

Brookville Planning Commission
Virtual Regular Meeting
January 14, 2021

The Regular Meeting of the Brookville Planning Commission was called to order by Chairperson Henderson at 7:30 p.m. on January 14, 2021. The meeting was held virtually using Webex. The Pledge of Allegiance was recited. Mayor Letner; Members, Claggett, Cordes, Requarth, Schreier and Sievers; City Manager Keaton, Zoning Officer Snedeker, Law Director Stephan and Clerk Duncan were present.

Chairperson Henderson reminded everyone the meeting is being recorded.

Roll call by Clerk Duncan.

Chairperson Henderson stated the Agenda needs to be amended to include administering the Oath of Office to new Planning Commission Member Jeff Requarth.

Motion by Schreier, second by Claggett to approve the Agenda as amended. Claggett yea, Cordes yea, Schreier yea, Sievers yea, Letner yea, Henderson yea. Member Requarth did not vote as he had not yet been sworn in. Motion carried with six yeas.

Law Director Stephan administered the Oath of Office to Member Jeff Requarth.

Motion by Claggett, second by Cordes to approve the meeting minutes of the December 17, 2020 Regular Planning Commission Meeting. Letner yea, Schreier yea, Cordes yea, Claggett yea, Sievers yea, Requarth abstain, Henderson yea, Motion carried with six yeas and one abstention.

Motion by Claggett, second by Sievers to nominate Chairperson Henderson as Chairperson for 2021. Sievers yea, Requarth yea, Cordes yea, Claggett yea, Schreier yea, Letner yea, Henderson abstained. Motion carried with six yeas and one abstention.

Motion by Cordes, second by Claggett to nominate Member Sievers as Vice Chairperson for 2021. Schreier yea, Claggett yea, Letner yea, Cordes yea, Requarth yea, Sievers abstain, Henderson yea. Motion carried with six yeas and one abstention.

Law Director Stephan presented the Meadows of Brookville Revised Preliminary Plan, Section 5 in the absence of Mike Oxner, of Professional Associates and Jennifer Gonzales, of Fischer Homes.

Law Director Stephan reported Taywood Enterprises, Inc. has filed an application for subdivision approval in the Meadows of Brookville for a single-family housing project to be built by Fischer Homes. After the denial of the requested rezoning to R-3 in November of 2020, Fischer Homes and Taywood Enterprises have worked with City Staff to develop a plan for single family housing to be built in the undeveloped area of Meadows of Brookville.

Law Director Stephan stated the applicant is requesting that the Meadows of Brookville Section Five Preliminary Plan be reapproved. In 2006, Planning Commission and City Council approved the Meadows of Brookville Section Five Preliminary Subdivision Plan and the Meadows of Brookville Final Subdivision Record Plan. In this 2006 approval, variances were approved on rear yard setbacks from 40 feet to 30 feet for lots 2412-2433, and on side yard setbacks from 10 feet to 7 ½ feet on lots 2434 through 2438.

Law Director Stephan stated in 2008, a portion of the Meadows of Brookville Section Five lots were re-platted into a single lot in the Meadows of Brookville Section Six Subdivision Record Plan. In the approval of the Meadows of Brookville Section Six Subdivision Record Plan, Planning Commission and City Council required that if the single lot (2609) created by the Meadows of Brookville Section Six Plan were to be developed in the future, the subdivision plan would follow the design of Meadows of Brookville Section Five Preliminary Plan. If the current application for re-approval of the Meadows of Brookville Section Five Preliminary Plan is approved, the single lot created in Meadows of Brookville Section Six will be subdivided in a plan that follows the design of the Meadows of Brookville Section Five Preliminary Plan first approved in 2006, and now reapproved.

Law Director Stephan stated the current application also requests approval of the modification of the rear yard setbacks from 40 feet to 30 feet for lots 2412-2424, 2426-2434, and lots 2449-2452, and modification of side yard setbacks from 10 feet to 7 ½ feet on lots 2435 through 2438. Planning Commission is authorized under Section 1105.03(c) to modify setback requirements specified in the zoning code. In addition, the applicant is also requesting that the City would measure the setbacks from the foundation rather than the edge of the roof to permit certain Fischer designs to fit on these lots. Most communities measure setbacks from the foundation. By authorizing measurement of the setback from the foundation, the setbacks will be reduced by approximately 1 foot, and will permit the Fischer designs to fit on the lots. Law Director Stephan commented Staff is looking to updating this section of our code and applying it to other subdivisions in the future.

Law Director Stephan stated the homes will meet or exceed the minimum floor area of 1,400 square feet required under the R-1C zoning district, which is the current zoning for the Meadows of Brookville subdivision. The covenants set forth on the Preliminary Plan provide for 1,400 square feet for minimum floor area. The 1,400 square feet is 100 square feet less than the requirement in the covenants for Meadows of Brookville Section One, Two, and Three of 1,500 square feet for single story homes. The covenants set forth on the proposed Preliminary Plan also provide that the expenses for the maintenance of the common areas for storm water management shall be billed by the City of Brookville to each homeowner on a pro-rata basis.

Law Director Stephan stated Planning Commission was provided the plans from Fischer Homes and they were also provided the links to take virtual tours of the designs they are proposing in this subdivision.

Law Director Stephan stated to summarize, the applicant is seeking:

- (a) Approval of the Revised Meadows of Brookville Section Five Preliminary Plan with the covenants for development specified on the plan.

- (b) Approval of the modifications of the rear yard setbacks from 40 feet to 30 feet for Lots 2412-2424, 2426-2434, and 2449-2452, and modification of side yard setbacks from 10 feet to 7 1/2 feet for lots 2435-2438; and
- (c) Approval of modification of the setbacks to provide for measurement of the setbacks from the building foundation for all lots in the subdivision.

Member Requarth inquired whether the other Meadows of Brookville sections are paying fees for stormwater management?

Law Director Stephan replied that is what we are moving toward. There is no Homeowner's Association in those areas. Last year, we stepped in to manage the stormwater detention areas. We are looking at assessments for all sections within the Meadows of Brookville going forward, with the City maintaining those areas. If, at some point in the future, a Homeowners Association is created, they can take that over but that is unlikely at this point. Law Director Stephan stated the City taking over the maintenance and assessing the homeowners is the best way to handle the situation.

Chairperson Henderson inquired if that includes mowing of the detention area as well?

Law Director Stephan replied as long as the section is under development, they will be responsible for the mowing. At some point in the future, we will probably be taking over the mowing of the swails in that detention area.

Chairperson Henderson inquired whether the assessment would be applied to all lot owners or just to the adjacent lot owners?

Law Director Stephan stated from a legal perspective, Staff is looking at applying the assessment to all homeowners. There are some other detention areas in the earlier sections that will need to be mowed and the City will look to assess for those costs as well.

Member Claggett inquired whether this entire subdivision, including the lots on Heckathorn Road, are within the City limits?

Law Director Stephan replied the entire subdivision is in the City of Brookville. Our corporate line is on Heckathorn Road, right along the west right-of-way.

Member Cordes asked if the limit of 1,400 square foot minimum applies to the ground floor. If there is a second floor the total square footage would be double?

Zoning Officer Snedeker stated the total square footage of the house would be 1,400 square foot. There will be a ranch model that is 1,400 square feet or a two-story that is 2,200 square feet of living space.

Member Claggett asked if the square footage total includes the garage?

Zoning Officer Snedeker replied it does not include the garage.

Member Cordes stated in other words, one of the two-story homes we are looking at is only a total of 1,400 square feet for both floors.

Zoning Officer Snedeker advised a 1,400 square foot home is usually a ranch.

Member Cordes stated all the plans he received were for two-story homes.

Chairperson Henderson commented the floor plans are all for 1,700 square feet and up.

Member Sievers asked if there are any other subdivisions in Brookville with modified setbacks?

Zoning Officer Snedeker replied there are not. When he worked for Artistic Homes, they always had to cut in a foot when they built in Brookville of the way we measure setbacks. No other community in the area measures from the overhang, they all measure from the foundation.

Chairperson Henderson agreed, stating measuring from the foundation is typical from what he has seen in other jurisdictions. Chairperson Henderson stated this is why he thinks we need to revisit this issue in the future.

Member Schreier asked if there is any conflict with the 1,400 square feet versus 1,500 square feet in the other three sections?

Law Director Stephan replied the requirement in the other three sections is a covenant requirement. The covenants are done section by section when they are platted. In Sections 1-3, the covenants provide for 1,500 square feet single-story and 1,700 for two-story. In Section 4, the area was replatted, and with the R-3 zoning there are doubles there. In Section 5, we would establish covenants that start at 1,400 square feet. From our perspective, the covenants meet the zoning. If they wanted to choose a higher number they could, but in terms of meeting the minimum zoning requirements, they are with the 1,400 square foot minimum.

Member Schreier stated typically in our zoning there is a different square footage requirement for a two-story. Is there not a requirement for R-1C?

Law Director Stephan replied if you look through the residential zoning districts, there is a number for minimum floor area, it does not distinguish between single-story and two-story. Law Director Stephan stated covenants for different plats typically do have that. Typically, if you have two-stories you exceed the minimum floor area by a significant amount.

Member Requarth inquired when construction would begin if this is adopted?

Zoning Officer Snedeker stated if Council approves this Preliminary Plan, Fischer Homes is ready to begin construction on their model home.

Law Director Stephan stated construction could begin immediately upon approval on the lots on Westbrook Road. The Final Subdivision Plat for the interior lots will have to be approved before construction can begin on those lots.

Member Claggett asked if Fischer Homes plans to build a model of each one of the homes?

Zoning Officer Snedeker replied not at this time. Right now, they plan to build the most popular model only.

Chairperson Henderson stated with the exception of the setbacks, this appears to be exactly the same as everything that was approved in 2006. Are the setbacks the only difference?

Law Director Stephan agreed that is basically the only difference. The variances for the side and rear yard setbacks were approved in 2006. We are now asking for approval of the modifications of the rear yard setbacks from 40 feet to 30 feet for Lots 2412-2424, 2426-2434, and 2449-2452 and modification of side yard setbacks from 10 feet to 7 1/2 feet for lots 2435-2438; and requesting to measure from the foundation for all lots. This would be a change from the 2006 approval.

Chairperson Henderson stated modifying the side yard setbacks on the curve is a common issue. The other lots are smaller lots so he understands those modifications as well.

Law Director Stephan stated a lot of these setbacks relate to the lots on the curve. The lots on Westbrook Road are smaller and that is the reason the rear yard setback was modified in 2006.

Chairperson Henderson stated it is not like there is an existing property there that will be impacted by the setback modifications.

Member Requarth agreed with Chairperson Henderson that there is no harm to anyone here. The setbacks are known going in.

Member Schreier indicated he needs to abstain from voting.

Motion by Requarth, second by Claggett to approve the Revised Meadows of Brookville Section Five Preliminary Plan with the covenants for development specified on the plan; approval of the modifications of the rear yard setbacks from 40 feet to 30 feet for Lots 2412-2424, 2426-2434, and 2449-2452; modification of side yard setbacks from 10 feet to 7 1/2 feet for lots 2435-2438; and approval of modification of the setbacks to provide for measurement of the setbacks from the building foundation for all lots in the subdivision. Letner yea, Schreier abstain, Claggett yea, Cordes yea, Sievers yea, Requarth yea, Henderson yea. Motion carried with six yeas and one abstention.

Zoning Officer Snedeker advised Planning Commission has been provided a copy of the Zoning, Building and Property Maintenance report for the year 2020. There was a big jump in pool permits as public pools were closed due to the pandemic.

Zoning Officer Snedeker reported Koch Construction Group broke ground on the Freedom First Credit Union this week.

Zoning Officer Snedeker reported the City entered into a five-year Lease Agreement with Production Service Management, Inc. who recently took occupancy of our former Fire Station at 401 Albert Road, Production Service Management has a five-year contract with GM to keep the manufacturing machinery operational at the new DMAX facility.

Zoning Officer Snedeker reported the deed has been transferred on K's Restaurant.

Member Claggett asked if a Mexican restaurant was going into the old K's Restaurant location?

Zoning Officer Snedeker replied he heard that rumor but has not heard it officially.

Law Director Stephan reported we have an application for construction of some solar panels at a home in Golden Gate Estates. Staff would like Planning Commission input on whether they will consider this application or if it should be taken to the Board of Zoning Appeals. This is a proposal for construction of solar panels in the rear yard which will require a variance of the rear yard setbacks. Law Director Stephan stated this brings us back to the setback issue and the fact that Planning Commission needs to review our setbacks.

Member Requarth inquired why the applicant wants to put the solar panels in the yard instead of on the roof?

Zoning Officer Snedeker replied the Homeowners Association turned down the applicant's request to put the solar panels on the roof.

Law Director Stephan stated the applicant communicated this information to staff. Law Director Stephan stated he would like to review the covenants for this development.

Member Claggett commented he does not recall solar panels being allowed anywhere but the roof when Planning Commission passed the Ordinance on solar panels.

Law Director Stephan stated in a residential district, solar energy equipment shall not be permitted in a front or side yard of a residential property. Ground mounted solar energy equipment may be located in a rear yard of a residential property but shall not be located in a rear yard setback. Ground mounted solar energy equipment shall not exceed 35% of the total area of the rear yard. Ground mounted solar energy equipment in the rear yard shall be adequately screened by vegetation or a fence and shall be installed in compliance with the applicable building code. Law Director Stephan stated this is Section 1157.10 in our zoning code. Law Director Stephan stated roof mounted solar energy equipment is permitted in all zoning districts. It shall not exceed the maximum building height and must be installed in compliance with the applicable building code. Law Director Stephan stated this is not a decision Planning Commission needs to make tonight, but Staff is looking for some direction in whether Planning Commission would like to hear this or if it should be submitted to the Board of Zoning Appeals.

Chairperson Henderson stated he thinks it is appropriate for Planning Commission to review. It will boil down to whether it is acceptable to the neighbors. The resident will have to screen it so no one will see it but the homeowner.

Member Requarth commented he thinks it will be ugly in the back yard.

Chairperson Henderson stated we have to be real. Sustainability is something of the future and this is what is coming. We cannot prohibit it as we have a code that allows it. Chairperson Henderson stated he thinks it is important but at the same time we have to be careful of our neighbors and what we are presenting in their view.

Member Requarth stated we can allow it on either the ground or the roof according to our code. Efficiency would be better on the roof. It would also be less visible on the roof.

Member Schreier commented as a resident of this development he has been involved in a lot of this discussion. The solar panels cannot be put on the back of the roof as it is on the north side. The panels need to be on the south side, which is facing the street. Member Schreier stated he wanted to relay this fact to Planning Commission, but he will be abstaining from voting on this issue.

Chairperson Henderson stated Planning Commission will need to hear from all adjacent property owners in order to approve something that crosses over the setback line.

Law Director Stephan stated Staff will notify all adjacent property owners that Planning Commission will be hearing this next month.

There was no Old Business.

There was no New Business.

Jessica Wells, of 21 Heckathorn Road, asked if Planning Commission will take public comments tonight?

Chairperson Henderson indicated public comments are not on the agenda and called for a motion to modify the Agenda to allow them.

Motion by Requarth, second by Sievers to amend the Agenda to accept public comments. All yeas, motion carried.

Ms. Wells stated she can be on board with the Taywood Enterprises Meadows of Brookville development plan that was approved tonight. She is excited to see 45 new homes go back there and fill in the empty space of the development. Ms. Wells stated she does want to point out the six floor plans provided and the virtual tours on the Fischer Homes website look very nice. Ms. Wells stated the Harper floor plan is really the only one that does not match the current community standards here in the Meadows of Brookville. It is a two-story home that is only 1,408 square feet where the covenants for Sections 1 through Section 4 state a two-story home needs to be a

minimum of 1,700 square feet. Ms. Wells stated if we took the Harper out of the conversation she could really be on board. Ms. Wells thanked Member Cordes for pointing that out earlier as well.

Ms. Wells then asked when the Meadows of Brookville residents could expect that the speed limit will be reduced on Westbrook Road. It is currently set at 55 miles per hour. In 2008, an expedited Type 2 annexation from the Ohio Department of Transportation was begun and it is now 13 years later. That does not feel very expedited to her. Ms. Wells wondered if there is an update on when they could expect the speed limit to be reduced, as you stated earlier, on Heckathorn Road from 55 miles per hour.

Chairperson Henderson stated he does not see the Harper floor plan in his packet.

Zoning Officer Snedeker stated he has the Harper floor plan and it does come in at 1408 sq ft. although he has not measured all the rooms yet.

Chairperson Henderson requested Law Director Stephan respond to Ms. Wells.

Mayor Letner stated in order to change the speed limit, a traffic study would need to be done. And that entails Montgomery County, the Township and the State. The City's hands are tied as we can only ask for the study. We have had the same situation on the other side of Westbrook Road when you come in from the west where the speed limit is 45 and reduces down to 25. Mayor Letner stated he asked for a traffic study there years ago and was told it was ok going from 25 mph to 45 mph. Mayor Letner advised we cannot tell you what the outcome would be of a traffic study. We can only give our recommendation and are at their mercy as to what they decide.

Ms. Wells stated she appreciates the Mayor's comments. However, it is on the public record that this process was begun in 2008, and nothing as far as she can see has been done to complete that process. There has been nothing other than Law Director Stephan stating the City has begun an expedited Type 2 process.

Law Director Stephan replied what he was referring to in the meeting minutes Ms. Wells is referring to is an expedited Type 2 annexation process. What that means is we would annex property on the other side of the road and then we would control both sides of Westbrook Road. Once we control both sides of Westbrook Road, we could determine the speed limit. Law Director Stephan advised the property owners on the other side of the road have never approached the City regarding annexing into Brookville. If they do, we would then start an expedited Type 2 process. It would then go before Montgomery County and if approved, we would annex that territory, which is currently Clay Township, into the City of Brookville. Once that would occur, both sides of Westbrook Road would be in the City and then we could set the speed limit. The word expedited within the annexation code refers to an expedited annexation process versus other annexation processes that were used in the past. Until we have property owners on the other side of the road that want to annex into the City, that process is not going to occur. Law Director Stephan stated the word expedited is confusing, but he was not referencing in those minutes to an expedited process through the State of Ohio like Mayor Letner is referring to. He was talking about an annexation process and right now the other side of Westbrook road is still Clay Township.

Ms. Wells thanked Law Director Stephan for his comments.

Mrs. Braund, of 15 Heckathorn Road, asked if the City can just annex the other half of the road? She inquired if it is not the property owner's property, it is Clay Township's property?

Law Director Stephan replied when you annex property from the township, the property owners deeds extend to the center of the road. The annexation petition would be signed by property owners on both sides of the road, and would include the entire road. We cannot annex half the road.

Ms. Braund stated she is looking out her window and there are only a couple of homes between her and the doctor's office so she thinks it would be doable to reduce that speed.

Ms. Braund stated when Law Director Stephan was giving Planning Commission the history there were a few things that were omitted. All of the Planning Commission members, with the exception of Jeffery, had that information when we were going through our objections previously. Mr. Oxner and Tim Taylor required that he would build, once he was ready, consistent with the covenants of the Meadows of Brookville. That is the 1,500 and 1,700 square feet. Ms. Braund stated as with Jessica, the Harper is her only objection. Ms. Braund stated if you put a 1,500 in there as we said, its consistent with what was said, your word, so to speak. Ms. Braund stated none of us has an issue, and when she says none of us, that would be all the residents that signed the petition. We got the signatures of all but four residents. Mrs. Braund stated there were three points in the petition, and she just wanted to bring back to Planning Commission's attention that we were opposed to the doubles that were proposed. Ms. Braund stated they wanted the 1,500 and 1,700 to be upheld and the important point that she thinks was omitted by Rod was that Tim Taylor, unbeknownst to the City or Planning or anybody, downgraded the minimum requirements in 2015. Mrs. Braund stated she really wishes that would have been brought up before your vote. All the residents that signed the petition requested that he was required to set that back, based on the fact that agreement was never drafted and signed and executed in writing. Mrs. Braund stated that is what was executed in principle by his tax savings so that is really her only opposition. Mrs. Braund stated she thinks weight should have been given to the petition that was signed by all of us. She is not sure how that may have got overlooked in this whole process. Ms. Braund stated that was a huge point that they all made and asked for some comments.

Chairperson Henderson replied the smallest unit in the Planning Commission packet was 1,700 square feet. The minimum in the new plat is 1,400 square feet which actually does makes sense for a .29 or .20 acre lot. Chairperson Henderson requested Zoning Officer Snedeker distribute the Harper floor plan to Planning Commission so they can review it.

Zoning Officer Snedeker replied he will email it now.

Ms. Braund stated that model is 1,408 square feet. If there was 92 more square feet there would be no opposition from any of residents. Realistically out of the plans that were submitted, the Harper is the only one that will fit on these lots. Ms. Braund stated these are less than what was agreed to and what was committed to and that is the issue.

Chairperson Henderson thanked Ms. Braund for her comments and asked if there are any other citizen comments?

Member Claggett asked if Planning Commission is allowed to reject just the Harper plan?

Chairperson Henderson deferred to Law Director Stephan.

Law Director Stephan replied Planning Commission could require that the covenants be 1,500 square feet based on the prior preliminary plan submitted in 2006. It provides 1,500 square feet for single story and 1,700 square feet for two story homes at a minimum. The 1,400 square foot minimum is what the developer is asking for and which the covenants were amended to by Taywood Enterprises for the lots on Westbrook Road. The amendment to the covenants filed with Montgomery County several years ago provides for 1,400 square foot. Law Director Stephan stated if they rejected one particular model, the developer could propose other models in the future, so the correct way to address it would be to set 1,500 as the minimum square footage. This would set a standard for Zoning Officer Snedeker to work from no matter which model is submitted.

Member Claggett stated he thinks this is something Planning Commission should consider.

Chairperson Henderson stated he received the Harper model plan and it is a nice-looking home which matches the style they have submitted.

Member Claggett asked what the other Planning Commission Members think about changing the minimum from 1,400 to 1,500 square feet?

Member Requarth stated he does not feel that is necessary.

Chairperson Henderson agreed, stating visually you will not be able to see the difference between the 1,408 and 1,500 square footage. The profile of the Harper does not appear any different from the front face or the curb as any of the others. Chairperson Henderson stated he does not think a change is necessary, but he will call for a vote if the other members request it.

Member Requarth stated the lots on Westbrook Road are smaller at .196 acres and up. Surely they will build a variety and not 40 of the 1,400 square foot homes.

Chairperson Henderson stated Fischer Homes provided a variety of homes for buyers to choose from.

Mayor Letner asked Jennifer Gonzales, of Fischer Homes, to respond.

Ms. Gonzales, Dayton Land Acquisition Manager of Fischer Homes, stated they have a monotony rule, where they do not and will not build the same floor plan next to each other nor in front of it. And even at that they will not duplicate elevations, meaning buyers cannot choose the same brick next to each other. The floor plans that they chose were the only models that would fit on these lots, and that is with the variance and not measuring the overhang and measuring to foundation. It was very hard to fit these onto these homesites. That does include the ones on Westbrook Road.

Ms. Gonzales stated right now there are seven floor plans that will fit on these lots with the approved variance. If they get rid of the Harper, that leaves only six. There will be a better variety in floor plans and home exteriors that you are going to see on Westbrook Road if they offer the Harper. Without the Harper, there are only six floor plans that can be chosen on Westbrook Road. Ms. Gonzales stated once they get into the new section, then they will have the full eight floor plans if the Harper is not removed. Ms. Gonzales stated this is whittled down from their usual selection of thirteen floor plans that customers normally have to choose from in a Maple Street Fischer Community. Fischer Homes is really trying to make this work and it will be a beautiful community. Ms. Gonzales stated she would be hesitant to take the Harper model out as it will eliminate one of the three-bedroom options and is the smallest home they are able to offer. On Westbrook Road they cannot even fit any of their ranch floor plans right now because of the requirements. Ms. Gonzales stated she would be hesitant to get rid of it because it is not going to give you as nice of a variety in throughout the community.

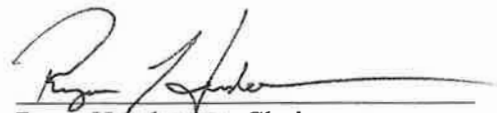
Member Claggett withdrew his objection.

Chairperson Henderson stated he will not call for a vote unless anyone else has objections to the Harper model.

Chairperson Henderson thanked Mike Oxner and Jennifer Gonzales for working together to find a solution. Chairperson Henderson stated it will look nice and Planning Commission is looking forward to growing the community.

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



Kimberly Duncan, Clerk

Ryan Henderson, Chairperson