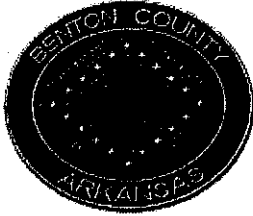


2018 MAY 09 AM 8:44



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

TENA O'BRIEN
CO. & PROBATE CLERK
BENTON COUNTY, ARK

April 4, 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, Ashley Tucker and Rick Williams were present.

Staff present: Taylor Reamer – Planning Division Manager, Derek Linn – Senior County Planner, Tracy Backs – County Planner and Glenn Tracy – Building Official were present

Public Present: 31 people signed the sign-in sheet.

Disposition of Minutes: March 21, 2018

Mr. Williams motioned to approve the March 21, 2018, Planning Board Meeting minutes. The motion was seconded by Mr. Maienschein. The motion carried 7 – 0.

General Public Comment: None

Old Business: None

New Business – Items for Public Hearing:

- I. **Barenz Septic Waiver, #18-046, 15517/15519 Sugar Creek Road, Garfield; 18-04470-000**

Representative: Antonio Granillo, 15519 Sugar Creek Road, Garfield

Staff gave a presentation on the Barenz Septic Waiver, #18-046, 15517/15519 Sugar Creek Road, Garfield; 18-04470-000

Mr. Bracy: You don't know where the existing lateral lines are and the existing septic?

FILED

Ms. Granillo: No.

2018 MAY -9 AM 8:45

Mr. Bracy: Have you tried to find them so that you don't possibly put the mobile home on top of them?

JENA O'BRIEN
CO & PROBATE CLERK
BENTON COUNTY AR

Ms. Granillo: We had someone come in and check; but the mobile home is placed too far away. He said that there is no way to find out. It's been there for a long time.

Mr. Reamer: In relation to the proposed system that is for the mobile home located on this graphic, in order to have a gravity-flow system, the slope is from the north to the south. In regard to the existing septic tank that I have my cursor on right now, which is just below or to the bottom of the existing three-bedroom home. You could make the assumption that to have a gravity-fed system, the septic lateral lines would be located in this graphic, to the right, or behind the bedroom.

Public Comment: None

Mr. Tucker made a motion to approve the septic waiver. Mr. Maienschein seconded the motion.

Motion approved: 7 - 0

II. Heavenly Paws Site Plan Review, #18-053, 10680 Shady Lane Circle, Gravette; 15-07330-000

Representative: Cheryl Lucius, 10680 Shady Lane Circle, Gravette

Staff gave a presentation on the Heavenly Paws Site Plan Review, #18-053, 10680 Shady Lane Circle, Gravette; 15-07330-000

Mr. Bracy: Do you have any additional information?

Ms. Lucius: No. We are not exactly sure with the trees and all that, what we need to do. We have ordered a light for the full shut-off. We have one already. We have ordered two more. I guess I forgot the water service.

Mr. Tucker: One of the things in our package is a deed restriction that the property was for single family residence only, no farm animals and no businesses. Were you aware of that?

2018 1481

TERRA O'BRIEN
CO. & PROBATE CLERK
BENTON COUNTY, ARK

Ms. Lucius: No. They never said that. There were animals there when they purchased the land. There have been horses there for...

Mr. Tucker: Since maybe the 60's?

Ms. Lucius: I don't know how long the animals have been there. There are horses and cattle all around us.

Mr. Tucker: I guess the difference is that this particular lot is in a subdivision. In the subdivision, it's not covenants, it's deed restrictions which are a little different than covenants in that you are supposed to be aware of them when you buy the property.

Ms. Lucius: We asked about it but they said that there were no restrictions on anything.

Mr. Tucker: That may have been wise because it is in the deed, not a covenant.

The property owner (Cathy Scroggin of 10680 Shady Lane Circle, Gravette) comes to the podium.

Mr. Bracy: Ma'am are you the owner of the property?

Ms. Scroggin: I am, yes.

Mr. Bracy: Can you answer any of these questions?

Ms. Scroggin: I can. There were horses there when we moved there. That's what the barn is for. So, I can't answer that question. There were horses on property when we moved there.

Mr. Bracy: It's an unfortunate part that realtors don't disclose things that may have changed. You purchased this property in 2014?

Ms. Scroggin: Yes, sir.

Mr. Bracy: So, all our latest covenants were prior to that, 2014.

Mr. Tucker: Yes, this was part of the deed in 1968 when it was platted or at least that's what the paper says.

FILED

2018 MAY -9 AM 8:46

TERESA O'BRIEN
CO. & PROBATE CLERK
BENTON COUNTY, AR

Mr. Bracy: Taylor (*Reamer*), what was the complaint?

Mr. Reamer: It was a general nuisance case focused on noise from the commercial operation with no approval.

Mr. Maienschein: You were out there today?

Mr. Reamer: Yes, sir.

Mr. Maienschein: Did you notice other animals, farm type, in the adjoining neighborhood?

Mr. Reamer: I do not recall seeing any property containing numerous farm animals or domestic animals.

Ms. Scroggin: There are chickens. There were goats. In that area, there are other farm animals.

Ms. Lucius: There are horses out there.

Mr. Maienschein: Are they in the subdivision though?

Ms. Scroggin: I don't know if they are or not. But in the subdivision, there are chickens and goats. The people that had the goats moved but there were goats.

Mr. Tucker: To the east is not part of the subdivision?

Mr. Reamer: Correct. The subdivision starts at Shady Lane Circle and moves north and west. The subdivision is outlined in the dashed, white line. There are chicken houses, poultry houses, poultry operations but they are located outside of the subdivision. Within the subdivision, I only visited Shady Lane Circle. I did not witness any agricultural structures containing any farm animals.

Mr. Bracy: So, we are looking at about five single-family residents that are attached to this property or near it?

Mr. Reamer: There is a single-family home immediately to the north, south and southwest. There is a vacant lot at the corner of Sunset Way and Shady Lane Circle. I do know that there is a residential building permit for that specific lot. But, at this time for existing residences, there would be a total of four, possibly five immediately adjacent.

FILED

2018 MAY -9 AM 8

TENA O'BRIEN
CO & PROBATE CLERK
BENTON COUNTY

Mr. Bracy: In the title search when you purchased this, did the title company not recognize that in the deed there was a....

Ms. Lucius: No.

Mr. Bracy: They didn't discover that? That's their job.

Ms. Lucius: They were very aware of what we were going to do with the property.

Mr. Bracy: The realtor?

Ms. Lucius: Yes.

Mr. Bracy: Was this operation present before you purchased this property?

Ms. Lucius: Yes. Heavenly Paws was started in Bella Vista.

Mr. Bracy: At this site, these structures were in place and domestic animals were being housed there?

Ms. Scroggin: Yes.

Mr. Torrez: Was Heavenly Paws being operated at that particular site prior to you purchasing the property?

Ms. Scroggin: No.

Public Comment:

Paige Todd, 10650 Shady Lane Circle, Gravette

Focus of comments: Noise levels from constant barking from 50+ dogs, sleep difficult, stench from dogs, poor living conditions for dogs, general eyesore, reduced property values

Mary Jane Adams, 15955 Sunset Way, Gravette

Focus of comments: aware of subdivision covenants when they purchased their property, devalue of her property

2018 1484

FILED

2018 MAY -9 AM 8:46

TERESA O'BRIEN
CO. & PROBATE CLERK
BENTON COUNTY, AR

Karen Churchwell, 15902 North Mt. Olive Road, Gravette

Focus of comments: Plat restrictions of no commercial enterprises within subdivision, noise from dog barking throughout the day of 50+ dogs, escape of dogs from their kennels, appreciate the dog service but not appropriate location for this service due to the impact on the residential neighborhood

Robert Lester, 10675 Shady Lane Circle, Gravette

Focus of comments: noise levels, smell at times, dogs loose in the road, not safe, not the proper site for what they are doing, aware of deed restrictions

Sondra Hilgen, 15731 North Mt. Olive Road, Gravette

Focus of comments: constant noise, high pet population, impact on property values

Nick Frakes, 10651 Shady Lane Circle, Gravette

Focus of comments: reduced property values, noise level

Michael Brown, mailing address: 901 SW Pure Globe Street, Bentonville;
bought nearby property with the intent to build a home.

Focus of comments: Concurs with what has previously been said; safety of his children, noise

George Ann Wood, 15961 Sunset Way, Gravette

Focus of comments: noise from barking dogs, aware of subdivision restrictions

Jennifer Rollins, 16101 Chinquapin Lane, Gravette

Focus of comments: property is an eyesore, experience with lost dog, ethical concerns regarding the treatment of dogs within the facility

Tilly Holloway, 12 Watson Lane, Bella Vista

Focus of comments: An employee of Village Pet Hospital of Bella Vista that does all medical treatment for Heavenly Paws rescues. Have volunteered at multiple adoption events for them as well. They spay/neuter, deworm, vaccinate and heartworm test every dog that comes in the building. I have seen dentals, hernia repairs, heartworm infestations and injuries sometimes severe enough to require drastic measures such as amputations, intensive care or even euthanasia and cremation. They have cremated the unfortunate DOA's. They pay for this out of pocket through donations and volunteer only. They take dogs off the streets or out of abusive/neglectful homes and into capable families.

2018 1485

FILED

2018 MAY -9 AM 8:46

JENA O'BRIEN
CO. & PROBATE CLERK
BENTON COUNTY, AR

Ms. Scroggin: The barking is not continuous. I have said, drive by our home and see. If we are out there working and cleaning stuff up, they will bark, but during the day, they do not. If someone walks by, they do bark. But the barking is not continuous by any means measurable. We don't dump dogs.

Ms. Lucius: We do cremate dogs. We have lost four dogs on premises due to old age. We'd had others that we have taken to the vet to have euthanized. Every animal that we had that has passed away, is cremated.

Mr. Tucker: In the past, the way we have treated subdivisions has been pretty consistent, whether it was a wrecker service, a car lot, cabinet shop, whatever it is, that subdivisions are kind of sacrosanct. They are their own thing and we have tried to protect subdivisions to be what they are. I think approving this would be somewhat inconsistent and open a precedent for us to treat subdivisions differently than we have in the past.

The matter of the deed restrictions is a civil matter. We don't necessarily enforce it. The people who bought lots here, bought them with the understanding that they would be surrounded by residents, not by a business, a farm or whatever. That they would have the joys of living in town but be out in the country. Apparently, that's what everybody wants. That's what these lots were sold as. That's what they were platted as. We've got one that we will see tonight that's the same way. It's platted as a subdivision for residents.

I'm not against animal shelters at all. We've looked at two recently. I've done some design work for one free of charge before. I think that this being in a subdivision and not having some of the characteristics that I would expect to see from a rescue or shelter either one, (i.e. clean up, individual pens, things like that) that make it easier to care for and also control the noise and atmosphere. It makes it difficult for me personally to approve.

Mr. Bracy: As Chairman of the Board, we do recognize the human element to our pets and animals. We do appreciate that and believe that your efforts in that wouldn't violate any of that. It is a subdivision. As a matter of fact, my wife and I are proud owners of a rescue dog for the last eight years. There is obviously a great need for this. We have to put the emotional part to the side. Unfortunately, Benton County doesn't have a lot of zoning per se; but, we do have land use. If the Board does not approve this, or even if we do, you as the owner would most likely need to go to your title company. It's their job to inform people when you buy real estate of what is on a deed. That's a civil part.

2018 MAY -9 AM 8:46

I have adopted three from them. My friends have adopted from them as well. They are the most ethical rescue that I have ever worked with. I have worked in this clinic for five years and can testify to their character and ethics. They are a service to the helpless animals in the streets as well as our community as a whole. They relieve our shelters by allowing more room in their facilities for strays and other homeless animals. They deserve nothing but our respect and support and I hope that you give that to them.

Mark Scott, 15973 Sunset Way, Gravette

Focus of comments: noise from dogs heard day and night, concur with all that has been said

Matthew Colston, 11 Mills Lane, Bella Vista

Focus of comments: Currently involved with animal rescue and work with both Ms. Scroggin and Ms. Lucius. They are extremely ethical and take extremely good care of their animals. Doesn't believe 100 percent of what is being said. Population growth of northwest Arkansas with needs for organizations like Heavenly Paws. Encourage others to think about impact that rescues make to the pet population.

Mike Savage, 2000 Montclair Avenue, Siloam Springs

Focus of comments: The Animal Control Officer for the city of Gravette Testifies on the behalf of Mr. and Mrs. Scroggins and their character. They do a great work in the community, not just in Gravette but all over northwest Arkansas. They receive dogs in poor physical condition and get them back to good health.

Mike Churchwell, 15902 North Mt. Olive Road, Gravette

Focus of comments: We realize that there is a need for these type of facilities but it's not needed in a residential subdivision; continuous noise is the main complaint

Public Comments Closed

Ms. Lucius: First of all, we do not throw dogs out or dispose of dogs on our private property. That's disgusting. The poodle that the previous speaker spoke of did get out of our fence. We fixed the fence. The dog did go to the vet. She was treated. We do get very sick dogs there. We get dogs that have to be euthanized because they are so sick. We do have two dogs of our own that walk around but neighbor's dogs run out in the road all the time. We have to slow down because they are not our dogs in the road but people drop dogs off that aren't ours. We are in the country.

FILED

2018 MAY -9 AM 8:46

TENA O'BRIEN
CO & PROBATE CLERK
BENTON COUNTY AR

Mr. Haddock: We will have.

Mr. Tucker: You will have. So, you will have a filter and all that with a down draft. Just want to make sure that you paint inside, not outside, especially with lacquer.

Mr. Haddock: You can't get any kind of finish spraying outside with lacquer anyway.

Mr. Tucker: Thank you for doing a good, detailed drawing. I wish everybody who did their own drawings, did them this well. This is very good. Thank you.

Mr. Bracy: I have to echo that too. It's very descriptive. I demonstrates the detail of the property owner, I guess. Do we vote on the building first, and then the septic?

Mr. Linn: That will be fine. They are kind of separate from each other. So, the Board can go in order as on the slide.

Mr. Bracy: If the building were not approved, then that would negate the second one?

Mr. Linn: I don't think in this case. They are very much stand alone.

Mr. Haddock: Yes, they are separate items.

Public Comments: None.

Mr. Tucker motions that the site plan be approved with the conditions listed.
Mr. Collyge seconded the motion.

Motion Approved: 7 - 0

Mr. Tucker motioned that the waiver be approved. Mr. Maienschein seconded the motion.

Motion Approved: 7 - 0

We have no say in that portion. Title companies are to disclose such avenues. Should they have overlooked that, it's their responsibility to compensate you however that needs to be done. It's done all the time. I have a challenge to approve this. It is in a subdivision. People have been there for many years.

They bought it with the intent of being a subdivision. Unfortunately, to some degree in Benton County being a rather young zoning or regulated County, there are a lot of things that have gone on in the past that we have been asked to change or make a variance for. When it comes to subdivisions, my tenure here for the last couple of years, has been that we try to maintain the integrity of the subdivision to be what it is intended to do for the residents and the financial impact. It is up to the developers, the realtors and the title companies in this County to inform people who come from out of state as to what is and isn't allowed. On the other side, it is the responsibility of the citizens of Benton County if they want to change something to do that before they invest lots of financial income in property.

Mr. Torrez moves that the Heavenly Paws Site Plan Review NOT be approved. Mr. Maienschein seconded the motion.

Mr. Tucker: So, voting 'yes' would be no.

Mr. Bracy: If we vote 'yes', we are NOT approving.

Motion Approved (for denial): 7 - 0

III. Haddock Site Plan Review and Septic Waiver, #18-054/#18-059, 17455/17457/17461 AR Highway 16, Siloam Springs; 18-10628-000

Representative: Eddie Haddock, 17455 Highway 16, Siloam Springs

Staff gave a presentation on the Haddock Site Plan Review and Septic Waiver, #18-054/#18-059, 17455/17457/17461 AR Highway 16, Siloam Springs; 18-10628-000

Mr. Bracy: Do you have any additional information or comments, sir?

Mr. Haddock: I do have the permit from the ARDOT already, as far as that consideration there.

Mr. Tucker: If you are painting with lacquer, make sure you do it inside. It's been the source of several complaints. Do you have a paint booth that you are going to paint in?

FILED

2018 MAY -9 AM 8:46

LENA O'BRIEN
CO & PROBATE CLERK
BENTON COUNTY AR

Based on the conversation from tonight, would the Board like to have these items placed on the April 18th Public Hearing, Old Business, in order to vote on forwarding these to the Legislative Committee? Is that the general consensus? The Board will see these items again in two weeks in order to formally endorse or revise these proposed revisions.

Mr. Tucker: Any word on when we would expect to see the Legislative Committee act on the previous....

Mr. Reamer: Based on just cursory e-mail correspondence, once it gets through this Board, it will be scheduled in the near future. No immediate timeline known. But there is interest in scheduling a Legislative Committee in the near future once it gets past this Board.

Mr. Tucker: Susan Anglin?

Mr. Reamer: Yes, I believe she is the Chair.

Mr. Tucker: She is the current Chair of the Legislative Committee?

Mr. Reamer: Yes, correct. She will be made aware as well as George Spence, County legal counsel as well as the County Judge out the outcome on the 18th (of April).

3. New Business:

I. Rush Setback Variance, #18-061, 9 Cyrus Rex Road, Rogers, 15-09095-001

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: Do you have anything to add?

Mr. Rush: I actually went and measured several of the houses in my cul-de-sac. The original covenant was only a 20' variance. On my side of the road, the average is somewhere around 27' from center line. I actually took one picture of a house where a car was actually touching the garage door and the car was on

2018 MAY -9 AM 8:46

TECHNICAL ADVISORY COMMITTEETENA O'BRIEN
CO & PROBATE CLERK
BENTON COUNTY, AR**1. Call to Order:****2. Old Business / Ongoing Applications:****I. Planning and Development Regulations – Update to Proposed Revisions**

Mr. Reamer: This old business items should be fairly short. The packet of information that I provided to the Board includes two new revisions. The Planning Staff is bringing those two new revisions to the Board for consideration at tonight's TAC. Depending on the outlook from the discussion on these revisions, we will then place it on Old Business Public Hearing on the 18th (of April). From the information provided to the Board, the first of which should be Chapter Two, section 2.2, Board of Appeals. There are two documents here. The first one being a simple, red line revision. This is simply changing the membership and terms section for the Board of Appeals. The first revision being under item a, Increasing the Members Reappointment Term to four years from the current, two-year term length.

Secondly, for alternate members, Staff has proposed a red-line edit to increase alternate members' reappoint term to four years from the current two-year term length. That is the extent of Chapter Two's revisions. This stemmed around the frequency in which Board of Appeals members would have to be appointed, reappointed and then finding new Board of Appeal members. Based on our research, the current layout that we have, after an 18-month period of establishing a new Board, every 18 months we would lose 50 percent. That was a little too frequent in order to successfully have members apply, get appointed and then within a year, to be reappointed to the same position and term out, essentially, in three years. That became somewhat of an issue for Staff. We did have some conversations with the Executive Office as well as County legal counsel concerning these term limits as well as the term lengths. That's the generality for Chapter Two's revisions.

The second document is to Chapter Three. The document has a red-line edit for definitions. This page deals with edits to Date of Decision definition as well as Decision Letter definition. After consulting with County legal counsel, planning Staff has added a balloon comment on the second page from the Director, dealing specifically with the second portion of both of the definitions relating to Administrative Approvals, following the same guidelines as Planning Board items that are approved. The general revisions and comments have been made within the document.

2018 MAY -9 AM 8:46

Mr. Linn: You can see here that the orange lines represent 10' of vertical between them. It's about 35' by the time you get to the back of the

TENA O'BRIEN
CLERK OF PROBATE
BENTON COUNTY, AR

Mr. Rush: I asked for 35' because I was told I would be shot down for 25'. It's going to be a push to use 35', just to be honest.

Mr. Bracy: What type of water system is in this property?

Mr. Rush: It's Rogers water.

Mr. Bracy: City water?

Mr. Rush: Yes. It's on my side of the road.

Mr. Bracy: That relieves you of having to have your septic away from wells.

Mr. Rush: Yes, but I have to be 100 linear feet from the 1135 elevation.

Mr. Bracy: That's the take line of the Corps?

Mr. Rush: Yes, it's actually above my take line. So, it really squeezes it up there. We had to go up to make it fit with the garage we had to shorten the lines. I was 14 weeks in planning the septic.

Mr. Bracy: My big question is, why is the building not square with the road?

Mr. Rush: Because of the septic. The septic takes a lot of my length. Once you get the septic, there's the tank because it has to fall from the tank to the lateral lines. Then I have to have another 10' from the lines. From the other side of the garage to the property line, I have to have an additional 10'. So, I have to have 10' on both sides of the septic, both sides of the tank and both sides of the garage. Just to get any size out of that garage whatsoever, I made it deeper.

Mr. Bracy: If I can understand this drawing, if you take the house and rotate it clockwise and move it to the right, it would be parallel. The garage would be able to move toward the lake more, or away from the road.

Mr. Rush: It would but it would just be so far down the hill that it's really not feasible because of the height of the walls. All of the walls would be 18' - 20' tall at that point.

the asphalt. That's how close some of these roads are. I am asking for every inch I can get because this lot is only 120' deep and it's steep. I am really trying to get the garage up to the elevation of the road to make it safer pulling in there and so I have a place to play basketball and to just make it better. I am really trying to get the garage up to the elevation of the road to make it safer pulling in there and so I have a place to play basketball and to just make it better.

TENA O'BRIEN
COUNTY CLERK
BENTON COUNTY, AR

Mr. Bracy: The drawing shows that there is no structure on this property right now.

Mr. Rush: No, there's a building permit and we dug a hole before it started raining.

Mr. Bracy: But there's no structure yet. The house is not built yet?

Mr. Rush: No.

Mr. Torrez: The garage is 35' deep. Theoretically, if you were to build the garage at a more standard size, 25' deep garage, it would be the 50' and you would meet all the requirements.

Mr. Rush: The reason for the depth is no matter what I do, I'm going to have a basement and suspend a slab. I know cost isn't a factor when I am talking to you guys but it's going to be outrageous just to do that. We dug a hole for the house and what we thought are going to be 10' walls are going to have to be 14' wall. It's steep!

Mr. Bracy: Is there a topo of this property?

Mr. Rush: I'm from Missouri. I'm not used to these hills.

Mr. Maienschein: The original plat of the subdivision just called for a 20' setback?

Mr. Rush: In the covenants for the plat, it did not state.

Mr. Maienschein: How old is that subdivision. That's a pretty old subdivision.

Mr. Rush: Early '80's.

Mr. Bracy: That's why.

Mr. Linn uses the new version of BaseMap to display the parcel of interest.

FILED

2018 MAY -9 AM 8:46

TENA O'BRIEN
CO & PROBATE CLERK
BENTON COUNTY, AR

Mr. Torrez: Is the house elevation lower than the garage?

Mr. Rush: Yes. The house will be built down by the lake because I am going to have to walk across a path to get to my house. I am really hoping to get the lower level of the garage about the same height as the upper level of my house.

Mr. Maienschein: Do you plan on putting a basement under the garage?

Mr. Rush: I have to. It's either that or I buy fill and fill it with dirt. I suspended a slab at my last house and it was nice for storage. One extra wall is all it really cost you.

Mr. Maienschein: Good storm shelter.

Mr. Rush: Yes.

Mr. Bracy: I guess I am still not clear. Looking at the typography, is not the slope going down relatively level from the east to the west. That's the way that looks. So, the house is going to be say zero is the front, 10, going down to 40. If you squared it up parallel to the road, the house would be only 10' deep in elevation. Your house is not parallel to the topo.

Mr. Rush: We dug the hole. It's actually not as skewed as much as this... It's not. But it's a 35' deep house with 14' of wall in the back.

Mr. Tucker: Is it almost parallel to the grade, to the contour lines?

Mr. Rush: Yes.

Mr. Bracy: So, it's a little bit skewed.

Mr. Torrez: So, with a little bit more money on excavating the property, for a better view of the lake.

Mr. Bracy: It's typical to do that, yes.

Mr. Rush: And they are almost touching...the garage and the house. On her plan, the house is moved to the right quite a ways.

FILED

Mr. Bracy: What is the dimension from the face of the garage to the paved road?
2018 MAY 9 AM 8:46

Mr. Rush: To the paving? Well, the paving is 9' from center. So what are you asking for is 25'.
TENA O'BRIEN
CO & PROBATE CLERK
BENTON COUNTY, AR

Mr. Tucker: So, basically enough to park a car.

Mr. Bracy: 25' to get your car off the edge of the road in front of the...

Mr. Torrez: I am still unclear why the garage has to be 35' deep. Is there a boat in there or something like that?

Mr. Rush: Well, I've got a tractor that was my grandfather's, that is not worth anything, that I'm probably not going to get rid of but have nowhere to store it. I'm intending to pull that tractor in and then put cars in. That's what it is for.

Mr. Maienschein: You're still going to be further back than most of your neighbors from the center line of the road.

Mr. Rush: Yes. I measured. One was 25', 27', 32' and directly across the road, it's 35'. There's one that you can almost touch the gutter from the road when I leave my property. There's some tight ones out there.

Mr. Bracy: Unfortunately, we find around the lake when they divided subdivisions, they made it pretty narrow. A lot of them are close to the roads when the roads were put in after the subdivision.

Mr. Linn: Staff has a follow-up comment. Mr. Rush, can you speak to the proximity here? Have you found these pins? Can you confirm the distance from this property line?

Mr. Rush: That's not an accurate drawing, to be honest with you, as to where the house is actually at now. I cut a big tree down and the Corps showed up. We were good but only by a foot or two. So, I know exactly where the line is. I was told that there was no setback from the Corps line.

Mr. Linn: There's not a setback from the Corps line but there is a 10' setback off of your property line. You said that you are 1' - 2' off of the Corps.

Mr. Rush: No, the tree was. I am well beyond that. The hole is dug for the house and it's probably 20'. It's skewed more up toward the septic system.

TENA O'BRIEN
CO & PROBATE CLERK
BENTON COUNTY, AR

Mr. Linn: Okay. Thank you.

Mr. Bracy: Would it benefit, and he's got a pretty good drawing here, to add a couple unique dimensions. If you could field dimension from your property line, not the Corps line. It sounds like your property line and the Corps line are the same? They don't always have to be.

Mr. Rush: Yes. Well, honestly, I don't know that answer. Well, I know where the pins are. They are exactly the same, yes.

Mr. Bracy: Usually, if you are that close to the lake, wherever the Corps line is would usually be your property line. That's my case. If you could dimension that on your drawing, what that distance is, 12', 15', whatever you believe it to be.. Now, that's to the foundation of your house, not to where your hole is.

Mr. Rush: Right. Yes, I've got the house pinned.

Mr. Bracy: And the garage, is there a dimension on that line from the property line, 10'? It's not legible. That just helps document. Technically, it's still a legal document when you look at it.

Mr. Rush: Okay.

Mr. Bracy: It's not really a legal document technically, because it is not surveyed. If no other questions, thank you.

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

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: Do you have anything in addition right now?

Mr. Hawkins: I'm not allowing chickens nor dog kennels. Thank you for letting that group go away. It makes me a lot less nervous to talk to you versus all those people. If I can address all those things (*outstanding items*) kind of one

2018 MAY -9 8:46

by one, to add to what Taylor (*Reamer*) said. All those things have been addressed with the engineer. They were just finishing before I could come to the meeting tonight. It looks to me like everything has been addressed. To lead one thing as far as the Fire Marshal goes, I had a burn pile going and a neighbor called me in. So, fire trucks can very easily go up and down our roads. As far as gates go, we are planning on putting electric gates. There are no gates at the other two entrances of Silver Cloud Trail and Fox.

Mr. Bracy: Those lead into another subdivision?

Mr. Hawkins: Yes.

Mr. Reamer: Those are both on the north side of the subdivision.

Mr. Bracy: So, that's a second egress out of the site?

Mr. Hawkins: Correct.

Mr. Reamer: They are platted subdivisions but not gated. Just to confirm, there will be gates at the other two entrances?

Mr. Hawkins: There will be gates and have all those other requirements from the Fire Marshal. Our front gate is the first one I started with. All the rest of them will be gated too with electric and the siren. All of our roads meet the grades and the siren access.

Mr. Bracy: How many gates are there? I saw three.

Mr. Hawkins: Three.

Mr. Bracy: The main road and two going to other subdivisions.

Mr. Hawkins: Correct.

Mr. Bracy: So, the main entrance is going to have a gate?

Mr. Hawkins: Yes. It already currently does.

Mr. Bracy: And the other two are not going to have gates?

Mr. Reamer: Correct.

Mr. Hawkins: Well, there's no intersection there.

Mr. Reamer: Lower there is.

Mr. Bracy: Yes, that's what I mean.

Mr. Hawkins: The POA where that intersection is right there, we put in a culvert and some other things to comply with AASHTO and the angles and all that to be able to give that a little easier access.

Mr. Reamer: But some of these POA areas like you are alluding to provide an intersection in which there are no obstructions, meaning they will always be vegetated and not improved.

Mr. Bracy: Was there a boat ramp on this site? There's no access to the lake?

Mr. Hawkins: Oh yes. There are several accesses to the lake.

Mr. Bracy: Walking accesses?

Mr. Hawkins: That north boundary that says access easement, there is a current community boat dock where that bottom triangle piece is. There is a drivable road that goes on the north end of that boundary line and parking available.

Mr. Bracy: So, residents can either walk to the boat dock or drive and park?

Mr. Hawkins: Correct.

Mr. Bracy: But there's no boat ramp there?

Mr. Hawkins: No boat ramp.

Mr. Tucker: How many slips does the dock have?

Mr. Hawkins: Currently it has four because of all the Corps restrictions. You can't go out and build a 20-slip boat dock in the beginning, right now. So, it's expandable.

Mr. Tucker: So, if you do that, you will apply for a permit?

2018 MAY -9 AM 8:46

Mr. Hawkins: No, they will have gates but don't have gates there currently.

They will be electric per requirement, have the siren access and everything else required. Everything was signed off by the engineer.

TOMAS GIBKIN
CO & PROBATE CLERK
BENTON COUNTY AR

On the very first plat map that Taylor (*Reamer*) showed you with the septic system stuff on there, that was inputted over an older plat map. It's been amended since then so you see the roads and how they connect. They much more accommodate that AASHTO requirement.

Mr. Bracy: In your deeds, that you defined, what restrictions would you put in those deeds?

Mr. Hawkins: I didn't put any deed restrictions. I have covenants and they have been filed. That preliminary covenant has been officially filed.

Mr. Reamer: I am going to move past some of the drier material... Use of Land... Residential Use... No lot shall be used except for residential purposes, common lot ownership, no building shall be erected, altered or placed on any lot other than one single family detached dwelling. Lot access is clearly outlined.

Based on my read in 2017, this was a fairly straightforward restrictive covenant really just protecting the aesthetics and use of the lots in the subdivision.

Mr. Bracy: It covers everything in 2014?

Mr. Reamer: Yes, it exceeds all current planning regulations as far as setbacks. We don't have any minimum restriction on dwelling size. There's architectural standards that the County does not have. It goes above and beyond some of the aspects of County regulations.

Mr. Bracy: I heard that there is common ground.

Mr. Hawkins: I was noted that we would take care of that as an HOA. I believe that that is now on the plat map.

Mr. Reamer: There is small text notated on there that that's POA areas.

Mr. Hawkins: The POA has one of the sediment ponds.

Mr. Bracy: So, that gives a lot of visibility to the intersection.

FILED

2018 MAY -9 AM 8:47

Mr. Hawkins: Yes, through the Corps. It was granted as a community boat slip for four but I built it with expansion capabilities as people buy lots and want access to the boat dock.

TERESA O'BRIEN
CO & PROBATE CLERK
BENTON COUNTY, AR

Mr. Bracy: You are aware that the Corps is reviewing all their regulations?

Mr. Hawkins: Very aware. I went to the meeting. They had information that helped me and Taylor (*Reamer*) had information that I didn't know. Everything was already taken care of with ADEQ and the Corps of Engineers. I gave the Corps a copy of the drainage report and they have been all over the property. The drainage wasn't affected. There were sediment ponds in two locations to make sure that no sediment would ever reach the lake. I have cleaned them out several times now that we have had several rains. They are working.

Mr. Homeyer: On your lot labeled #2, which I assume should be #3, ...

Mr. Hawkins: Yes, you are exactly right. Thank you.

Mr. Homeyer: The drainage easement that is shown doesn't line up with the contours. Is that easement on the drainage way or is it off to the side like it is showing with the contours there?

Mr. Hawkins: You are correct. The way the contour line sits, that was an unbuildable piece of property so I just wanted a drainage easement. My intent was to be able to use that drainage easement to always be able to keep that culvert that goes underneath the road to one of those sediment ponds, to always have drainage access. If anything got blocked up in there, it could be removed without having to get with the owner.

Mr. Homeyer: So, there is still a buildable area to the west?

Mr. Hawkins: Yes. And I did fix the number too.

4. Other Business: None

5. Staff Updates - Administrative Approvals:

- I. Moore Minor Subdivision, #17-287, 9975 Kindred Hollow Rd; 18-05223-000
- II. Eden Minor Subdivision, #17-320, 14312, 14311, 14318 Vine Road, Springdale; 18-03041-000, 18-03043-000
- III. Douglas Minor Subdivision, #18-050, 14715 Fruitwood Rd; 18-12218-000

6. Discussion Items:

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

Mr. Reamer: Each Board member should have an inter-office memo from Kevin (*Gambrill*) the Director, to Planning Staff. Being that Kevin (*Gambrill*) is not here today, I think it would be beneficial to have the Board review this memo and possibly discuss it in depth at the next Planning Board meeting on the 18th (*of April*). The memo essentially surrounds a section of regulation in Chapter 6 (section 6.1) which is Site Plan Review, Applicability and Exemption. Subitem 6, includes the verbiage... "*a change in use of an existing structure that is not required or exempted from Site Plan Review.*" We have development exempted from Site Plan Review first of which being one, two family dwellings and agricultural uses, both as defined in the regulations. The third exemption would be exempt Home and Rural Family Occupations and temporary uses as outlined in Chapter 7. Number four, a type of activity that would be exempt from Site Plan Review, interior renovation, to accommodate an existing land use of an existing building that does not expand the envelope nor require additional parking. Six deals with similar things as far as remodeling or updating the façade or canopies, windows or mechanical equipment. Those types of things are exempt from Site Plan Review.

The sixth is the subject of this memo that the Director has drafted. It reads, "*change in use of an existing structure, providing that the change in use does not increase the number of parking or loading spaces on site or create any nuisance or environmental impact on nearby properties.*" In the memo, Staff is attempting to delineate when this particular instance would apply to an existing structure and how we would review or exempt an existing structure that is either changing property owners or changing tenants. When would a structure that has not been reviewed or has been reviewed but is changing use be required to be reviewed by the Planning Board? In the memo the word, "intensification" is used – if a land use of an existing structure becomes more intense. An example would be going from a profession office to a cabinet shop. Something where a change of an existing building is getting more intense or creating a nuisance either by noise, light, vibration or it creates a negative impact on nearby properties. There are some instances where the change in use is so negligible, that Staff is having a tough time delineating when the change in use requires Site Plan Review and when it's exempted per this section of code.

2018 MAY -9 AM 8:47

Mr. Bracy: So, an example would be taking a single-family residence and making a pet shelter.

TENA O'BRIEN
CO & PROBATE CLERK
BENTON COUNTY, AR

Mr. Reamer: That would be a change in use requiring a Site Plan Review. It would also be similar for commercial complexes that have four or five suites. One tenant at this time is a hair dresser and another tenant is a professional office. Those changes in uses are fairly miniscule and may not require a full Site Plan Review. But, if one of those tenants were a coffee shop and they went to a drive-through fast food shop, would that constitute a Site Plan Review or would it be a miniscule change in use that would be exempt? It's a fine line to try and differentiate between these uses requiring Site Plan Review and these uses being exempt.

Mr. Bracy: Would not some guidelines be in changing the use if it's exterior of the structure? Interior things tend not to expose themselves to changes.

Mr. Reamer: Right. And we have had instances like that. It just so happens this is a recent inquiry that I had that we were made aware of an existing office in a two-tenant office space near Siloam Springs. The owner of the property needed to do an interior remodel of the leasable spaces. They are currently being used for professional offices and they are going to continue to be used for professional offices. The interior renovation is exempt from Site Plan Review. In this particular case, there was no change in use. There was a change tenant. That was also exempt from Site Plan Review. Those cases are rare. We more often find a structure or use of a building predates building permits and predates land use approval requirements. But in some way, shape or form, the Planning Staff becomes aware of them. If it's a change in use that is the same, an office to an office or a restaurant to a restaurant, we have gone to number six here and told them that they are exempt. There is a threshold in which change in use of an existing structure that requires more parking or a new loading dock or creates additional nuisances like noise or environmental impact, those would come before the Board. But, there is that fine line of change in use of an existing structure that could or could not be exempt from Site Plan Review.

Mr. Maienschein: Staff is making that decision?

Mr. Reamer: That is the reason we are having this memo come before the Board to have a very candid discussion of the direction and intent of this section specifically. I know current Staff was not in the office or around when this particular section or the whole Site Plan Review was discussed previously. So, historically it was of our best interest to at least have a conversation with the Board of the intent of exempting changes of use of existing structures.

2018 1502

Mr. Bracy: It appears to me that we see a number of existing, pre-1990 that the uses now are going to be different. If they weren't brought to the Board, then those would continue to go undocumented for septic waste. I believe the County is trying to regulate for lack of a better term, to the benefit of the general public that may have not been available previously. We are a very rural county becoming a very industrial/residential county. Basically, it's 2018. It's not 1899 anymore. If it doesn't come back up as something new, it will continue to be more meetings like tonight.

Mr. Tucker: Until we have zoning, I think it's going to be tough.

Mr. Reamer: We have had conversations within Staff. There is a theory of existing uses being nonconforming or existing as a nonconformity until which that use has ceased for 366 days. If there is an established use on site, it can continue; but at which time the use ceases or stops where there is no tenant or anything for 365 days, that 366th day, the nonconforming use is null. It's void now. You have to come in for official review. That brings up a whole new bucket of homework for Staff to do to try to establish timelines for these existing buildings.

Mr. Bracy: That's in the guidelines now?

Mr. Reamer: It is not in our regulations but is an understood or common planning or zoning law which is not the case here. A nonconformity is such of a use that never received approval or was in place prior to Large Scale Development or requirements of regulation. They are allowed to continue until which it ceases for one calendar year. Then they lose that nonconforming status. It's an exercise for Staff to develop a timeline of when that was established, when it was occupied, who occupied it, if it stops and when it stops. So, it presents its challenges. That aspect of the theory of the 365 day cease and desist, the cease of the use on that 366th day, the nonconformity status is lost. This is somewhat difficult in a young regulation to develop the timelines for these types of existing structures. This may not be the first and last conversation we have about this particular item.

Mr. Bracy: County taxes aren't based necessarily on use?

Mr. Reamer: In the 90's would be a good starting point. We do see instances where there are pre-90's buildings that we don't have the tax assessment recordation history where we can definitively say that 1992 was the first year it was classified as commercial. Number one because they aren't assessed every

FILED

year. It's usually on a four year or five-year cycle. Second, the State of Arkansas recordation isn't as accurate as one would assume or wish to be. We can discuss it again on the 18th (of April).

2018 MAY - 9 AM 8:47
TENA O'BRIEN
CO & PROBATE CLERK
BENTON COUNTY, AR

II. Development Department Re-Location / Open House

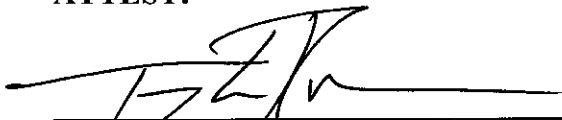
Mr. Reamer: If you are not aware, our department will be relocating. We are moving offices. We will be at 1204 SW 14th. It is the old Health Department and the previous home to the Election Commission. It is the Public Service Building. It also houses the Arkansas Extension Office. We will be out by the Road Yard effective Monday, April 9. Telephone numbers will stay the same. E-mails will stay the same. We'll just be in a new location.

Meeting Adjourned: 8:18 p.m.

Next Meeting: Wednesday, April 18, 2018

APPROVED THIS 18th DAY OF April, 2018

ATTEST:


~~PLANNING DIRECTOR or~~
PLANNING MANAGER

APPROVED:


PLANNING BOARD CHAIR or
PLANNING BOARD VICE CHAIR

2018 1504

