

Brookville Planning Commission
Virtual Regular Meeting
July 16, 2020

The Regular Meeting of the Brookville Planning Commission was called to order by Vice Chairperson Boose at 7:30 p.m. on July 16, 2020. The meeting was held virtually using the Zoom web application. The Pledge of Allegiance was recited. Mayor Letner; Members Cordes, Schreier and Sievers; City Manager Keaton, Zoning Officer Snedeker, Law Director Stephan and Clerk Duncan were present. Member Henderson was absent. Member Claggett arrived later.

Roll call by Clerk Duncan.

Motion by Schreier, second by Letner to approve the Agenda as presented. All yeas, motion carried.

Motion by Cordes, second by Sievers to approve the meeting minutes of the June 11, 2020 Regular Planning Commission Meeting. Schreier abstain, Letner yea, Sievers yea, Cordes abstain, Boose yea. Motion carried with three yeas and two abstentions.

Zoning Officer Snedeker reported Minor Subdivision MS #20-02 is a Minor Subdivision Lot Split Application jointly filed by Mike Oxner of 516 Patricia Faye, owner of Lot 2043 and Justin Izor, owner of Lot 2045, who would like to split Lot 2044 to add to their current properties. This is a Minor Subdivision re-plat.

Member Schreier commented maybe he should abstain from the discussion as this is in his development.

Member Letner inquired whether Member Schreier is a member of the Golden Gate Homeowners Association?

Member Schreier indicated he is a member of the Homeowners Association.

Member Letner asked if the Homeowners Association has been notified of this proposed lot split?

Member Schreier replied not to his knowledge.

Member Letner stated his concern is this is taking an unimproved lot and adding another unimproved lot to it. Mayor Letner indicated he would like to know the owner's intentions once the lots are merged. Mayor Letner asked Zoning Officer Snedeker if the intention is to build a bigger home?

Zoning Officer Snedeker stated he does not know the owner's intentions. If it is to build a bigger home he will have to keep in mind the utility easement. Merging the lots will give him a little more room on the side yard setbacks but he cannot get into that utility easement. Zoning Officer Snedeker stated he thinks Mike Oxner is the President of the Homeowner's Association.

Mayor Letter stated he would like to see a letter from the Homeowners Association that states they approve the lot split.

Law Director Stephan advised the center lot is currently owned by the parties on either side and one of the reasons for the lot split is to divide the ownership of the lot.

Member Schreier asked Member Letner what he would like to see?

Member Letner replied he would like to see that the lot split has the blessing of the Homeowners Association. Member Letner commented this lot has been empty for 20 years. Maybe no one wants it, but the lot is also potentially taking revenue away from the City.

Member Schreier commented the Izor's just purchased Lot 2045. If the lot split is approved, they could potentially expand their home to the west, depending on the easements as they will have a lot and a half. Mike Oxner already has an existing home so his half of the lot would not be suitable for any future building. Member Schreier commented his current home in this development is on a lot and a half that was re-platted and split with his neighbor years ago. Member Schreier stated this set a precedent in Golden Gate Estates where three lots were converted into two lots.

Member Boose inquired whether the previous lot split was voted on by the Homeowners Association?

Member Schreier replied that was many years ago and he does not know whether it went before the Homeowners Association.

Law Director Stephan stated the prior lot combination was not submitted to the Homeowners Association for approval. From a zoning point of view, it met all the subdivision regulations and requirements and did not need approval by the Homeowners Association.

Member Letner stated he is good with that.

Member Schreier asked if he should abstain from the vote as he lives in this subdivision?

Law Director Stephan replied Member Schreier should abstain.

Motion by Letner, second by Sievers to approve the Record Plan for Golden Gate Estates Section 2-B to subdivide Lot 2044. Member Letner yea, Member Sievers yea, Member Schreier abstained, Member Cordes yea, Member Boose yea. Motion carried with four yeas and one abstention.

Zoning Officer Snedeker reported that H.R. Holp & Sons is interested in purchasing the old Singer's Catering property at 263 Joanna Street, which borders their property at 530 Hay Avenue. The plan is to demolish the existing building on the property and combine all the lots into one parcel. Zoning Officer Snedeker advised H.R. Holp would like to use this property to expand their business in machinery equipment storage, which is a Special Use in I-1 Light Industrial District 1143.03 (b) (12).

H. R Holp & Sons is also requesting a Variance for the property for Construction Requirements. Concrete and asphalt will not hold up to the heavy equipment they use. They are requesting a gravel pad like they have in their current lot.

Member Schreier inquired if the plan is to keep the lots separate or re-plat the properties into one lot?

Zoning Officer Snedeker replied they will combine all the lots into one lot if Planning Commission approves the Variance. They will come back with a subdivision plan to combine the lots in the future.

Member Boose asked how much of the property will be gravel?

Zoning Officer Snedeker replied everything will be graveled where the old Singer's building is. They will keep a grass buffer in the back where the catch basin is.

Member Schreier inquired about the parcel that is on the corner?

Zoning Officer Snedeker replied the Holps own that property as well. There is a house on the property which they lease to a tenant.

Member Sievers inquired whether the house at 504 Hay Avenue is occupied.

Zoning Officer Snedeker replied 504 Hay Avenue is occupied.

Member Letner asked if there will be an egress off Joanna Street?

Zoning Officer Snedeker replied they already have egress on Joanna Street.

Member Boose asked if they will come back with a formal plat plan once this moves forward?

Law Director Stephan replied right now they are asking for approval of the Special Use for storage of their trucks with the variance for using gravel for the parking lot instead of pavement or concrete as required by the zoning code. They wanted to get this decision before they move forward with the purchase of the property. Once they complete the purchase, they will come back with a subdivision plan to combine the lots together.

Member Schreier inquired whether there are any dust concerns with all the gravel and trucks going in and out.

Zoning Officer Snedeker replied their current lot is all gravel and they seem to keep the dust down with no complaints.

Member Cordes asked if there is any chance the Singer's property could be sold "as is" and be of more value to the City?

Zoning Officer Snedeker replied the engineering and structure evaluation would cost more than the building is worth if a buyer wanted to change the use.

Motion by Schreier, second by Cordes to approve Special Use #SU 20-05 at 263 Joanna Street for storage of machinery and equipment in the I-1 Zoning District with a Variance to permit gravel instead of concrete or pavement. All yeas, motion carried.

Zoning Officer Snedeker advised the next item for review is Special Use Permit #SU 20-06 submitted by Oakwood Investment Partners, to place their food vendor truck on the McMakens IGA lot with the purpose of selling bourbon chicken. Zoning Office Snedeker reported they have submitted their food inspection report, vendors license and proof of insurance. They did not have a set schedule but they indicated they plan to rotate weekends between our community and several other communities. McMakens has also submitted a letter granting permission for the food truck to be on their lot.

Mayor Letner stated about three weeks ago, he delivered a Cease and Desist letter to the operator of this mobile food truck. They were violating City Ordinance by operating without a City permit. Mayor Letner stated he spoke with the owner, Jim Kelly, and advised him this was a zoning issue and not a police issue. Mr. Kelly's response was to thumb his nose at both the Mayor and the City, and he continued to operate from Thursday through Saturday, with total disregard for the Cease and Desist letter. Mayor Letner stated within 20-30 minutes of delivering the letter, it was incorrectly reported on Facebook, giving all the wrong reasons, that the Mayor was trying to shut down the food truck. Mayor Letner stated he has six points of contact, but no one contacted him personally. Mayor Letner stated he was called a tyrant, which did not offend him. He was offended by Mr. Kelly who showed total disregard for the process and thumbing his nose at the Mayor and the City. Mayor Letner stated Mr. Kelly does not have his support for this reason. Mayor Letner also stated he would welcome Mr. Kelly if he would like to build a brick and mortar store in Brookville.

Member Boose stated that is a common stance that previous Planning Commission members have taken, opposing food trucks as they take away potential sales from Brookville businesses. Member Boose stated he has not been opposed to food trucks when they have followed the procedure, but he is concerned about Mr. Kelly's lack of regard for the procedure.

Mayor Letner stated once he explained to Mr. Kelly that it was a Zoning matter and not a Police matter, Mr. Kelly's response was that he bought product for the whole weekend and he was staying open.

Mayor Letner stated Mr. Kelly put the cart before the horse and now he is coming to them with his hat in his hand. Mayor Letner advised his personal opinion is to vote no.

Member Schreier stated this is a tough one. He definitely does not agree with the way Mr. Kelly went through the process, however his food truck has the potential to attract people into town which could increase traffic in other local businesses. Member Schreier commented that surely

Mr. Kelly has set up in other communities who required a permit, and he should have followed our process.

Member Sievers agreed that surely Mr. Kelly knows that he cannot just set up somewhere without checking into whether he needs to file for a permit. Member Sievers advised she did see the Facebook post, which was one-sided and blew the situation out of proportion. Member Sievers commented that the food truck trend is popular right now. It has the potential to bring people into Brookville, and to increase traffic to other local businesses. Member Sievers stated this is a tough call, how it was handled was wrong, however, this will come up again and Planning Commission needs to think about how they want to handle it.

Member Schreier stated it is difficult to grant the permit when Mr. Kelly was advised of the process and did not follow it. The permitting process is here for a reason.

Member Boose stated he has been on Planning Commission for 20 years and although some members have been against it in the past, they have never denied a permit for a food vendor to set up in town.

Member Schreier inquired whether previous applicants have always followed the permitting process?

Member Boose replied previous applicants have followed the permitting process.

Zoning Officer Snedeker stated while Planning Commission has made some good points, there is no reason to deny the permit based on our Zoning Ordinance. Mobile food vendors can be denied for parking or for location but denying them for not getting a permit is not listed. Zoning Officer Snedeker asked Law Director Stephan if his interpretation is correct?

Law Director Stephan stated that is correct. It is not specifically listed in the Zoning Code that failure to comply in the past is a basis for denying a current permit application. Law Director Stephan also noted that technically Mr. Kelly had 14 days to appeal the Cease and Desist Order he was issued. Law Director Stephan stated he appreciated the Mayor's efforts to deliver the order and try to make our position clear. Our community is unique in that we have written mobile food vending into our Zoning Ordinance to try to manage it. We could revisit the issue and add additional provisions or decide not to allow mobile food vendors at all. There are other communities that do not deal with it through a zoning code so our approach is unique, however, most communities do require some type of permit from the City to operate a mobile food truck.

Member Schreier stated that based on this, it sounds like if we cannot technically deny the permit because they meet the criteria and we do not have any recourse.

Law Director Stephan stated Zoning Officer Snedeker is correct that failing to file for a permit is not a criteria for denying the Special Use application.

Member Schreier stated this is a unique situation and we want to be cautious about how we interpret this. What is to prevent someone else from setting up a food truck for a few weeks without a permit and waiting to apply for the permit after they receive a cease and desist order?

Law Director Stephan stated most mobile food vendors are only here for a few weekends. We created the mobile food vendor Code to try to control the process. We have this issue from time to time where vendors come in and are not aware of the Code. In these cases, Zoning Officer Snedeker tries to notify them of the procedure immediately. Law Director Stephan agreed with the Mayor that in this situation there was a willful disrespect of the process and the steps taken to try and get them to come into compliance. Law Director Stephan commented at least they have now submitted a Special Use application and are trying to come into compliance.

Zoning Officer Snedeker stated the mobile food vendor permit is good for one year. Planning Commission could approve this permit and review the Code before Mr. Kelly applies for a permit next year.

Member Boose agreed Planning Commission should consider reviewing our Ordinance Code.

Zoning Officer Snedeker suggested we could double the fee if a mobile food vendor applies for a Special Use permit after they have already set up.

Law Director Stephan agreed we could build that into the Code and stated technically we could still seek a penalty under the current order. Law Director Stephan stated he thinks this is a common problem.

Member Schreier suggested shortening the time frame for compliance from 14 days to 48 hours.

Law Director Stephan stated the 14 days is a time frame for property maintenance or Zoning Code violations. Law Director Stephan stated the Code could be amended to require them to respond in a certain time period.

Member Boose suggested if the penalty is substantial, they will go through the process up front.

Member Schreier stated even though it has not been a pleasant situation it is hard to deny this permit application.

Member Boose inquired about the food truck from a public health standpoint regarding COVID-19?

Zoning Officer Snedeker replied Montgomery County Health Department is in charge of enforcing that compliance.

Member Schreier commented Mr. Kelly has produced their health inspection certificates as part of the process.

Motion by Sievers, second by Schreier to approve Special Use #SU 20-06 for Oakwood Investment Partners to operate a mobile food truck in the McMakens parking lot. Schreier yea, Letner nay, Sievers yea, Cordes nay, Boose yea. Motion passed with three yeas and two nays.

Member Cordes commented on his vote, stating that sometimes you have to look at the character of the person involved. Member Cordes stated in this case he would not want that person in our community.

Zoning Officer Snedeker reported that Bruns Development has broke ground on the multi-family units and Tim Via's permits for the daycare center have been approved by Montgomery County Building Department.

Zoning Officer Snedeker reported another single-family home permit has been issued for a total of three homes currently under construction on Kimmel Avenue.

Zoning Officer Snedeker advised Freedom First Credit Union has changed engineers to Choice One Engineering and are awaiting final review.

Member Boose commented he has been approached about how to apply at the new GM plant and asked if Zoning Officer Snedeker has that information?

Zoning Officer Snedeker stated they should contact the UAW in Dayton, Ohio as these jobs will all be union positions.

Member Sievers asked if Zoning Officer Snedeker has any information about the sale of the land on West Westbrook Road?

Zoning Officer Snedeker replied that land was purchased by the developer who previously approached Planning Commission about the patio homes. The developer is currently working with two potential builders. They will be coming back to Planning Commission with several proposals about this land, the land next to the Fire Station, and the lots in Sterling Homes, Section 8.

Law Director Stephan reported the City of Brookville has received a request from a citizen to consider permitting the keeping of chickens within the City of Brookville. Law Director Stephan advised he was directed by the City Manager to prepare a memorandum regarding this issue to assist Planning Commission and City Council in reviewing this request. Law Director Stephan reported our current nuisance Code prohibits chickens from being housed anywhere in Brookville. Our zoning regulations prohibit as an accessory use the housing or keeping of chickens in a chicken coup or other structure in any residential district. The language in our C conservation district permits agricultural activities. Our conservation districts are only used for areas when they are first annexed in, and typically there have been a few occasions where those properties have been farms. The code language for agricultural uses prohibits chickens from being housed within one hundred (100) feet of any residential zoning district. We have very few properties zoned Conservation and the nuisance code would conflict with the zoning code as the nuisance code prohibits chickens from being housed anywhere in the city." We have very few properties zoned conservation and the nuisance Code would conflict with that and say that chickens cannot be housed at all. Law Director

Stephan stated he has provided sample Ordinances from three jurisdictions in Ohio that have adopted regulations that do allow chickens. Each of these Ordinances limit the number of chickens and limit it to hens. They all have significant provisions about how the chicken coup or enclosure needs to be built and the setbacks for those structures. Law Director Stephan stated he also looked at the Codes in Vandalia, Englewood, Union and Clayton and none of them have adopted an Ordinance to permit chickens within residential districts. Law Director Stephan asked Planning Commission to review the sample Ordinances for further discussion next month and asked if he could answer any questions?

Member Schreier wondered how many cities there are in the State of Ohio and how many of them allow chickens within the City limits? Member Schreier stated he would like to know if the percentage is very small or if only a few Planning Commissions have entertained this idea, how did they go through the process? Member Schreier wondered whether they had a public hearing or if they asked for input from the surrounding neighbors. Member Schreier stated there are a lot of things that come into play other than just writing an Ordinance.

Law Director Stephan replied if Planning Commission wants to move forward this would come before our citizens in a public hearing. We would want to have a thorough process if we head down the pathway of permitting chickens. Law Director Stephan stated he does not know the percentage of communities that have adopted an Ordinance to allow chickens. Law Director Stephan stated the State of Ohio Legislature was looking at state-wide regulations regarding chicken but to his knowledge that has never been passed. It is still a city by city decision.

Member Boose stated he believes it would be a logistical nightmare to manage the different zoning districts if the number of chickens they could have is determined by lot size and/or by zoning district.

Law Director Stephan stated he would agree with that. If Planning Commission wants to move forward he would suggest there are some districts where chickens would not be allowed at all because of small setbacks. There are a few areas with much bigger yards and much bigger setbacks where it would be more feasible. Law Director Stephan advised Planning Commission could adopt a Code that would be limited to certain zoning districts. Law Director Stephan commented it is a lot to take on and a lot to consider as you will have neighbors who will be concerned about it.

Mayor Letner stated his concern is wildlife as there are many raccoons, coyotes and fox in town.

Member Sievers commented she has raised chickens in the past and it attracts a ton of predators. Even with an enclosed coup the predators manage to get in it. Then there are chicken carcasses to deal with. Member Sievers stated Brookville is surrounded by townships that are very open to agriculture so the opportunity is really close if you want that kind of lifestyle.

Member Boose asked what Mr. Hopkins reasons are for wanting to raise chickens within the City?

Law Director Stephan stated he has not communicated with Mr. Hopkins directly, but he has read the emails between Manager Keaton and Mr. Hopkins. Law Director Stephan stated he thinks Mr. Hopkins reasons are a combination of there has been a back-to-nature type movement in Ohio

where some communities are trying to allow citizens to raise their own fresh eggs. Again, the State Legislature has looked at provisions that actually prohibit cities from regulating chickens that has not passed. Law Director Stephan stated Mr. Hopkins is in an area which does have some bigger back yards and he is requesting it because other communities have allowed it.

Member Schreier stated he read Mr. Hopkin's request and recalled a few of the reasons Mr. Hopkins listed in his email were altruistic, well intentioned thoughts about providing things for others and having the chickens as a resource for other people, which is a reasonable thought process. Planning Commission has to look at the overall impact on the community, whether the neighborhoods are going to accept it, the impact on the community such as the wildlife and the housekeeping things that go along with having a chicken coup. Member Schreier commented this is one of those things that may start out well intentioned, such as when people landscape their yard, but later realize it is hard to maintain. There is a lot of work involved in owning wildlife. Member Schreier commented he has taken a straw poll regarding chickens from people he has been in contact with recently.

Mayor Letner advised Mr. Hopkins has sent him some correspondence and included a photograph of the long lines of cars at the Nutter Center where people were waiting for food from the food bank. That same week the local IGA advertised two dozen eggs for \$0.50 per dozen. Mayor Letner commented if eggs are that plentiful and that cheap, he does not buy into Mr. Hopkin's reasoning.

Member Schreier commented that the Ordinance examples in front of them allow only three or four chickens, some of them up to six chickens. This is not a sustainable food source. It seems the thought process is here but the execution of it won't work because the volume is not there.

Law Director Stephan agreed that these Ordinances are designed for personal consumption.

Member Schreier agreed it cannot be commercialized.

Member Claggett joined the meeting.

Member Claggett commented that if Planning Commission would allow chickens they should only allow a certain number of chickens in certain zoning districts, and no roosters should be allowed.

Member Schreier stated the examples that Law Director Stephan provided did not allow roosters.

Member Claggett asked if the State of Ohio is actually thinking of allowing this?

Law Director Stephan replied there was a bill introduced that would pre-empt local legislation prohibiting chickens. This bill has not passed.

Member Boose asked if Council is waiting for Planning Commission's recommendation?

Mayor Letner replied that Council does not have an opinion at this point.

Member Schreier commented Mr. Hopkins did make a statement to Council that he would like to see chickens allowed in Brookville.

Member Boose inquired if any other community members have approached Council or the City with this same request?

Mayor Letner replied not that he is aware of.

Member Claggett commented there is a man on Westbrook who has raised horses for years.

Zoning Officer Snedeker stated that man has been raising horses for years, prior to Brookville's livestock Ordinance.

Member Claggett expressed concern that if we allow chickens, people will want other livestock such as pet pigs.

Member Schreier commented the Ordinances provided by Law Director Stephan were very specific that they only allowed chickens.

Member Sievers asked if the City did allow chickens, who would be in charge of enforcing it?

Law Director Stephan replied it would be enforced by Zoning Officer Snedeker.

Member Schreier stated there is a fair amount of content we need to review.

Law Director Stephan recommended taking 30 days to review the material as there is a lot to look at and consider.

There was no Old Business.

Member Schreier commented that the Service Department did a nice job edging the sidewalks in the park.

Member Claggett asked if the car service center on the corner of Western and Wolf Creek is abandoned?

Zoning Officer Snedeker replied he and Manager Keaton have been working with Law Director Stephan to get the property under our control, but it is not an easy task.

Motion by Schreier, second by Claggett to adjourn. All yeas, motion carried.



Kimberly Duncan, Clerk

Brent Boose, Vice Chairperson