

FILED

2018 MAY -9 8:47



**Benton County Planning Board
Public Hearing
Technical Advisory Committee Meeting**

TENA O'BRIEN
CO & PROBATE CLERK
BENTON COUNTY AR

April 18, 2018

6:00 p.m.

Benton County Administration Building
215 East Central Avenue, Bentonville AR 72712

Meeting Minutes

PUBLIC HEARING:

Call to Order: The meeting was convened at 6:00 p.m. by the Planning Board Chair, Bob Bracy.

Roll Call: Bob Bracy, Sean Collyge, Ron Homeyer, Terry Maienschein, Stephen Torrez and Rick Williams were present. Ashley Tucker was absent.

Staff present: Kevin Gambrell – Director of Planning, Taylor Reamer – Planning Division Manager, Derek Linn – Senior County Planner, Tracy Backs – County Planner, Glenn Tracy – Building Official and Joshua Bryant – JP Planning Board Liaison were present

Public Present: 11 people signed the sign-in sheet.

Disposition of Minutes: April 4, 2018

Mr. Williams motioned to approve the April 4, 2018, Planning Board Meeting minutes. The motion was seconded by Mr. Homeyer. The motion carried 6 – 0.

General Public Comment: None

Old Business:

1. Planning and Development Regulations – Update to Proposed Revisions

Mr. Reamer: Simple revisions within Chapter 2 and 3:

Revision of Chapter 2, section 2.2: membership term revision for Board of Appeals; increasing the reappointment terms for members and alternative members to four years from the current two-year length

Revision of Chapter 3: definition for 'date of decision' as well as Decision Letter; upon further discussions with the County legal counsel, small amount of verbiage added and uploaded to the County Dashboard

Mr. Williams motioned to approve the revisions. Mr. Maienschein seconded the motion.

Motion Approved: 6 - 0

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New Business – Items for Public Hearing:

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I. Rush Setback Variance, #18-061, 9 Cyrus Rex Road, Rogers, 15-09095-001
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Representative: Christopher Rush, owner of the property at 9 Cyrus Rex Road in the Rivercliff subdivision.

Staff gave a presentation on the Rush Setback Variance, #18-061, 9 Cyrus Rex Road, Rogers, 15-09095-001

Mr. Bracy: Is there anything you would like to add?

Mr. Rush: Three is not. You did request a distance from the garage to the property line. It is 10' from the side property line.

Mr. Bracy: That was the little dimension that we couldn't see.

Mr. Rush: Yes.

Mr. Bracy: For clarity, can you tell me again how far out of the easement....?

Mr. Linn: *Discusses the site plan on the screens.* Applicant is requesting a 35' setback in lieu of the required 50'. It is not in the right of way.

Public Comment:

Marvin Sorvala, 13 Cyrus Rex Road, Rogers
Focus of comments: No objection to the variance provided that there is room to pull a truck into the driveway up to the garage. It appears that there would be enough room. Note that many existing garages are closer to the right of way than this garage would be.

Mr. Bracy: I believe in the TAC we clarified that you could pull a pick-up truck or a large vehicle in front of this proposed garage and still be off the roadway.

Mr. Rush: Yes, I believe that there would be 25' – 26' of available space.

Mr. Homeyer motioned for approval of the Rush Variance. Mr. Collyge seconded the motion.

Motion Approved: 6 - 0

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**II. Hawks Landing Estates Final Plat Major Subdivision, #18-068, Hawks
Landing Drive, Rogers; 18-04910-002**

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Representative: David Hawkins, 15600 Hawkins Drive, Rogers

Staff gave a presentation on the Hawks Landing Estates Final Plat Major Subdivision, #18-068, Hawks Landing Drive, Rogers; 18-04910-002

Mr. Bracy: Is there anything that you would like to add to this, sir?

Mr. Hawkins: As far as (*Outstanding Item*) number 1, that calculation has been completed. I don't know why they haven't submitted that. Number 4, AASHTO has been verified that that intersection met that degree coming off of that road, so that was complete.

Mr. Reamer: I haven't received it.

Mr. Hawkins: I am sorry that I am kind of green behind the ears on some of this stuff. On the improved utility plans, the water was installed and improved. I have the letter from Benton County Rural Water District Number 1. They are the ones that have completed and finalized that. Regarding Carroll Electric, they have my plans. I can't get electric cable to go under ground through conduit until I get the final plat approval. So, I don't know if that letter comes afterwards. I don't know how the process works on that one. They just ran a new water line right in front of my property to that water tower. They are taking down that big, stove pipe water tower that was right in front of my property and replaced it with a big 8" - 10" line. So, that will do away with that stove pipe. One of my water extensions comes off of that new water line that just came in. The testing of one of four water line extensions will be complete when this last little bit is done right in front of my property. All the water lines have been in, tested and the water company has taken over three of the four. So, the fourth one is just waiting to be tested, chlorinated and some other process that they do. They couldn't do that until the brand-new water line was finished. That just got completed. I just talked to Eddie Cooper, the head of Benton County Water District Number 1 today. That is completed now. That last extension for me comes right off Guyll Ridge Road on to Hawks Landing. That should be done next week. All I need is letters from them I guess. Again, I don't know if that comes before or after the final plat approval.

Mr. Bracy: Thank you. There was a lot of information in there.

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Mr. Hawkins: I am just trying to hit these bullet points.

Mr. Bracy: The water company needs from you an estimate of how much water use your project is going to take. If you have given that to them, they will use that to calculate the lines that they will bring in. They would acknowledge that before you start your project.

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Mr. Hawkins: Absolutely. That was all approved and completed. I am kind of shocked that that's not taken off the list.

Mr. Bracy: It's saying we don't have approved plans from them or from your architect.

Mr. Hawkins: My water plans are in what I brought two weeks ago.

Mr. Reamer: Number 2 is going to be specifically taken care of when a Certificate of Completion is completed by the engineer, that the lines physically are put into the ground properly as per plans as well as the road and any utilities. So, the Certificate of Completion, in general, will take care of this utility infrastructure aspect. During preliminary plat review, the Water District did approve the line size and capacity to the site. That has been taken care of. Number 2 is speaking for just the certificate that those aspects were completed properly. So, it is serviced and it does have capacity. That has been taken care of. Yes, sir.

Mr. Bracy: That is for protection of the owner. I assume that's the same for Carroll Electric, electrical capacity to the site?

Mr. Reamer: Yes, exactly.

Mr. Hawkins: Yes, they have given final approval. They haven't completed it because they need final plat approval before they can come in and run their lines.

Public Comments: None.

Mr. Williams motioned for approval contingent on completion of the outstanding items report. Mr. Maienschein seconded the motion.

Motion Approved: 6 - 0

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TECHNICAL ADVISORY COMMITTEE

2. **Call to Order:**
3. **Old Business / Ongoing Applications:** None
4. **New Business:**

I. Spinks Septic Waiver, #18-073, 4086, 4088, 4100 Patterson Road, Pea Ridge; 18-05389-000

Representative: Donald Dobbs, 1373 North Pine Creek Drive, Fayetteville

Staff gave a presentation on the Spinks Septic Waiver, #18-073, 4086, 4088, 4100 Patterson Road, Pea Ridge; 18-05389-000

Mr. Bracy: Do you have any additional information on this project, sir?

Mr. Dobbs: We are just trying to move a modular home on the property to help take care of grandma.

Mr. Bracy: You are confirming that you are going to remove that modular home?

Mr. Dobbs: The old modular home, yes, sir.

Mr. Bracy: Which is the 4086?

Mr. Dobbs: Correct.

Board Comments: None.

II. Martinez Site Plan Review, #18-080, 5475 + 5529 Colvin Place, Lowell; 18-02843-001

Representative: Tina Ford, Bates and Associates, 7230 Pleasant Ridge Drive, Fayetteville

Staff gave a presentation on the Martinez Site Plan Review, #18-080, 5475 + 5529 Colvin Place, Lowell; 18-02843-001

Mr. Bracy: Any additional information on this project?

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Ms. Ford: We received this project back after it was denied. In April (of 2017), Bates and Associates submitted the initial one that got denied. We picked it back up when we were informed of all the drastic changes that happened since last year. He went from 30 dump trucks down to 13. I personally went out and visited the site. It's gone through some drastic changes and looks a whole lot better. He still has a lot of things to do to his residence. He has some 4' x 4' columns with wrought iron up for entrance gates. It looks a lot better than what it did.

We are aware of the situation with the neighbors. We researched multiple different trees and shrubs and put three-tier where the neighbors to the south are at as well as the north property line with the trees being evergreens planted closed together to become dense and form a solid tree line. This will screen and provide dust control. On the east property line, the pond there is pretty much a berm and there are existing trees there. We have added fencing there as well and a row of additional trees to fill in any gaps where existing trees are missing. The north property line has the buildings there where we can't get a buffer in that area. Where the buildings aren't, we will go back to three-tier planting. We have two-tier where the buildings are at.

I believe this project has drastically improved. Once all these elements are put together, this will satisfy the neighbors. Their concern for the heavy commercial that is going on there, has drastically went down. He (Mr. Martinez) also does not do any equipment runs for the trucking company on Sundays. It's six days a week and they stop at 7 p.m. Hours are now 6 a.m. to 7 p.m. He currently is doing renovations to the house on Sundays. He's not doing any trucking outside those hours six days a week.

As far as the outstanding items and the hazardous material, he does now have a contract with Crystal Clean. They have been getting their used oil and batteries and hauling those off. I have seen receipts on that. The ADEQ complaint was resolved on September 21st of last year. There have been no more complaints that I have been made aware of. I do have verification that this is Springdale water for water service. I have seen the utility receipts and will submit that. I believe that we can meet all these requirements.

Mr. Bracy: Is the owner here now?

Ms. Ford: Yes, the owner is here.

Mr. Kendall: I am Don Kendall, the Martinez's lawyer.

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CLERK
BENTON COUNTY AR

Mr. Bracy: I understand. Thank you, sir. I appreciate and commend the engineering firm. You have done a good job of professionally detailing out a project that was presented in a, to put it bluntly, sketchy format. I also visited the site, probably a little over a month ago. It does look a whole lot different than it did when this project was denied.

My only concern at this point, is that you see earlier this project has gone on with a number of denials. The owner continued to operate even though we denied this project. The courts denied it. You continued to operate. I find that to be a little bit concerning. I can understand land use in Benton County is a bit new to operations; but after going through out lengthy process, and the court's lengthy process, to continue to operate concerns me, not that I would pass it or deny it on that. What I see is a whole lot different. My hopes would be that the owner would abide by the rules and regulations of Benton County if this is approved and how it's approved with any variances.

Mr. Kendall: The court has not denied. This case is pending. We have advised the Martinez's that they are not violating the law. We are working with the County. The County attorney requested that the case be passed pending the fact that we are working with the County. There has been no finding by a court. They have issued no order. That hasn't happened.

Mr. Bracy: That is my understanding but they haven't approved anything either.

Mr. Homeyer: I just need some clarification here. You reduced this to 13 parking spaces for trucks, right? You are staying 10 trucks but there are 13 spaces for vehicle and equipment parking. Is this still a full-blown trucking operation here or are you simply going to be bringing trucks in for repair and then taking them out to another yard somewhere?

Mr. Kendall: This is a dump truck operation with 10 dump trucks all for I-49 when all that paving was going on up there. That's why there were so many trucks going in and out of there. There are 10 trucks proposed now. They have three pieces of equipment that are in and out. That's where the three comes in. They have a track hoe....

Mr. Martinez:....a rotor compacter and an excavator.

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Mr. Kendall:....which is in the lot when it's brought back from the job left out on the jobs when there is a job going on. The rest of it is, they do normal maintenance on their trucks.

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Mr. Martinez: Fleet maintenance.

Mr. Homeyer: So, are we talking trucks leaving in the morning and coming back in the evening or are they coming and going all day long?

Mr. Martinez: No, in the evening.

Mr. Homeyer: Just one time out and one time in?

Mr. Martinez: Yes. When the truck is broke down, it comes back in the yard to fix it. Or when the job is finished early, the trucks go back to park in the yard. The trucks leave in the morning and come back when the job is done.

Mr. Homeyer: A lot of the public comment before was that these trucks were coming all day and all night. I was trying to clarify that situation.

Mr. Kendall: That's entirely changed.

Mr. Homeyer: I appreciate that.

Mr. Martinez: That happened before when I worked on the I-49. The other thing, my brother was parking in my place too. He's not parking there anymore. Now it's just my trucks.

Mr. Homeyer: Okay. Thank you.

Mr. Kendall: I don't know if it makes any difference, but if you go back and look at this property before he bought it, it was a junkyard. It was terrible.

Mr. Homeyer: There's no comparison to what it used to look like and what it looks like now. We appreciate the clean up effort and all that. I just wanted to clarify the amount of traffic we are talking about, that's all.

Mr. Martinez: I am making it better every day.

Mr. Homeyer: We appreciate it.

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Mr. Bracy: I agree. I also visited the site just a month ago. It is completely different that it was. It also is more compatible to the neighborhood. There are other properties that are in some commercial but not as heavy as this was. It's not that incompatible with what you have done now. It would have been nice if that would have happened a year ago. That's my only comment is a concern that if we review this, that it will stay well within the land use regulations and I trust that it would.

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Mr. Gambrell: We heard you say that during the week, 6 a.m. to 7 p.m., is what you are proposing for this submittal?

Mr. Martinez: Yes.

Mr. Gambrell: Weekday. Monday through Friday or Monday through Saturday?

Mr. Martinez: Monday through Saturday.

Mr. Gambrell: And not Sundays?

Mr. Martinez: Not Sunday.

Mr. Gambrell: Two trips a day per vehicle, so, on the ten trucks, we'd be talking about 20 trips per day max plus employees coming in?

Mr. Martinez: Yes. And the 10 trucks don't work every day. It may be 6 - 8 trucks working. A truck might be broken down. Maximum 8 trucks working per day.

III. Keith Austin Construction Site Plan Review - #18-078, Variance - 18-082, Waiver - 18-083; 3597 Phillips Road, Lowell; 18-02876-001

Representative: James Geurtz, 134 West Emma Avenue, Springdale

Staff gave a presentation on the Keith Austin Construction Site Plan Review - #18-078, Variance - 18-082, Waiver - 18-083; 3597 Phillips Road, Lowell; 18-02876-001

Mr. Bracy: Do you have anything to add to the project, sir?

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Mr. Geurtz: Just to go over the outstanding items. We actually currently have power to the site but we will get you a letter from the power company. Same with water. There's a 12" line on the north edge of our property. We will work with Springdale Water to get the letter. Regarding the trash cans, currently the plan is to have his trash cans located inside his building and take them outside during trash day. We will work with Solid Waste on what the requirements are for that. Regarding the landscape buffer, we will work with Staff to meet that requirement. We will have to come up with some type of plan to deal with the setback issues and see how that affects the property. This is a one-acre, small site. I think those were the main items I was wanting to address.

Mr. Torrez: What about the fence? I think I saw a picture of the fence. Does that show to be improved at all? I wasn't quite clear on that.

Mr. Geurtz: We will work with Staff on what's required for that fencing.

Mr. Bracy: One of the questions was a setback variance from 10' to 9.77'?

Mr. Reamer: The existing metal building is about 95 percent complete. They originally came and got a building permit with the Building Safety Division for a residential shop. Unbeknownst to them, they needed to do a commercial building permit which would have brought them before the Board initially. The property owner is now rectifying that issue both with occupancy of the building... They don't have occupancy at this point in time due to the fact that it is a commercial building and not a residential building. And then, going through the Site Plan Review process, and working with the engineer on the project, it was found that the building that is nearly complete, is 2.76" within the 10' setback. Therefore, the property owner has requested a variance from the rear yard setbacks as is noted here to provide a minimum of a 9.77' setback in lieu of the required 10'. This should be the plan that is in front of the Board. It should have a 2.76"....

Mr. Gambrell: When the applicant came in for their building permits, and they were asked if it was going to be commercial, they answered not commercial because they didn't intend to have any customers come. That's a typical misnomer when it comes to land use because from a Planning standpoint we really don't look at it as to whether customer is coming or not. We are looking at the intensity of the actual land use. It was an honest mistake.

Mr. Torrez: So, did they get their residential building permit?

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Mr. Gambrill: The Building Official can clarify this.

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Mr. Tracy: Yes, they got a permit for the residential building. It is an existing concrete slab. The slab was already there.

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CO & PROBATE CLERK
BENTON COUNTY AR

Mr. Reamer: This land use issue was brought to the County's attention at final inspection, I believe. The inspector visited the site, was doing the walk through for the final inspection, and there were some blatant commercial aspects relating to interior fire, lighting and electrical, things like that that were brought to Planning Staff's attention as far as the commercial proposal.

Mr. Bracy: You say that the slab was existing which would mean that it was there long before this project was started.

Mr. Tracy: Yes, sir.

Mr. Bracy: So, it would have been grandfathered.

Mr. Gambrill: Well, the use not so much.

Mr. Bracy: Not the use but the slab would have been. That issue would be moot. He just wants to get that legally put on paper.

Mr. Gambrill: They want to utilize the slab as it sits in relation to the existing property lines which is why we are at fractions of feet.

Mr. Geurtz: Mr. Austin, do you have anything to add to what was discussed?

Mr. Austin: I'm sorry. I don't know what was discussed. I have a hard time hearing. I've been trying to listen but I just can't make it out.

5. Other Business: None

6. Staff Updates - Administrative Approvals:

- I. Snoderly Minor Subdivision, #18-069, Sugar Creek Road at Minch Springs Road, Avoca; 18-04488-001
- II. Todd Minor Subdivision, #18-075, Fishback Road, Bentonville; 18-12233-000
- III. Eden Minor Subdivision, #18-076, 14312, 14311, 14318 Vine Road, Springdale; 18-03041-000
- IV. Neff / Lakeside Investments Property Line Adjustment, #18-084, 14961 Muldoon Drive, Rogers; 18-05194-003, 18-05194-002

V. Young Minor Subdivision, #18-085, 10203 Old Campbell Road, 18-03913-000
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7. Discussion Items:

I. Chapter 6, Section 6.1 Inter-Office Memorandum on Existing Uses

Mr. Gambrill: In your binders there is an inter-office memorandum that I drafted for Staff to use and any other folks in the Development Department to sort of clarify Section 6.1 under the Site Plan Review Chapter. It specifically deals with the applicability and exemption from Site Plan Review. The memo speaks to *a change in use of an existing structure shall be regulated in the following manners...*

I'm not going to read from the two bullets but there are just situations, one is where you have existing nonresidential and nonagricultural structures that either predate the building permit programs, which didn't start until 2006 or may even predate planning regulations when we didn't have Site Plan Review or Large-Scale Development standards. You could also have a situation where you have an existing building independent of that that wants to utilize that existing building for whatever it was initially constructed for without expanding it or intensification at all. That's the second paragraph. We feel that those also fall under the exemption requirement. We don't feel that those types of scenarios would warrant Site Plan Review today. We have had existing construction change ownership where the ownership doesn't have any record of coming in to the County for any sort of review. The previous owner never needed to or never did for a variety of reasons. It just gets into the history of the County. We feel as though those types of situations do not warrant coming to this Board for Site Plan Review.

Mr. Bracy: Is that because they don't impede on the exterior of the property or the dimensions of the building or the use of the building?

Mr. Gambrill: It's a combination of both. There are other places in the country where if they were allowed to operate or they weren't enforced upon 365 days or longer, they are allowed to stay. I've never seen that stipulated here. You get into, not so much grandfathered because we don't have zoning, but you get into those issues where if you try to retroactively apply Site Plan standards today because they never went through Planning before, we would find ourselves in an uphill battle in terms of liability, etc. It would be very difficult for us to even try to go back retroactively and do that. This is a much more fair, simple approach to working with current standards, obviously for new construction. If you find some legacy issues, as long as they are not intensifying whatever the new construction was and it predates the building permit program and it predates land use regulations, (those are the things that are written in the memo) then we feel the exemption clause under 6.1 would apply.

Mr. Bracy: 2006 was the first requirement for building permits in Benton County?

Mr. Gambrill: The building permit program was adopted in 2006.

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Mr. Tracy: November 2005.

Mr. Gambrill: This is a memo. We didn't feel like there needed to be additional language proposed to the regulations. We just often will come to the Board and provide you all with memos and things that we feel clarify how we administer these things day to day. If there is discussion needed, that's fine. We are just bringing it to your attention.

TERESA D'BRIEN
CLERK & PROBATE CLERK
BENTON COUNTY, AR

Mr. Maienschein: Sounds good to me.

Mr. Bracy: I read somewhere that there was some verbiage of the 365-1/2 days or 365 days. Did I read that right?

Mr. Gambrill: I've not read that here. I've seen that written in zoning codes elsewhere.

Mr. Bracy: I thought I read that somewhere.

Mr. Gambrill: The way it works is nonconforming uses or uses that were in violation, if they cease to operate for 365 days, they may lose the grandfathering provision.

Mr. Bracy: That's what it was, if they cease to operate.

Mr. Gambrill: That's more typical in a zoned environment.

Mr. Bracy: It's not in Benton County?

Mr. Gambrill: I've never seen that verbiage. We would have to entertain the legal counsel.

Mr. Homeyer: I have no objections to implementing this executive order. It makes sense and is fair in my opinion.

Meeting Adjourned: 7:20 p.m.

Next Meeting: Wednesday, May 2, 2018

APPROVED THIS 2nd DAY OF May, 2018

ATTEST:


**PLANNING DIRECTOR or
PLANNING MANAGER**

APPROVED:


**PLANNING BOARD CHAIR or
PLANNING BOARD VICE CHAIR**

