARK PLANNING COMMISSION Regular Meeting - May 08, 2019



#### 1. CALL TO ORDER

The meeting was called to order at 7:00 PM.

#### 2. ROLL CALL/PLEDGE OF ALLEGIANCE

Those present were: Commissioners Herbers, Husain, Kiekow, Kisch, Mersereau, Mohamed, Morton-Spears, Vosberg; Senior City Planner Larson; Planning Director Sherman; Council Member Liaison West-Hafner.

Those not present were: Commissioner Hanson.

#### 3. EXPLANATION BY CHAIR

#### 4. APPROVAL OF AGENDA

MOTION MERSEREAU, SECOND VOSBERG TO APPROVE THE MAY 09, 2019 AGENDA.

*MOTION CARRIED UNANIMOUSLY.*

#### 5. CONSENT AGENDA

##### A. Minutes – April 10, 2019

MOTION HUSAIN, SECOND MERSEREAU TO APPROVE THE CONSENT AGENDA.

*MOTION CARRIED UNANIMOUSLY.*

#### 6. PUBLIC HEARING

##### A. CMT Brooklyn Park, LLC (Panera Bread) – Plat and Conditional Use Permit #19-107 for a restaurant with a drive-thru at 5651 96<sup>th</sup> Avenue North.

Senior Planner Larson introduced the two-part application for a site just west of Zane Ave and east of 96<sup>th</sup> Ave which will be the access point. He added this was the same site that had an approved proposal for a Fairfield Inn a couple of years ago, but this project did not move forward since there were two other hotels who started construction sooner. He explained the new proposal is for a stand-alone Panera Bread restaurant of about 4,300 square feet. The building will be one-story with a drive-thru. He stated the Panera site will be located at the northern portion of the property, and a new driveway will be constructed to match up with the curb cut-out currently located along 96<sup>th</sup> Ave. He pointed out a planned connection between the Panera site and Kwik Trip to the north. The front of the building faces Zane Ave, and the drive-thru entrance is around the southeast corner and wraps around the north end of the building. He provided that the drive-thru has at least 6 spots for vehicle stacking. He stated there will be one row of parking around the building with a double row in the back and additional space to the east to create additional parking if needed. He discussed that Panera doesn't need the southern portion of the lot, and the owner doesn't know what to do with the property at this time, but a concept is included in the plans although this would likely change. He assured the Commission that a proposal for the southern portion of the site would have to come back through the Commission and City Council

once a use is determined. He noted the Great River Energy transmission line easement runs through the entire lot north of the building as documented on the landscaping plan, so this limits the allowable height on the site such as overstory trees. He indicated that ornamental trees will be fine since they are generally shorter. He stated another height concern is with the light poles in the area, Kwik Trip has very short light poles, so a condition of the approval is that Great River Energy review and approve the lighting and landscaping plans to confirm the height of these items won't interfere with the transmission line. He pointed to a sign shown on the plans at the northeast portion of the site which is placed to avoid the utility lines, but City Staff is concerned that the sign is too close to the Kwik Trip driveway which may lead to customers unnecessarily accessing Panera through the Kwik Trip driveway. He noted that moving the sign closer to the Panera driveway does put it over utility lines. He recommended the sign be changed to a smaller directional sign with less of a footing, or for the applicant to work with Opus across the street to locate the sign on the other side of the Panera driveway. He stated the applicant has decided on a third option, to move the sewer line so there is room for the sign in the plan. He described the building as meeting the design requirements for articulation of building materials with mostly brick and some efface. He said the roof top units are adequately screened. He reiterated the light poles in the lighting plan will likely change, and there is one spot in the parking lot that does dip below the 1-foot candle level required, so another couple of poles may need to be added. City Staff recommends approval.

Ken Knuckles, representing CMT Brooklyn Park, LLC, stated they are anxious to begin the project. He elaborated that they have filed their plans for review with Great River Energy, and feedback on the height of the trees, light poles and monument sign is expected very quickly. He added the light poles outside of the easement are 25-feet tall, and they propose 20-foot tall poles within the easement. He stated they understand they may need to make further adjustments. He explained the West Mississippi Watershed District determined the applicant doesn't need to submit any further plans with them as the site will be included in the 610 Crossing and plans for the regional basin have already been submitted. He stated the applicant has no issues with the conditions lined out in the staff report, the only thing they wanted to discuss further was the relocation of the monument sign. He offered to answer any questions on behalf of the owner.

Commissioner Vice-Chair Kisch opened the public hearing.

Seeing no one approach the podium, Commissioner Vice-Chair Kisch closed the public hearing.

Commissioner Vice-Chair Kisch asked if the cross-access maintenance agreement is relative to the access of the Kwik Trip site in regard to the plat or would that be in relation to the parcel subdivided to the south.

Senior Planner Larson said this was looked at in detail with the applicant. He provided that when the 610 Crossings shopping center was approved, there was a set of documents recorded against all the properties that basically provided everybody with blanket cross-access maintenance agreements. These agreements continue to remain in place as the properties continue to be developed and sub-divided.

Commissioner Vice-Chair Kisch said he was fearful that the plat may create an inaccessible parcel if a cross-access agreement was not in existence. He asked if the revised sign location creates a conflict with the sidewalk and pedestrian access.

Ken Knuckles said the sidewalk in the plan is a proposed sidewalk in the right-of-way of 96<sup>th</sup> Ave. He assured the Commission that the monument sign would be located on their parcel, so there would be no impact to the sidewalk.

Commissioner Vice-Chair Kisch said his concern is the access from the sidewalk to the property along the road as the monument sign looks to fall in the middle.

Sherry Ahrens, representing Westwood, stated the revised plan is just a sketch plan that has already been modified to move the sign over another 15-feet as well as reroute the sidewalk around the sign. She assured the sign would not be located in the sidewalk.

Ken Knuckles circled back to address the question about cross-access agreements. He stated in discussions with the applicant's lawyers he specifically asked if there was a need to document access easements with specific parcels. He was assured by the lawyers that this was already addressed through the REA and OEA documents in place for 610 Crossings.

Commissioner Mohamed asked how this restaurant compares in building size to nearby Panera Bread restaurants.

Ken Knuckles stated that 4,300 square feet is prototypical for Panera although there are smaller and larger restaurants.

Matthew Hinchcliffe, representing Arch Vision from St. Louis, MO, reiterated that the size of this Panera is typical of the new generation buildings. He mentioned previous iterations are also similar in square footage, but they don't have as much building articulation as the new generation concepts.

MOTION MOHAMED, SECOND MERSEREAU TO RECOMMEND APPROVAL OF PRELIMINARY PLAT #19-107 FOR "SIX TEN CROSSINGS SECOND ADDITION," SUBJECT TO CONDITIONS IN THE DRAFT RESOLUTION.

*MOTION CARRIED UNANIMOUSLY.*

MOTION MOHAMED, SECOND HERBERS TO RECOMMEND APPROVAL OF CONDITIONAL USE PERMIT #19-107 FOR A RESTAURANT WITH A DRIVE-THRU AT 5651 96<sup>TH</sup> AVENUE NORTH, SUBJECT TO CONDITIONS IN THE DRAFT RESOLUTION.

*MOTION CARRIED UNANIMOUSLY.*

Planning Director Sherman confirmed that the public hearing items will move on to City Council Tuesday, May 28.

**B. Leopold's Mississippi Gardens – Variance #19-108 to allow for fence within the Mississippi River Critical Area setbacks at 9500 West River Rd. N.**

Senior Planner Larson introduced the request to construct a typical 7-foot tall wood privacy fence. He stated the fence itself is not out of the ordinary as most homeowners or businesses in town could construct such a fence without a permit. In this case, Mississippi Gardens, a wedding event center, is located on the Mississippi River and has a bluff from West River Road down to the flats near the river. He explained that properties along the river have an extra set of regulations. One regulation is that no structures can be constructed within 100 feet of the high-water mark. He

stated the high-water mark is basically where the gravel and sand of the river meets the grass and vegetation of the upland. He stated the other regulation is that nothing can be built within 40 feet of the top or bottom of a slope that exceeds 12 percent. He pointed out the property line that runs through a tree line between two sheds. He pointed out that the portion of the property that flattens out is down in a flood plain, which has additional requirements, although the area doesn't get a lot of flooding. He explained the applicant proposes building a fence that is 30 feet from the water, and up the slope as close to the street as allowable. He explained the concept of the clear-view triangle that applies to the front yard to address visibility concerns. He stated one would measure 30 feet along the edge of the driveway and the edge of the curb, and anything within the resulting triangle must not exceed 42 inches. He said the other component of fence regulations for the front yard is that the fence cannot exceed 42 inches within the first 15 feet of the property line. He stated that the clear-view triangle impacts about 5 feet of the fence, and then there is another 10 feet before the fence can be taller than 42 inches. He explained that fences are generally allowed in the flood plain, but the DNR has a rule that the fence needs to be easily disassembled. He explained the idea is that the posts would stay in the ground, but the panels should pop off to avoid impacting the flow or collecting debris. Staff recommends approval.

Jordan Leopold, 9500 West River Road, co-owns Leopold's Mississippi Garden with his wife Jaime. He stated his property is unique in the City as it is the only commercial property along the Mississippi River that borders a residential property. He asked the variance to be approved for liability concerns. He provided an example that upcoming prom photos will result in over 200 people being on the property, and they don't want their guests to wander into the neighboring property which brides have done in the past. He said their property currently consists of about 3 acres, they accumulated an additional property that used to be a house which has since been removed. They thought this purchase would be a good buffer. He explained that as of 2017 they have new neighbors, and this fence is needed for liability purposes as well as to separate the properties.

Commissioner Vice-Chair Kisch opened the public hearing.

Krissy Munholland, 9432 West River Road, stated her opposition of the proposed fence. She stated they have lived at this neighboring property since 2016 after living in the city their whole lives. She stated their house is their utopia with panoramic views of the Mississippi River, and they are saddened that their backyard view will be obstructed by a 7-foot fence. She said her husband and next-door neighbor will also speak to additional concerns.

Chris Munholland, 9432 West River Road, agreed that the property and area are unique as all the houses are built on a bluff. He described the scenic views of the river as spectacular. He stated that south of their property there are no fences which create a unique wildlife habitat. He included that the water level is currently very high as he has a cottonwood that is under 6 feet of water. He asked who will monitor the removal of the fence to allow for wildlife to move up the area when there is high water. He added that it is difficult to build a nice-looking fence when there is a steep grade. He believed that the images provided to the Planning Commission were not representative of how the fence would look since the property is not flat. He stated his concern that the fence would deter other's enjoyment of the views when they are using the walking path or driving down the scenic road. He stated that it is a national wildlife area it needs to be considered that the wildlife should be able to access the area and easily go back and forth. He

understands the businessowner wants to maintain their property for when it is in use for temporary events, but they would be subject to the view of the fence permanently. He stated his disappointment especially since he plans to retire in this house that was designed specifically to view the river. He stated his belief this would set a precedent for the rest of the residents to construct such a fence. He stated his belief that such a fence would not enhance a kayaker's experience. He said he thoroughly opposes the variance.

Krissy Munholland, 9432 West River Road, once more approached the podium with an interest to address the liability concerns of the businessowner. She offered to put up a decorative chain-link fence along their property line that says "private" in hopes of preventing guests from wandering on to their property. She said they would be willing to work with the businessowner on something like that.

Carrie Oslund, 9418 West River Road, said she is speaking on her behalf as well as the homeowner's behalf Charlie Knudsen. She stated that Leopold's Mississippi Gardens is the kind of business one wants to have in their neighborhood. She agreed that the property is unique in that it is right next to a residential area, the landscaping is immaculate, and the guests and staff are respectful. She stated in general she has no disagreement with the Leopold's as they have always been kind, respectful, and polite in their interactions with her. She stated her opposition to the fence as she fears it will alter the character of the neighborhood. She spoke for the neighborhood stating they moved to the area because of the meditative, panoramic view of the river. She stated this fence will not only block the view but set a precedent for others to set up more fences. She said both her and Charlie don't want to see fences this close to the river in their view. She said right now the area is full of nature and trees, and she hopes the Commission will not allow that to be altered.

Seeing no one approach the podium, Commissioner Vice-Chair Kisch closed the public hearing.

Commissioner Mohamed stated that Leopold's is a valued business, but he will not be in support of a fence variance since the neighbors are being supportive to work out another solution. He agrees there is an essence with freedom to move around in that area. He doesn't believe that fences make people feel secure. He pointed to the many stipulations unique to the area in regard to having a fence due to the floodplains. He confirmed he agrees with the view points of the neighbors. He stated that a vegetative barrier would be more appropriate.

Commissioner Kiekow stated initially he was in support of the variance thinking that the neighbors were in support of the fence, but his mind has changed after hearing that the neighbors are not in favor of the variance. He stated his belief that a fence that obstructs the view wouldn't benefit the neighborhood. He said there are other ways to keep guests from wandering off the property such as a decorative chain-link fence. He stated he doesn't support the proposal at this time.

Commissioner Vosberg stated she is in agreement with the other commissioners and is not in favor of granting the variance for a permanent fence. She believes there are other ways to create a separation that addresses the concern of guests wandering into someone else's property. She suggested decorative landscaping and gentle directions. She agreed this would set a precedent for other neighbors which goes against the characteristics of the Mississippi River area, not only the view but the ability for it to be seen and used by everyone on the water.

Commissioner Morton-Spears stated her concern that the privacy fence seems so tall. She reiterated that other options should be considered to address the safety and liability concerns. She compared the fence to the Berlin Wall in that it would push people away instead of bringing them in. She agreed with the residents that the beauty of the area should be retained and encouraged the neighborhood to reach a compromise. She stated she will oppose the variance.

Commissioner Husain asked if alternatives such as bushes and chain-link fences had been discussed.

Jordon Leopold explained that the liability concerns are not just about people wandering, but the neighbors also purchased a dog over the winter. He said the dog is a 90-pound labradoodle. He explained it poses a potential liability problem for the dog to wander on to their property while unleashed and engage with the guests. He clarified that they are not asking for the fence to go all the way to the water, and the water and animals will be able to get around the proposed fence. He said they plan to use removable panels as suggested. He said the reason they are asking for a 7-foot fence is because they have to consider the backdrop for photos, and taller people will look weird in pictures in front of a 6-foot fence. He stated they could consider vegetation. However, the odds are slim that such vegetation will survive the winters, and it takes time for the vegetation to grow back in to create a barrier. He stated that the other homeowners sit on a bluff just like their property, so their views of the river will not be impacted.

Jamie Leopold, the applicant, stated it only takes one bad review of a bride being jumped on by a dog to destroy their business reputation. She stated guests already comment on the nearby property in terms of the color of their house, the shed, and the vehicles parked outside. She explained the fence would be a solution to keep everything peaceful.

Jordon Leopold admitted the dog could possibly run around this fence as well.

Jamie Leopold stated they did talk to their neighbors about an invisible fence, but the neighbors felt that was inhumane. She said it would be different if it was an entirely residential area, but this is a different set-up.

Jordon Leopold said when brides and grooms bring animals on to their property for pictures they make them sign pet waivers, and they must remain on leashes. He stated that there is a concern in the about how one dog would react to the other as it is unpredictable. He said they also want their neighbors to be able to enjoy their lawn when they are sitting out in the backyard, he doesn't want them to feel they need to disappear into their house to respect the brides and grooms. He stated that the privacy fence would allow the neighbors privacy as well as it would block the visual element. He added they are free to do what they want anyways, but they are asked to be courteous and try not make any interruptions.

Jamie Leopold stated the neighbors have been really good about that in making sure they aren't doing anything like sawing wood, taking down trees, or mowing their lawn in the middle of an ongoing ceremony. She said they had a similar relationship with the previous owners. She said the problem arises when someone doesn't agree on everything, what happens when someone decides to start a lawn mower out of spite. She said while it might be one wedding for the business, it is someone else's major life event. She said the goal of the fence is to remediate any problems as it would be something determined that doesn't need to be discussed every time. She reiterated

this would allow the homeowners to have more personal freedoms, such as having a bon fire, on their property without it interfering with the business.

Commissioner Mersereau asked the resident how they control the dog in their backyard now.

Krissy Munholland stated that the public hearing notice arrived before the Leopold's were aware they had a dog. She stated their dog is a poodle that is 10-weeks old. She stated that the dog stays on a rope in their yard. She accused the Leopolds of speaking falsely. She said it won't be a 90-pound dog because it is a poodle which usually get to be about 60 pounds.

Chris Munholland said they never spoke to anyone about an invisible fence.

Krissy Munholland agreed they never spoke about an invisible fence. She said they only found about the dog after she spoke with them about receiving the public hearing notice.

Chris Munholland assured they will take care of the dog as all residents should.

Krissy Munholland said the dog will always be hooked by the rope on the upper level, she doesn't even know if the dog will ever be down on the lower level due to the vegetation and burrs. If he were ever to be on the lower level, he would be on a leash.

Commissioner Kiekow said he is trying to understand the main reason the applicants want to put up a fence. He asked if it was the dog or if they are trying to control customers.

Commissioner Vice-Chair Kisch asked that any further back-and-forth be prevented by keeping the conversation up with the Commission going forward. He stated his belief that enough information or a lack of consistency in information has been established, and the Commission will most likely receive two different answers. He explained the public comment period is closed, so the conversation needs to remain with the Commission.

Commissioner Kiekow wants to make a basis of a compromise to make both parties relatively happy to prevent a neighborhood war.

Commissioner Herbers pointed to the practical difficulties. He stated he is struggling to get through all of the requirements to grant a variance on the fence. He said that yes, it is true that other businesses in residential areas are able to construct a fence on their side of the property line. However, since the property is on a river bluff there are special setbacks that are in place for the intent of never allowing a fence in the critical area. He stated that he doesn't think the variance should be allowed because the business did not anticipate and plan for liability concerns. He argued that the business is obviously there because of the river bluff, and now they are proposing to take the landscaping away from the area. He agrees that the river and bluff are natural features not created by the landowner, but again they chose their location because of those features which they are now potentially asking to take away from other parties. He understood their liability concerns, but he thinks those concerns run both ways as the neighbors would also be concerned if their dog exhibited unruly behavior. He pointed out that it is easy to say that variances don't set a precedent because they are considered on a case-by-case basis, but in this case if this fence were to be allowed on the river bluff, the Commission will have a hard time telling homeowners it is not allowed for them because the merits are different. He explained the merits to him seem like a stop of wildlife or inhibit site lines of the neighbors because they don't like the cars parked in

their driveway or the color of the house. He doesn't feel that the merits presented are a good enough reason to allow the fence variance.

Commissioner Vice-Chair Kisch explained that regardless of the recommendation, the proposal will still go to City Council for the final vote. He strongly encouraged both properties to meet between now and the City Council reading to work out a compromise to present to the City. He stated his agreement with other commissioners that the solid fence will be visually imposing. He contemplated that other types of fences that could achieve the same goals of a barrier for separation. He offered less imposing options such as natural vegetation or a black rod iron fence with spacing in between that would allow some visual transparency. He agreed that the merits outlined in the application don't seem to be providing the entire picture as to why this fence is wanted. He questioned the need to go all the way to the front property line within the CVT area. He pointed out that the aerial shot presented appears to have the fence extend past the front property line. He clarified he is not in favor of the Commission recommending nor the City Council approving a fence that goes off the property line. He conceded it could be a mapping error.

Senior Planner Larson explained there is a survey issue with all the properties along the Mississippi River as the property line extends all the way to the water, but it looks like the property line is 50 feet from the water. He clarified the visual is a survey line, not the property line.

Commissioner Vice-Chair Kisch asked his last comment be disregarded.

**MOTION MOHAMED, SECOND MERSEREAU TO RECOMMEND APPROVAL OF A VARIANCE TO CONSTRUCT A FENCE WITHIN THE MISSISSIPPI RIVER CRITICAL AREA AT 9500 WEST RIVER ROAD, SUBJECT TO CONDITIONS IN THE DRAFT RESOLUTION.**

Commissioner Vice-Chair Kisch clarified that the motion is to approve the variance.

Commissioner Mohamed confirmed an affirmative motion is how the City Attorney trained the Commission to conduct business. He said anyone not in agreement should vote nay.

*MOTION FAILED 0-8.*

**7. OTHER BUSINESS (none)**

**8. DISCUSSION ITEMS (none)**

**9. INFORMATION ITEMS**

**A. Council Comments**

Council Liaison West-Hafner stated the Council met on Apr. 22 and approved the drive-thru at 85<sup>th</sup> and West Broadway, the code change for vet clinics, and the time extension for Samara Circle.

**B. Commission comments**

**C. Staff Comments**

Planning Director Sherman said there will be a work session on May 22. She said they will discuss the code for Pigs, Goats and Chickens as well as findings on Conditional Use Permits. She told the Commission to look out for an email in the next couple of weeks regarding a tour of a multi-

family housing site as there is a developer who is considering doing work in the Village, and the tour will look at their previous properties. She said the tour will be in June, potentially Jun. 3. She asked that those who are available participate on the tour so they can get a feel of the development that will be proposed in Brooklyn Park.

Commissioner Vosberg said they have been receiving an email survey request related to the Pigs, Goats and Chickens. She asked if the survey results will be available when the discussion starts.

Planning Director Sherman said the work session will be more of an introduction to the issue. She stated right now the project is in an information gathering stage. She added the City Council has seen this same presentation. She clarified this presentation is more to create the groundwork for future discussions. She stated the work session is not intended for this to be a decision-making discussion. She explained they may see this presentation at least one more time before it would go to a public hearing.

Commissioner Vosberg asked if the survey results would be available before the presentation comes back formally.

Planning Director Sherman confirmed yes.

#### **10. ADJOURN TO A WORK SESSION**

Commissioner Vice-Chair Kisch adjourned the regular meeting to a work session at 7:58 PM.

Respectfully submitted,

Natalie Davis  
Planning Program Assistant