

**CITY OF GERMANTOWN PLANNING COMMISSION
MINUTES OF MEETING HELD FEBRUARY 24, 2021**

The City of Germantown Planning Commission met on February 24, 2021 at 7:00 p.m. in the City Building Council Chambers.

MEMBERS PRESENT:

The following members were present at the Call to Order: Larry Wiser, Jeffrey Jones, Whitney Izor, Andy Rohrbach, and Rob Rettich.

ALSO PRESENT:

Kelli Novak, Clerk of Council; Tom Schiff, Law Director; Chip Wirrig, Public Service Operations Manager; Keith Brane, City Planner; Ryan Morris, Associate Construction; Ms. Etta Reed, Bayer-Becker; Kile Genslinger, Applicant for rezoning; and several members of the community.

ELECTION OF 2021 OFFICERS:

On a motion by Larry Wiser, seconded by Mr. Rettich, it was moved to elect Jeffrey Jones to serve as Chairman of the Planning Commission for 2021. On call of the roll: Wiser, yes; Jones, yes; Izor, yes; Rohrbach, yes; and Rettich, yes. Motion carried.

On a motion by Jeffrey Jones, seconded by Andy Rohrbach, it was moved to elect Whitney Izor to serve as Vice-Chairman of the Planning Commission for 2021. On call of the roll: Wiser, yes; Jones, yes; Izor, yes; Rohrbach, yes; and Rettich, yes. Motion carried.

SET DATES AND TIMES FOR MEETINGS:

On a motion by Jeffrey Jones, seconded by Whitney Izor; it was moved to hold Planning Commission meetings when there is business on the fourth Wednesday of each month at 7:00 p.m. On call of the roll: Wiser, yes; Jones, yes; Izor, yes; Rohrbach, yes; and Rettich, yes. Motion carried.

CONSIDER APPROVAL OF THE MINUTES OF THE DECEMBER 9, 2020 PLANNING COMMISSION MEETING:

The minutes were amended prior to the start of the meeting to include Mr. Wiser who was present at the December 9, 2020 meeting.

On a motion by Andy Rohrbach, seconded by Jeffrey Jones, it was moved to approve the minutes of the December 9, 2020 meeting as amended. On call of the roll: Wiser, yes; Jones, yes; Izor, yes; Rohrbach, yes; and Rettich, yes. Motion carried.

BUSINESS:

Chairman Jones said tonight we have three cases: two final plats and a rezoning. Mr. Morris would also like to discuss when we can schedule a hearing for a new medical building.

1. Final Plat Application #FP 21-01, made by Associate Construction to consider the approval of Walnut Hill. If granted it would allow 21 Single Family Dwellings to be located on the south side of Dayton Germantown Pike near Worthington Drive.

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Mr. Brane reviewed the case; Mr. Ryan Morris of Associate Construction, 31 Eagle Court, Carlisle Ohio gave a summary of the proposed project.

Chair Jones opened the public hearing at 7:10 p.m. and asked if anyone wanted to speak for or against the proposal. Hearing none, the public hearing was closed at 7:12 p.m.

Board members raised concerns regarding placement of fire hydrants and a deceleration lane coming into the plat. Both questions were answered to the satisfaction of the board.

On a motion by Chairman Jones, seconded by Mr. Rohrbach, it was moved to recommend that City Council approve Application #FP 21-01, final plat for Walnut Hill, which would allow 21 Single Family Dwellings to be located on the south side of Dayton Germantown Pike near Worthington Drive. On call of the roll: Wisner, yes; Jones, yes; Izor, yes; Rohrbach, yes; and Rettich, yes. Motion carried.

2. Final Plat Application #FP 21-02 made by JA Development/Joe Cristo to consider the approval of Berryview Estates Section 4/Twin Creek Preserve. If granted it would allow 38 Single Family Dwellings to be located at the west end of Maxwell Court off Strawberry Fields Drive.

Ms. Etta Reed of Bayer-Becker, 6900 Tylersville Road, Mason, Ohio gave a summary of items completed since the approval of the preliminary plat approval: we submitted construction drawings which were approved by the City Engineer; we are in the process of preparing the Ohio EPA permit to install paperwork to submit to staff for their signature; and we submitted the final plat for your review and recommendation to Council. We are also asking you to allow us the change the name from Berryview Estates Section 4 to Twin Creek Preserve.

Mr. Brane reviewed the case.

Chairman Jones opened the public hearing at 7:19 p.m. and asked if there were any proponents wanting to speak. Hearing none, he asked if there were any opponents.

Shawn Kidd, 79 Kemp Street, disagrees with name change.

Mr. Brane reviewed comments and concerns from surrounding property owners: perceived inadequate addressment of proposed drainage, storm water run-off, fill dirt, and the single access point level of service during egress from Strawberry Fields to E. Market. We received one email and video clip from Steve Wesche, 685 Maxwell Court. Shown on video was creek water entering his back yard and flooding which he states has happened on multiple occasions. He also is concerned about litter in the creek and surrounding woods; ponds that have become inhabitable to fish and other local wildlife and have become dumping grounds for tires and appliances, all due to lack of maintenance; traffic increases and use of what appears to be an outdated traffic study.

Pam Preston, 28 Marshall Ave, same concerns regarding traffic and width of the street.

Tracy Wright, 25 Marshall Ave, traffic concerns.

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Shawn Kidd, 79 Kemp, traffic concerns if tied into Kemp; concern about sanitary sewer system and if the capacity will be increased. Mr. Wirrig asked when the sewage back up occurred because the sewer was relined 2 or 3 years ago and I haven't heard anything since. Mr. Kidd said that was about when it happened and I wasn't aware it had been taken care of.

There were no other speakers.

Ms. Reed said the concerns were the same concerns we heard during the preliminary plat. We submitted additional drainage information and additional traffic information to indicate a traffic signal or additional lanes would not be warranted. The lots were approved when Berryview Estates was approved years ago and we are building 3 fewer homes than what was approved in 2006 so we are generating less traffic than what was originally anticipated. In regards to the drainage we are building those lots up so there the pads will be above the FEMA flood plain elevation as we indicated we would do at the preliminary. There is a FEMA flood plain at the rear of those lots so in a heavy rain event they will have water in their backyards but it will not enter the homes. We feel confident we have met all the requirements of the city and we are prepared to move forward with construction.

Mr. Kidd said there were questions about tying into Pollyanna and Kemp St. that haven't been addressed yet.

Mr. Brane said staffs defers to Ms. Reed on her outlook regarding that type of connection. We also want to hear what solution she is proposing for that intersection in terms of striping.

Ms. Reed said we are only making one public roadway connection on Maxwell Court that goes out to Strawberry Fields and then to Market. We have looked at traffic analysis at Strawberry Fields and Market and turn lanes are not warranted. We are not intending to do any striping.

Mr. Kidd asked what organization performed the traffic study and is it current. I am concerned about tying into Kemp because the City just purchased a lot on Kemp.

Mr. Brane said regarding the access, we have complaints about getting out of the plat and there is no solution offered by the developer. Is there a liability issue, the cost is not substantial is it Ms. Reed? Ms. Reed said the cost will be some signage as well as some striping. Chairman Jones asked if staff is making a recommendation. Mr. Brane said we are looking for some type of step up solution. We can postpone this while we look into a traffic solution or we can get the striping provided.

Chairman Jones said he didn't want to pass the buck and there is another public hearing to review the final at City Council. Once they have the hearing, they can table this until they have the additional information. Mr. Schiff said they could if necessary and the City would defer to a traffic engineer in that situation. Chairman Jones asked if approval at City Council could be made with conditions. Mr. Schiff said yes, I believe that is a possible outcome but unless there has been a traffic engineer that's going to suggest additional lanes or striping, it's not going to happen because we are going to rely on the experts in this situation. Mr. Brane said the traffic engineer sent Mr. Wirrig a request for additional information and we forwarded that a long time ago. Chairman Jones said are you saying the developer has not submitted the requested information. Mr. Wirrig and Mr. Brane said they had not seen it.

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Ms. Reed said Mr. Wirrig did forward some questions to Mr. Oakes which I did responded to Mr. Wirrig and asked where the request came from. We submitted a traffic letter in August 2020 addressing these issues. One of Mr. Oakes questions was while I don't have the exact volumes or analysis, I would suspect a traffic signal is not warranted based on volume. They looked at the queues and delays on Strawberry Fields but I don't see any mention of queueing on Market, particularly, west bound left. The only concerns mentioned at the preliminary in August were the traffic signal and the queue on Strawberry Fields. I do have the analysis and there is no queueing problem on Market. We took it a step further in performing ODOT turn lane warrant analysis to see if a turn lane was warranted on Market and neither a left nor a right was warranted.

Chairman Jones asked if that information based on what she just said would be sufficient for Council. Mr. Brane said it was a request for clarification of information and striping is discussed at the final. I hear the striping is not warranted, I don't hear that it wouldn't make the situation better or there is liability incurred if striping is provided. You can move this forward to City Council without a solution but you have a representative of Council on your board and I think they want it worked out before it gets to them. Mr. Rettich, Council Representative, agreed.

Ms. Reed said she communicated with her client and they are willing to do striping on Strawberry Fields.

Chairman Jones closed the public hearing at 7:49 p.m.

Chairman Jones said he is leaning towards tabling this. Mr. Brane said we have the opportunity to meet in two weeks since we are having a work session. I also think the indication from the developer to provide striping is a major move forward and we are not going to connect with any roads because it is not feasible; one way in and one way out. The drainage is up to the EPA.

Chairman Jones asked that Germantown Township on plan be corrected to German Township. He asked Mr. Wirrig why there was 1 foot beyond the back of the sidewalk before the property line. Mr. Wirrig said it's just a standard so we don't have to go on a person's property to repair a sidewalk.

Chairman Jones asked if all of staff was okay with the hammerhead design and what would prevent someone for going on Mr. Hensley's property. Mr. Wirrig said there are trees along the property line.

Mr. Brane said he is wondering why we were putting down pavement with no curb to hold the pavement in place and to prevent encroachment.

Chairman Jones asked Ms. Reed if they could put curb there as a precaution. Ms. Reed said we are dedicating additional right-of-way at the north end to accommodate a future extension of Marshall Ave. So curb is not being installed so that when the remainder of the Marshall Ave. extension is constructed, it is easily attached to the pavement that's there. If it were a permanent situation we would install curb but it is temporary at this time. Chairman Jones said it was my understanding that property owner was not willing to sell that property any time during his life. Ms. Reed said it was our understanding there was a plan to extend Marshall Ave. and that's why we dedicated the additional right-of-way.

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Chairman Jones said the trees are at grade so what's to prevent a car from going off the pavement and hitting a tree. Mr. Brane said there are no plans to put those through any time soon; the City lacks funding to acquire properties so it is likely more permanent than it is temporary. There is no question that curbing helps hold pavement in place. Chairman Jones said he would like to see staff reconcile that before we come back in two weeks. I would like to see something that alerts a driver they can't go any further. Markers in combination with raised curb, something that is a physical barrier but also identification that says you can't go beyond this point.

Mr. Rettich said he thought they did request a traffic study but due to Covid-19, we weren't able to get one with traffic that was much different than it was back then. I thought you pulled a study that was only a year old to get a more accurate study. Ms. Reed said we talked about it in August and with Covid-19 a traffic study would not have the volumes that were pre-covid. We were able to get counts from ODOT done in August 2019 and we used those to determine if turn lanes were warranted.

Chairman Jones said Ms. Preston has commented that based on the size of the trees if someone were to come through the trees in a vehicle they could end up in her living room. If someone has lost control of their vehicle I want to make sure they can't cause further damage to themselves or neighboring properties. I think that is reasonable. I would like to see staff come up with a consensus with the developer to figure how to prevent further egress off that road.

Mr. Rettich said I believe the name change will lead to confusion between Twin Creek Reserve and Twin Creek Preserve. Ms. Izor agreed it could be misleading.

Ms. Izor said she also wanted to go on record that she thought they needed some sort of barrier at the hammerhead to prevent someone from potentially driving onto someone else's property.

Chairman Jones asked what date the next meeting is. Mrs. Novak said March 10th at 7:00 p.m.

On a motion by Chairman Jones, seconded by Ms. Izor, it was moved to table Final Plat Application #FP21-02 made by JA Development/Joe Cristo to consider approval of Berryview Estates or what is now proposed to be called Twin Creek Preserve until requested information including the traffic study, terminus improvements, and other issues can be addressed by the developer to the satisfaction of City Staff. On call of the roll: Mr. Wiser, yes; Mr. Jones; yes; Ms. Izor, yes; Mr. Rohrbach, yes; and Mr. Rettich, yes. Motion carried.

Ms. Reed said I want to make sure I understand so we can have everything addressed when we see you in two weeks: A barrier of some sort at the t-turnaround so someone would not drive off the pavement and discuss the name change. Are we resolved on the turn lane/traffic issue; I don't know what you need from us on that. Chairman Jones said besides a barrier, I would like to see some sort of identification before they hit the barrier to know that is a terminus.

Chairman Jones asked if staff was clear on what she's requesting. Mr. Wirrig said she has agreed to provide the traffic study and we want to see that for review. Mr. Brane added they want to see the striping plan.

3. Petition for Change of Zoning District Application #RZ 20-01, made by the owner/resident to allow 279 South Main Street to be rezoned from C-2 Downtown Business District to C-1

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Commercial Business District. Planning Commission's recommendation will go before City Council for final review and approval.

Mr. Kile Genslinger, 279 South Main Street, summarized a proposal for a seasonal recreational kayak and bike rental business in the downtown area. This will add other opportunities for the downtown restaurant and retail businesses and once improved, the business will increase tax revenue for the city.

Mr. Rohrbach recused himself from this case on advice from the City Solicitor with the provision he could speak during the public hearing as a proponent for the rezoning.

Mr. Brane reviewed the staff report. Earlier today you were emailed a support, oppose, and hesitantly agree list along with the petition signers. The recommendation rationale is the C-1 Commercial district will allow more intensive uses than the C-2 Downtown Business district and it would be incompatible with the surrounding residential districts. Once you allow one C-1 use, you allow all C-1 uses. The complaints from the surrounding property owners illustrate the unsuitability of the requested zoning district. Additionally the process is singling out a classification different from that of the surrounding area for the benefit of the owner and to the detriment of other area owners. It is unwise at best and illegal at worst.

Chairman Jones opened the public hearing at 8:15 p.m. He reminded the board that all uses need to be analyzed when looking at a change in zoning district since any use allowed in the changed district can now go on that property. He reviewed the uses and conditional uses allowed in a C-1 district. Mr. Schiff agreed with Chairman Jones and Mr. Brane's summaries.

Chairman Jones opened the floor to proponents of the rezoning.

Mr. Andrew Rohrbach, 56 North Circle Drive, said my property abuts Mr. Genslinger's property and he no problem with what goes on over there. There have various businesses in the past and if Mr. Genslinger follows through with his plan I think it would increase property values and it a good idea.

Chairman Jones opened the floor to opponents of the rezoning. Hearing none, he asked for final statements of staff and/or the applicant.

Mr. Genslinger asked if it was possible to have an amendment for just the kayak/bike rental facility. It is a really good location and allows us to serve a lot of people in this general area. I'll work with anyone to resolve any issues to have a business that will benefit the community.

Mr. Brane said we are responding to a specific request that has been made. The Planning Commission's recommendation will go forward to City Council.

Mr. Genslinger asked if that was a possibility that there could be an amendment I wasn't aware of and that's my fault. Could there be some type of consideration in the current zoning to allow that. Chairman Jones said you would have to reapply for a Planned Unit Development which gives greater assurances and it's contractual. You would have to do exactly what you say you are going to do if it is approved by Planning Commission and City Council.

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Mr. Brane said there is a minimum area for that type of development. Chairman Jones said five acres so we would have to look at that.

Chairman Jones closed the public hearing at 8:30 p.m.

Chairman Jones said I have a concern about the intensity of some of the uses that would be allowed with that change in district.

Mr. Wisner asked if Mr. Genslinger could apply for some type of use variance to allow the business. Chairman Jones said use variances in Ohio are not permitted, and if you do it has to be in the Charter as a provision. It is not in our Charter.

Ms. Izor said I have similar comments to Mr. Wisner. I agree rezoning this one parcel to C-1 doesn't make a lot of sense and that is the narrow decision we are here to talk about today. We do support small business and this seems like it would be a light use and wouldn't even warrant a C-1. It's just not fitting in to the letter of the law the way the C-1 and C-2 are written. I'm curious what we can do help this applicant understand what his options can be. I know we don't advise but this seems like something the City Council or the Economic Development Board to look in to.

Mr. Brane said Mr. Genslinger is working with Economic Development, Pat Higgins, and they have found an acceptable site. Mr. Genslinger said it would be working from a Shell gas station and he would have to rent the building next to it for \$1,000 per month. We only run about four months and I would have to pay rent for a full year. If I leave and they rent the building, I'm back to putting up a tent.

Mr. Rettich said I want the kayak business to be successful but I can't justify the change in zoning and opening it up to so many other possibilities. The Kayak business could be there 20 years and in 30 years there could be a business that is unacceptable to the residents. You don't know what will happen in the future. The only way I know off the top of my head is possibly do a text amendment to zoning. Chairman Jones said text amendments are the same as map amendments, they originate with staff and then it's scheduled the same way as this process.

Mr. Wisner said I think we are of the same mind. My other comment would be I think the spirit and intent of the law as written would not permit the kayak business to be defined as vehicle sales and rentals. I don't think that was thought of when it was written. Chairman Jones said a vehicle doesn't have to be motorized and I disagree.

On a motion by Chairman Jones, seconded by Ms. Izor, it was moved to approve the change of zoning, Application #RZ20-01 made by the owner/resident of 279 South Main Street to be rezoned from C-2 Downtown Business District to C-1 Commercial District. On call of the roll: Mr. Wisner, no; Mr. Jones, no; Ms. Izor, no; Mr. Rohrbach, I recuse; and Mr. Rettich, no. Motion failed.

Chairman Jones said this will go before City Council and you will want to schedule that with Mrs. Novak.

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OTHER BUSINESS:

Mr. Ryan Morris, Associate Construction, introduced Mr. John Burkhardt who reviewed plans for a new project, a medical center on the westernmost corner of Hickory Pointe Center.

Chairman Jones said so you are going to get a plat for the subdivision regulations then approval of the PUD. Mr. Brane said they can get a metes and bounds survey record to split off the lot to put it in a holding company but a record plan is required as part of the PUD approval.

Chairman Jones asked if their plan was to submit both at the preliminary plan and then come back for a final. Mr. Morris said yes. Chairman Jones asked what the time frame was. Mr. Burkhardt said we are hoping to be on the March 24th agenda for the preliminary and the April meeting for the final. We would then break ground within 30 days.

ADJOURNMENT:

With no further business, the meeting adjourned at 9:10 p.m.

Jeffrey Jones
Chairman, Planning Commission

Keith A. Brane
City Planner