

BROOKINGS PLANNING COMMISSION MINUTES

July 7, 2020

CALL TO ORDER

The regular meeting of the Brookings Planning Commission was called to order by Chair Wulkowicz at 7:03 pm in the Council Chambers at Brookings City Hall followed by the Pledge of Allegiance.

ROLL CALL

Commissioners Present: Cody Coons, Bill Dundom, Tim Hartzell, Skip Hunter (telephone), Clayton Malmberg, Michelle Morosky, Chair Gerald Wulkowicz

Staff Present: PWDS Director Tony Baron, Planning Tech Lauri Ziemer, Deputy City Clerk Amber Nalls, LCOG representatives Henry Hearley and Paula Taylor present by phone

Audience Present: approximately 60 citizens

PLANNING COMMISSION CHAIR PERSON ANNOUNCEMENTS - None

PUBLIC HEARINGS

4.1 In the matter of File No. **ANX-1-20**, a request to annex seven tax lots with a zone change, located along Parkview Drive between Hampton and Vista Ridge Drive, identified as Assessors' Map 40-13-31B Tax lots 00404, 01800, 01320, 01315, 01500 and 40-13-31CB, Tax lot 01301; and one tax lot located at the end of East Harris Heights identified as Assessors' Map 40-14-36A, Tax lot 00900 into the City of Brookings.

There were no ex parte contact, bias, personal interest, or conflicts of interest declared and no objection to the jurisdiction of the Planning Commission to hear the matter. The public hearing was opened at 7:09 pm.

LCOG representative Henry Hearley presented PowerPoint presentation reviewing each parcel requesting annexation and the staff report. Chair Wulkowicz asked for clarification that tax lots 01315 and 01500 are split by Parkview Drive and small triangle portions of the parcels are also located on the east side of Parkview Drive, which LCOG representative Paula Taylor clarified was correct. Chair Wulkowicz noted that a tool shop currently on parcel 01500 may not meet setback requirements and be in the city right-of-way. Henry advised that annexation does not take into account present buildings and/or requirements for future improvements. Chair Wulkowicz recommended it be noted that the tool shop may be in city right of way and that a restriction or alternate for its demise be in the conditions and final order. No other parties appeared to present information. Public hearing was closed at 7:30 pm.

The Commission discussed the annexation request. **Motion made by Chair Wulkowicz authorizing annexation of seven tax lots with a zone change, located along Parkview Drive between Hampton and Vista Ridge Drive, identified as Assessors' Map 40-13-31B Tax lots 00404, 01800, 01320, 01315, 01500 and 40-13-31CB, Tax lot 01301; and one tax lot located at the end of East Harris Heights identified as Assessors' Map 40-14-36A, Tax lot 00900 into the City of Brookings; based on the findings and conclusions stated in the staff report and subject to the conditions of approval for tax lot 01500 and 01315 that the portions on the east side of Parkview Drive remain with their respective parcels on the west side if they are not sub-dividable and that the shop located on Parcel 01500 in the Parkview ROW be addressed by restricting any future building permits so that when it is no longer of service is removed from the public right of way. Motion seconded and with no further discussion by a 7-0 vote the motion carried unanimously.** Matter forwarded to City Council.

4.2 In the matter of File No. **CUP-2-20**, a request for approval of a Conditional Use Permit to establish a 14-unit residential care facility on a .58 acre parcel located at 17212 S. Passley Road; Assessor's Map 4014-36BA, Tax Lot 02200; zoned R-1-6 (Single Family Residential). The applicant/owner is Brett Kemp.

Commissioner Morosky declared ex parte contact as she is friends with the applicant and Commissioner Coons declared ex parte contact as he is a third cousin of the applicant. Both declared they had no bias, personal interest or conflict of interest and could make a non-partisan decision. There were no further ex parte contact, bias, personal interest or conflicts of interest declared and no objection to the jurisdiction of the Planning Commission to

hear the matter. The public hearing was opened at 7:39 pm. PWDS Director Tony Baron presented the Staff Report.

Applicant Statement:

Aga Kemp on behalf of applicant Brett Kemp presented information on the proposed facility which will be a state licensed Residential Assisted Living (RAL) Home for non-ambulatory seniors with disabilities that interfere with daily living. The facility would not house mental care, memory care or drug rehabilitation patients. They want to build the facility in a residential neighborhood so the senior residents felt included in the community and feel the Fair Housing Act and Americans with Disabilities Act are factors that should be considered when considering the application. The state licensing process is done in several phases; the first phase is currently in review and they anticipate approval to move forward to the next phase in the next 30 days. The facility plan has been developed with consultants and partners in the design of the house, along with programs for the betterment of the seniors living in the home. The house design will be submitted to the State for approval at the appropriate phase. Staffing will be 2-3 trained caregivers during the day and 1-2 during the nights; staff transition times will be staggered.

Chair Wulkowicz reminded audience members that any written documents submitted prior to tonight have been entered into the public record.

Speakers opposed to the application:

Denise Ortega, 96511 West Cliff Drive, Brookings, OR. Does not believe the neighborhood is opposed to people with disabilities, they just do not know what kind of facility it is going to be used for as the application was not specific. Believes the state license should be issued before CUP approval is granted and the CUP application should be denied by the Planning Commission. A petition was circulated and signed by 144 residents against the facility because they do not know what the facility is for and have concerns about traffic and safety issues. Would like a traffic impact study and state DHS licensure approval first.

Victor Ortega, 96511 West Cliff Drive, Brookings, OR. Does not believe the entire criterion has been met. The size of the 140' x 15' flag lot driveway is not adequate egress and ingress access for emergency vehicles; S Passley Road is presently not wide enough at 18' in some areas for emergency vehicles and does not accommodate the traffic that exists now. Believes there is no evidence to support that there will be no impact on the neighborhood. Thinks this is spot zoning and this rear flag lot zoned R-1-6 that is not the location for this facility.

Gerald Klaas, 96490 Dawson Road, Brookings, OR. Lives near the intersection of S Passley and Dawson Road. Does not believe criterion two is met and that S Passley Road is not adequate in width to handle vehicle traffic that the proposed use will generate. Currently the intersection width at S Passley and Dawson is maybe 50' wide, however there is only 18' of paved surface in that area. Intersection traffic can be delayed because of the S curve coming onto Dawson from Hwy 101 and wider vehicles make navigation difficult turning onto S Passley. Concerned that current street conditions are not adequate for emergency evacuations and requests a traffic study be done for the existing traffic use and the impact the proposed facility will have.

Debbie Gleason, 17192 S Passley Road, Brookings, OR. Lives on the SW corner of West Cliff and S Passley and is not against elderly people or the idea of the facility. Believes large vehicles will not be able to make right hand turn into the driveway and there is no turnaround once in the driveway. Excess parking will be parking in front of her house and use the West Cliff cul-de-sac. Large and emergency vehicles already have a difficult time making the turn onto S Passley and will not be able to turn into the 15' driveway.

Loren Rings, 96407 Oceanside E, Brookings, OR. Does not believe criterion 1, Section 17.172.061 for flag lots is met. The accessway of a rear lot cannot be included in the minimum lot size and building coverage is 40%. The rear lot size is 178' x 131.95 for a total of 23,487 sf when you put a 9,588 sf building on it, it is over 40% and the max is 40%. The size of the proposed facility exceeds the maximum lot coverage.

Marco Thorson, 96509 West Cliff Drive, Brookings, OR. Lives across from the proposed facility and is opposed to running a business in a residential area. Not opposed to type of facility, opposed to the facility on a flag lot sandwiched in between current homes that are a quarter of its size. Feels letters submitted in support of facility

are letters of recommendation for the builder not the location. If application approved would request trees along the property lines be maintained and a 6' fence be built prior to construction the length of the accessway to mitigate the loss of neighborhood security, privacy and loss of property value. This would also ensure that construction traffic does not use their private street, West Cliff Drive.

Donald Cox, 17323 Blueberry, Brookings, OR. Concerned the facility could be changed to a different type of facility for drug rehab, sex offenders, non violent prisoners or low income housing for homeless. Driveway access with no turnaround is not sufficient and S Passley Road too narrow.

Linda Martin, 17202 S Passley Road, Brookings, OR. The Dawson Tract area was annexed into the City 28 years ago as R-1-6, for single family residences. The property owners then paid assessments to live in a single family residence area. Bringing a 14 unit building into a single residence area is wrong and the people who live closest will be greatly affected.

Shannon Christopher, 96418 Oceanside E, Brookings, OR. Believes this parcel is not appropriate for the facility. Drainage from this parcel will drain into the existing ditch that is already overtaxed by the surrounding properties and is maintained primarily by the Oceanside HOA. The ditch has flooded multiple properties in the past. The plans submitted do not bear the stamp of an Oregon licensed architect or engineer. Request the city require detailed water, street and traffic impact studies, and an independent market analysis. Municipal codes in place to protect residents and urge denial of request.

Kai Overbeck, 96406 Oceanside E, Brookings, OR. This parcel has abundant trees and birds. Suitable for a home but not the place for this facility. Roadway too narrow. Commercial business should not be in a residential area.

Tony Ellsworth, 96384 Dawson Road, Brookings, OR. Moved there to live in a zoned R-1-6 neighborhood. Placing such a large structure on a small parcel and the inevitable amount of traffic is inconsistent with zoning law.

Sandra Geiger, 96422 Oceanside Drive East, Brookings, OR. No drainage in this area, the water will discharge down the hill onto Oceanside HOA property which cannot handle the water causing houses and crawl spaces to flood. Need to find another place for this facility and to send the water.

Brenda Cox, 17323 Blueberry, Brookings, OR. Believes there will not be adequate staff to care for 14 non-ambulatory elder residents and especially in the case of an emergency. The accessway, street access and the Dawson/S Passley intersection is inadequate to accommodate emergency vehicles. 2-3 caregivers not enough to care for 14 residents during the day and 1-2 caregivers not enough at night.

Kevin O'Rear, 96505 West Cliff Drive, Brookings, OR. Group homes problematic because of noise and parking. The 45° accessway will cause people to swerve into West Cliff Drive into existing homes. Fire plug being moved will also cause swerving. Disagreed with staff report concerning the impact on the neighborhood as there is universal opposition from neighborhood to the facility.

Applicants Rebuttal

Aga Kemp expressed they are citizens in the local community also and did not expect an us vs. them attitude. Everybody says they support the project just not here, then where. There is a serious need for facilities in the area. Chose this parcel because it is tucked away with a nature like setting off of a main street and they do plan to keep the trees. The facility is a legal use of the property and is protected by federal, state and local laws/ordinances, and the Fair Housing Act. The letters of recommendation were to indicate they would be excellent stewards of this project. The number of caregiver staff ratio is above the number required by the state and emergency requirements will be met to provide safety for residents. Emergency preparedness is part of state licensing review and they will continue to work with the state to make sure all requirements are met. Fire Chief has approved the access. The state licensing process is done in phases and all requirements will be met. Similar accessways exist throughout the city serving multiple homes. A lot of thought was put into the location thinking it would be least impacted there than being on a main street. Questioned if approval for a Conditional Use Permit is dependent upon state licensing being requirements being met. They have started the process and because of COVID the

process has been slowed down. Daily traffic will include two caregivers and possibly a nurse being staggered by shifts throughout the day and will not increase traffic. Unfortunately there are not a lot of visitors to this type of facility. An independent 3rd party market analysis has been conducted that shows there is a serious need right now for a facility as this in this area. They plan on being excellent neighbors.

Brett Kemp advised any home built is responsible for it's water runoff and to the west of the property is access to is the city easement storm drain. They do plan to keep the trees on back property line; however noted that when anyone builds they take down trees in the way of the development.

No additional comments by Planning staff. No participants requested additional time to present evidence. Applicant did not request additional time to submit written argument. The public hearing was closed at 9:24 pm.

Chair Wulkowicz provided the audience with Planning Commission guidelines. The Planning Commission does not determine building conditions to be met.

Chair Wulkowicz questioned the statement by resident Loren Rings on the 40% building coverage, PWDS Director Baron advised that a condition of approval could be established to make the building smaller to meet the criteria.

Commissioner Malmberg questioned if the CUP was issued and the facility did not get licensing approval. Chair Wulkowicz suggested a Condition of Approval be made that construction not be allowed to start until licensing has been secured for a senior assisted care facility.

Applicant Aga Kemp informed the Planning Commission that State DHS is a multi phase process, and they are currently at the point of submitting plans and requesting a license, which is currently in review. Construction cannot proceed without DHS approval, actual licensing cannot be issued until the building can be inspected and a final license is not granted until a final inspection is completed.

Commission Malmberg expressed concern about the accessway and that the turn radius off S Passley doesn't allow for larger trucks supplying medical supplies, noting that traffic frequenting a residence is different than from a business and this is inconsistent with the neighborhood. Feels criterion 2 is not met in relation to streets and S Passley cannot accommodate large vehicles like fire truck and garbage trucks. Criterion 3 - neighborhood zoning of R-1-6 allowing a 14 unit facility originally zoned to be a single family dwelling is increasing the density of the neighborhood. Feels the application does not met criterion 2, 3, and 5.

Commissioner Hunter concerned about a zoning that would allow this to happen when so many residents in the area are against it, thought matter should be tabled and have City Council make a decision as to what the concerns are. Zoning says it can be done and Federal law says it can't be stopped based on it being an assisted living facility. Chair Wulkowicz asked PWDS Director Baron if matter could be reviewed by the city attorney; advised that time may not permit for a City Council workshop to review the matter and then come back to Planning Commission. He did have earlier contact with the city attorney who advised that Planning Commission make a decision and if the decision is based on the absence of criteria they be very clear what criteria is not being met.

Commissioner Morosky expressed that she feels she cannot vote just how she wants as the Planning Commission is there to follow the criteria outlined in the BMC and adhere to that.

Commissioner Hartzell does not agree with rubber stamping of the application and feels the neighbor concerns and property rights need to be considered and not ignored.

Applicant Aga Kemp pointed the commissioner's attention to the documents she submitted from a Land Use Attorney and the Fair Housing Act and Americans with Disabilities Act guideline summary for their review, so they could be informed and understand how DOJ and the land use lawyer explain how they are protected to comply with city ordinances.

Commissioner Malmberg pointed out codes and laws are in place to protect these uses and the BMC allows for a Conditional Use but it does not guarantee approval. The Planning Commission to determine if criterion is met.

Commissioner Dundom believes the criteria and ordinances are important but that neighbors private property rights trump the ordinances. The Kemps and the neighborhood both have those rights. He does not like the accessway/road conditions and thinks it is poor planning.

Commissioner Coons questioned if it was against federal law to deny, Chair Wulkowicz stated that had not been determined. An audience member stated that it is against federal law to discriminate against persons based on their disabilities but this is not that. Commissioner Morosky added Planning Commissions duty is to determine if the staff report is correct in saying the criteria is met and if not the reasons need to be explained how a criteria is not met in case of an appeal.

PWDS Director Baron reminded commissioners that even though criteria is not met they can add Conditions of Approval.

Motion made by Commissioner Malmberg to deny File No. CUP-2-20 a request for approval of a Conditional Use Permit to establish a 14-unit residential care facility on a .58 acre parcel located at 17212 S. Passley Road; Assessor's Map 4014-36BA, Tax Lot 02200; zoned R-1-6 (Single Family Residential); and direct staff to draft a denial final order, citing the following criterion as not being met: Criteria 1 adequate size and shape - lot size is not adequate for the size of the building in terms of the building is in excess of 40% of the lot size not including the accessway. Criteria 2 relation to streets - has not been met in terms of minimum driveway width to accommodate commercial traffic for a business and accommodate turn radiuses off S Passley Road. Criteria 3 neighborhood impact - has not been met in terms this facility is inconsistent with the adjoining properties. Motion seconded and with no further discussion by a 5-2 vote the motion carried with Chair Wulkowicz and Commissioner Morosky voting against.

MINUTES FOR APPROVAL

5.1 Minutes of regular Planning Commission meeting of May 5, 2020. **Motion made by Chair Wulkowicz to approve the minutes of May 5, 2020; motion seconded. With no further discussion, by a 7-0 vote the motion carried unanimously.**

UNSCHEDULED PUBLIC APPEARANCE - None

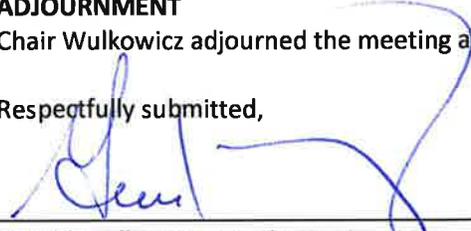
REPORT FROM THE PLANNING STAFF – None

COMMISSION FINAL COMMENTS – None

ADJOURNMENT

Chair Wulkowicz adjourned the meeting at 10:08 pm.

Respectfully submitted,



Gerald Wulkowicz, Brookings Planning Commissioner
Approved at the Dec 1, 2020 meeting