

CITY OF BRANSON PLANNING & ZONING COMMISSION
REGULAR MEETING – MINUTES
July 06, 2004

CALL TO ORDER: Chairperson Davis called the regular meeting of the City of Branson Planning and Zoning Commission meeting to order at 7:30 P.M. in the Council Chambers, 110 West Maddux, Branson, Missouri.

SPECIAL ANNOUNCEMENTS

PUBLIC COMMENTS

CONSENT

1. Roll Call.

Commissioners Present: Commissioners Boyce, Hartley, Roeger, VanderNaald, Weisz, Williams, Vice-Chairperson Harris and Chairperson Davis.
Commissioners Absent: Commissioners Butler and Edie.
Staff Present: Don Stephens-Director of Planning and Development, Dan Wichmer-City Attorney and Ruth Denham-Administrative Assistant.

2. Approve Agenda.

Recommended Action: Approve the format of July 06, 2004 agenda.

MOTION:

Motion by Vice-Chairperson Harris, seconded by Commissioner Hartley and unanimously carried to approve the format of the July 06, 2004 agenda.

3. Approve Minutes.

A. June 01, 2004.

Recommended Action: None.

MOTION:

Motion by Commissioner Williams, seconded by Commissioner Roeger and unanimously carried to approve the minutes of the June 01, 2004 meeting.

OLD BUSINESS

4. Request To Zone Newly Annexed Property Located In Rainbow Shoals Subdivision, Branson, Missouri As "R-1", Single Family Residential, "R-3" Multi Family and "C" Commercial. Resolution No. P-2004-016.

Applicant: City of Branson.

Don Stephens, Director of Planning and Development, presented the staff report as filed with the Planning Division. Mr. Stephens explained that as part of the public input process, Dr. Gerald Blue has provided staff with documentation showing approval from Taney County of a Division III permit for a Master Planned Development that included multi-family development. The development includes property to the east of the subject property, which cannot be heard this evening due to advertising requirements. However, Lots 1, 2, 3, 4, and 5 of Block 4 and Lots 2 and 3 of Block 5, Rainbow Shoals Subdivision belong to Dr. Blue and were advertised for this evening's public hearing. Mr. Stephens read Section 405.030(f) of the Branson Municipal Code, which states:

F. When territory, which is the subject of a current Division I or Division III permit previously issued by the County, is annexed into the City, such territory shall be deemed zoned within the City in accordance with the land use authorized under such Division I or Division III permit. Following annexation, such territory shall be developed in accordance with the density, parking, building height, building construction and landscaping regulations of the City of Branson.

Mr. Stephens discussed his recent conversations with Dr. Blue and suggested possible zonings for Dr. Blue's properties.

SPEAKING IN FAVOR:

Steve Muth, 418 Dalton Drive, voiced his concerns regarding the protection of residential properties.

SPEAKING IN OPPOSITION:

None.

Commissioner Weisz asked City Attorney Wichmer if private covenants and restrictions could be considered by the Planning and Zoning Commission, to which Mr. Wichmer answered no.

MOTION:

Motion by Commissioner Weisz, seconded by Vice-Chairperson Harris to approve Resolution No. P-2004-016 by utilizing Attachment #3 and excluding Dr. Gerald Blue's properties legally described as Lots 1, 2, 3, 4, and 5 of Block 4 and Lots 2 and 3 of Block 5, Rainbow Shoals Subdivision.

AYES: Commissioners Boyce, Hartley, Roeger, VanderNaald, Weisz, Williams, Vice-Chairperson Harris and Chairperson Davis.

NOES: None.

ABSTAIN: None.

ABSENT: Commissioners Butler and Edie.

Motion to approve Resolution No. P-2004-016, attachment #3, excluding Lots 1, 2, 3, 4, and 5 of Block 4 and Lots 2 and 3 of Block 5, Rainbow Shoals Subdivision carried with an 8-0 vote.

5. A Resolution Recommending A Bill Amending The Landscaping, Buffering and Clearing Regulations Definition Of Retaining Wall And Adding Language Allowing For Alternative Methods.

Applicant: City of Branson.

Don Stephens, Director of Planning and Development, presented the staff report as filed with the Planning Division.

Chairperson Davis stated that the resolution before the Commission this evening was the resolution that was actually approved by the Commission at the May meeting. Therefore, Chairperson Davis stated that in order to get this item on the floor, a motion for amendment is necessary. Chairperson Davis commented that Mr. Stephens has provided a good blend of trying to take concerns of the development side of things and at the same time, trying to preserve the aesthetic features and factors in the community in the terms of development. Chairperson Davis voiced his concerns that the Commission be cautious in making recommendations to modify codes based upon recommendations from any particular groups or committees, as that is the responsibility of the Planning and Zoning Commission.

Commissioner Roeger asked for confirmation that the residential will have no greater height than eight foot but it would only have three foot between the wall faces as opposed to the twelve foot which would have four foot between wall faces.

Don Stephens responded that the answer to Commissioner Roeger's question is completely up to the Planning and Zoning Commissioners. Mr. Stephens added that the ordinance included in the package has the actual language previously passed by the Commission, along with suggested language in red print for Commission consideration.

Commissioner Boyce asked Mr. Stephens if the amendment should include eight feet and three feet, to which Mr. Stephens answered that it is completely up to the Commission.

City Attorney Wichmer stated that the Commissioners previously asked staff to bring this item back, and as it currently stands, eight and three feet across the board is in black print. The red print is the proposed change to go back to eight and four feet plus an exception for twelve and four feet if the property is "C" Commercially zoned. Mr. Wichmer added that what is before the Planning Commission and has been passed by the Commission is eight and three feet. Mr. Stephens added that eight and three feet would remain the same unless an amendment is made.

Vice-Chairperson Harris referred to the staff report pertaining to Administrative Review Team (ART) and approval by the Director of Planning and Development. Harris asked Mr. Stephens if that gives the Director the power to over-rule all of the eight and three or eight and four, under any situation. Mr. Stephens answered that if an alternative method is presented to ART, (that team consisting of technical staff and occasionally members of utility companies), and they, as a group, felt it was a fitting alternative method, they would then forward the proposal to him for review. Mr. Stephens added that the ultimate determination would be his.

Vice-Chairperson Harris voiced his concern that there be some method of feedback provided to the Planning and Zoning Commission so they are kept in the loop of concept discussion.

Chairperson Davis asked Mr. Stephens if there is an opportunity for the Planning and Zoning Commissioners to have final approval after ART without slowing the project down. Mr. Stephens stated that it would slow the project down, but added the Planning and Zoning Commission have every right to have final approval. Mr. Stephens explained the ART meeting process and the timeframe, which would be slowed down if the items would have to be presented at Planning and Zoning Commission, which meets on a monthly basis only. Mr. Stephens stated that his preference would be that as the alternative methods are provided for review, if one is approved, he will provide a report under Director's Report on the Planning and Zoning Commission agenda.

Commissioner Williams asked Mr. Stephens if there is anything in the Landscape Ordinance that deals with plantings and screening in the proposed ordinance amendment. Mr. Stephens answered yes, but without referring to the code book out, he could not quote the section.

Commissioner Roeger commented that the Planning and Zoning Commission does not have authority to provide design approval.

Commissioner Weisz noted that in the landscape area, plantings other than grass can be used. There are various ground coverings that can be utilized. Commissioner Weisz spoke in agreement with Mr. Stephens in regards to the importance of not delaying projects with additional requirements.

Commissioner Hartley voiced her concerns regarding precedence being set.

Vice-Chairperson commended Mr. Stephen's suggestion of providing an update under Director's Report on the agenda if submittals for alternative methods are received.

MOTION:

Motion by Commissioner Weisz, seconded by Commissioner Roeger to approve Resolution No. P-2004-013, utilizing the staff version as shown in red print, with following amendment:

RETAINING WALLS: A structure constructed or erected between lands of different elevations. A retaining wall, which directly abuts and faces a residential zoning district, shall not have an exposed wall face greater than eight (8) feet in height, with a three foot off-set between wall faces to allow for landscaping. A retaining wall, which directly abuts and faces any zoning district, other than residential, shall not have an exposed wall face greater than twelve (12) feet in height. In the event that more than one retaining wall is needed, there shall be at least a four (4) foot off-set between wall faces to allow for landscaping. When special property conditions exist, which make it unfeasible to meet this requirement, applicants may present alternative recommendations to the Administrative Review Team (ART) of the Planning and Development Department for consideration. The recommendation of ART shall be presented to the Director of Planning and Development for consideration. No permit for any alternative method shall be issued without final approval from the Director of Planning and Development.

City Attorney Wichmer raised a point of order and referred to language in the sixth line of the paragraph, *...in the event that more than one retaining wall is needed...*, and stated that an insertion is necessary that refers to commercial zoning.

Don Stephens confirmed that the Commission's desire is to allow for eight (8) feet in height and three (3) foot off-sets for residential and twelve (12) feet in height and four (4) feet off-sets for all else, to which they agreed. Mr. Stephens stated that he would provide language to reflect this change and include it before submittal to the Board of Aldermen.

MOTION:

Motion by Commissioner Williams, seconded by Commissioner Hartley to add and the Planning and Zoning Commission to the end of the last line.

Commissioner Boyce referred to previous discussion in which it was agreed that this requirement would slow down the process.

Commissioner Weisz spoke in opposition of the amendment due to the delay it would create in the process. Commissioner Boyce seconded Mr. Weisz' opposition.

SPEAKING IN FAVOR:

None.

SPEAKING IN OPPOSITION:

Rick Huffman stated that requiring applicants to go through ART and then Planning and Zoning Commission would harm development and slow down the process. Mr. Huffman stated that he feels final decision at the Director of Planning and Development Department level is more than sufficient.

Chairperson Davis asked Mr. Huffman if he feels developers are able to pre-plan so that all code requirements can be met prior to submittal. Mr. Huffman stated that in his case, he is able to properly prepare early on because he is aware of the city's code regulations. However, in the case of an outside developer, it can impede the process because these requirements are unusual, as most cities do not have them.

Commissioner Williams stated that he is not as concerned with the requirement of eight (8) and twelve feet in height as much as he is with the alternative methods.

Vice-Chairperson Harris stated that he is pleased with the information received that engineering design is required for any wall seven (7) feet in height in any zoning. Harris added that he is satisfied with the fact that Mr. Stephens will keep the Commission abreast under Director's Report on the agenda.

Chairperson Davis asked for a roll call vote on the amendment, to which Commissioner Roeger clarified this roll call vote will be on the amendment made by Commissioner Williams.

AYES: Commissioner Williams.
NOES: Commissioners Boyce, Hartley, Roeger, VanderNaald, Weisz and Vice-Chairperson Harris.
ABSTAIN: Chairperson Davis.
ABSENT: Commissioners Butler and Edie.

Motion to approve the amendment denied 7-1, with the abstention counting as a no.

Chairperson Davis asked for a roll call vote on the main motion.

AYES: Commissioners Boyce, Hartley, Roeger, VanderNaald, Weisz, Williams and Vice-Chairperson Harris.
NOES: None.
ABSTAIN: Chairperson Davis.
ABSENT: Commissioners Butler and Edie.

Motion to approve Resolution No. P-2004-013, utilizing the staff version shown in red print with one amendment, as suggested by City Attorney Wichmer, carried 8-0, with the abstention counting as a yes.

PUBLIC HEARINGS

6. Request For Approval Of A Special Use Permit To Place A Modular Home On Property Locate at 305 Lake Drive, Branson, Missouri. Resolution No. P-2004-017.

Applicant: David and Janet Oyler.

Don Stephens, Director of Planning and Development, presented the staff report as filed with the Planning Division. Mr. Stephens added that the applicant contacted the Planning Division and stated they would not be able to attend this evening's meeting. Mr. Stephens referred to the petition presented by neighboring property owners, of which copies were provided to Commissioners prior to the meeting. An overhead of the proposed modular home was shown. Mr. Stephens stated that Master Code Official and Building Division Supervisor, Tim Trout, has provided a memo confirming that the subject modular home does meet the requirements of the International Residential Code, 2000 Edition, which has been adopted by the City of Branson.

Chairperson Davis asked Mr. Stephens to give an example of what type of manufactured home would not meet the building requirements of the City of Branson. Mr. Stephens stated that any manufactured home not constructed to any standards but FHA, for requirements such as room sizes, does not meet the building requirements of the City of Branson.

SPEAKING IN FAVOR:

Chuck Zender, neighboring property owner, stated that he had signed the subject petition against approval for the request. Mr. Zender requested that his name be stricken from the petition as he feels the subject modular home is appealing and has the potential to increase property values in the area. Mr. Zender added that another property owner listed on the petition desires his name to be removed as he shares Mr. Zender's opinion.

Phyllis Winn, 400 Lake Drive, spoke in favor of the proposed modular home to be located on the subject property. Ms. Winn voiced her concerns about setting a precedence for modular homes in the area as she feels not all future modular homes will be as aesthetically pleasing as the one being requested this evening.

Chairperson Davis stated that each request to locate a modular home in a residentially zoned area requires approval of a Special Use Permit from the Planning and Zoning Commission.

SPEAKING IN OPPOSITION:
None.

Due to the fact that the applicant was not able to attend this evening's meeting, Chairperson Davis asked the Commission and staff if they recommend postponement of this request. Mr. Stephens responded that the applicants stated that they would prefer approval as they have a financial commitment in the modular home.

Vice-Chairperson Harris asked Mr. Stephens, if approved, would the applicant be obligated to use the particular model of modular home presented this evening. Mr. Stephens answered no, as the request is for approval of use of modular on the property only.

MOTION:

Motion by Vice-Chairperson Harris, seconded by Commissioner Hartley to postpone Resolution No. P-2004-017 to the August 03, 2004 Planning and Zoning Commission meeting.

AYES: Commissioners Hartley, VanderNaald, Weisz, Williams, Vice-Chairperson Harris and Chairperson Davis.
NOES: Commissioners Boyce and Roeger.
ABSTAIN: None.
ABSENT: Commissioners Butler and Edie.

Motion to postpone Resolution No. P-2004-017 to the August meeting carried 6-2.

7. Request For Approval Of A Special Use Permit To Operate A Theatre On Property Located At 3307 W. Highway 76, Branson, Missouri. Resolution No. P-2004-018.
Applicant: Joe Aziza.

Don Stephens, Director of Planning and Development, presented the staff report as filed with the Planning Division.

Mark Welytok, Heritage Architecture, stated that the subject property was designed as a restaurant. Mr. Welytok explained that the initial tenant was not able to complete the contract. A new tenant is interested in the property, and desires to have a platform added to the building for entertainment purposes.

Commissioner Weisz asked Mr. Welytok if the request for a theatre use would change the parking or occupant load at the site. Mr. Welytok answered no, as theatre and restaurant both require one (1) parking space per three (3) occupants.

SPEAKING IN FAVOR:
None.

SPEAKING IN OPPOSITION:
None.

MOTION:

Motion by Commissioner Williams, seconded by Commissioner Roeger to approve Resolution No. P-2004-018.

AYES: Commissioners Boyce, Hartley, Roeger, VanderNaald, Weisz, Williams and Vice-Chairperson Harris.
NOES: None.
ABSTAIN: Chairperson Davis.
ABSENT: Commissioners Butler and Edie.

Motion to approve Resolution No. P-2004-018 carried 8-0, with the abstention counting as a yes.

8. Request To Zone Newly Annexed Property Located At 148 Cypria Lane, Branson, Missouri. Resolution No. P-2004-019.

Applicant: Dennis and Anita Sheaffer.

Don Stephens, Director of Planning and Development, presented the staff report as filed with the Planning Division.

Denny Sheaffer, applicant, stated that he desires to operate a two-unit bed and breakfast business at this location. Mr. Sheaffer stated that he is aware of the requirement to hook up to city sewer to operate his bed and breakfast.

SPEAKING IN FAVOR:

None.

SPEAKING IN OPPOSITION:

None.

MOTION:

Motion by Vice-Chairperson Harris, seconded by Commissioner Roeger to approve Resolution No. P-2004-019.

AYES: Commissioners Boyce, Hartley, Roeger, VanderNaald, Weisz, Williams, Vice-Chairperson Harris Chairperson Davis.
NOES: None.
ABSTAIN: None.
ABSENT: Commissioners Butler and Edie.

Motion to approve Resolution No. P-2004-019 carried 8-0.

Commissioner Weisz excused himself from the table for Items 9 and 10 due to a conflict of interest.

9. Request For Approval Of A Preliminary Subdivision Plat For Branson Hills Plaza, Branson, Missouri. Resolution No. P-2004-020.

Applicant: Ozark Diversified Development LLC.

Don Stephens, Director of Planning and Development, presented the staff report as filed with the Planning Division. Mr. Stephens explained the process for final plat approval.

Dan Tate, TRI Architects, stated that curb cuts, water, sewer, and storm water issues would be addressed and included in the final platting process.

SPEAKING IN FAVOR:

None.

SPEAKING IN OPPOSITION:

Gary Fultz stated that Branson Hills Association is involved in discussion with Richmack LLC. Mr. Fultz voiced his concerns regarding Ozark Diversified platting the common area owned by Branson Hills Association and controlled by Richmack LLC.

Mr. Tate stated that he was unaware that the common area should be excluded.

Chairperson Davis asked City Attorney Wichmer how the Commission is to proceed. Mr. Wichmer requested a recess to confirm ownership of certain parcels included in the preliminary plat.

Mr. Stephens stated that staff is reviewing the plat to confirm the legal descriptions. Mr. Stephens suggested that, if there is a question relating to the correct legal description, the recommendation from the Planning and Zoning Commission could be adjusted to approve the preliminary plat subject to clarification of the correct legal description before it is presented to the Board of Aldermen.

Mr. Stephens reported to the Planning Commission that the preliminary plat does include the common area. Mr. Stephens added that this concern could be resolved prior to the Board of Aldermen.

Chairperson Davis asked Mr. Wichmer if the Commission could proceed with this item. Mr. Wichmer stated that staff did not find any documents that indicated that the common area was part of the preliminary plat submission.

Rick Huffman, representative for Branson Hills Association, spoke in support of amending the plat to reflect the correct legal description.

MOTION:

Motion by Vice-Chairperson Harris, seconded by Commissioner Roeger to approve Resolution No. P-2004-020 subject to confirmation of the land boundaries before submittal to the Board of Aldermen.

AYES: Commissioners Boyce, Roeger, VanderNaald, Williams, Vice-Chairperson Harris and Chairperson Davis.

NOES: Commissioner Hartley.

ABSTAIN: Commissioner Weisz.

ABSENT: Commissioners Butler and Edie.

Motion to approve Resolution No. P-2004-020 carried 6-1.

10. Request To Rezone Property From "C" Commercial To "PD" Planned Development For Property Located In Branson Hills, Branson, Missouri. Resolution No. P-2004-021.

Applicant: Ozark Diversified Development LLC.

Don Stephens, Director of Planning and Development, presented the staff report as filed with the Planning Division.

Dan Tate, TRI Architects, gave an overhead presentation of the Planned Development.

Vice-Chairperson Harris asked Mr. Tate to explain the landscape plans for the parking area. Mr. Tate stated that the parking lot plans meet the ordinance requirements for internal green space in terms of quantity. Mr. Tate stated that the parking lot has been organized into two separate pieces; the parking

area and the service drive. The parking area is compliant with the City of Branson ordinance requirements. The service drive does not yet meet the requirements.

Commissioner Roeger asked how the applicant proposes to grade the terrain. Mr. Tate referred to Exhibit E, the grading plan, in the agenda packet. Mr. Tate pointed out the retaining walls, none of which exceed the eight-foot (8') requirement, and added that he has not received negative responses to the plan to date.

Commissioner Boyce asked if the slopes would be re-vegetated or left as natural rock. Mr. Tate stated that they would re-vegetate with hydro-seed.

Commissioner Roeger asked when the applicants plan to commence. Mr. Tate answered that commencement is planned for December, 2004. Commissioner Roeger voiced his concerns regarding the subject area being cleared and not completed.

Staff requested a ten-minute recess.

Don Stephens stated that the subject property cannot be zoned without the permission of the owner, as it is a Planned Development with mixed use on the property. Mr. Stephens added that staff spoke with the property owner of the parcel in question and then deferred the discussion to City Attorney Wichmer.

Mr. Wichmer stated that he consulted with the applicants, their legal counsel and representatives of the property owner's association. Mr. Wichmer reported that all parties have agreed that the applicant will go forward with the Planned Development subject to working out the grading and slope issues with Branson Hills Association prior to submittal of the Planned Development to the Board of Aldermen.

Mr. Wichmer asked the representatives of the association if this is the agreement that was reached. Rick Huffman confirmed agreement on behalf of the Branson Hills Property Owner's Association.

Daniel Cofran, legal counsel, confirmed agreement on behalf of Ozark Diversified Development LLC.

Don Stephens confirmed that the design for grading and slopes would be required to meet the requirements of the Branson Municipal Code.

MOTION:

Motion by Vice-Chairperson, seconded by Commissioner VanderNaald to approve Resolution No. 2004-024, subject to the applicant working out all grading and slope details with Branson Hills Association to meet the requirements of the City of Branson Municipal Code prior to submittal of the Planned Development to the Board of Aldermen.

- AYES: Commissioners Boyce, Hartley, Roeger, VanderNaald, Weisz, Williams, Vice-Chairperson Harris Chairperson Davis.
NOES: None.
ABSTAIN: None.
ABSENT: Commissioners Butler and Edie.

Motion to approve Resolution No. P-2004-021 carried 8-0.


OTHER BUSINESS

ADVISORY RECOMMENDATIONS

ADJOURNMENT

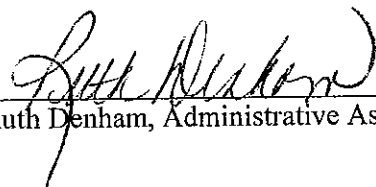
MOTION:

Motion by Commissioner Boyce, seconded by Commissioner Roeger and unanimously carried to adjourn the meeting at 9:30 p.m.



Rick Davis, Chairperson

8/3/04
Date



Ruth Denham, Administrative Assistant

8/4/04
Date