City of Olathe

City Planning Division

MINUTES

Planning Commission Meeting: January 28, 2019

Application:	**SU18-0008 A special use permit for more than 4 animals (dogs)**
Location:	813 E. Wabash Street
Owner/Applicant:	David and Cynthia Czernik
Staff Contact:	Dan Fernandez, Planner II

Dan Fernandez, Planner II, appeared before the Planning Commission, summarizing the request, which is for a special use permit allowing more than four dogs at 813 East Wabash Street. He noted on the aerial phot the location of the residence situated on an approximately 7700-square foot lot. Open space to the south is zoned R-4. He noted that per the UDO, up to four domestic pets may be kept on property less than three acres by right and a special use permit is required to have more than that.

Mr. Fernandez reported that the applicant has eight dogs and would like to have up to 10 dogs so they can house two foster dogs. Currently, six dogs are licensed; the other two are not. The foster dogs typically stay a couple days at the property while shelters are found to house them. The applicant submitted a summary of how the animals are cared for. Each applicant reports having over 1,000 hours of volunteer service at various agencies, helping dogs. Staff received an email verification from the head of one of these agencies verifying hours served.

Mr. Fernandez stated that as part of this special use permit application, the applicant has agreed to build a privacy fence around the back yard, replacing a four-foot chain link fence. The privacy fence will provide more screening and help contain the dogs in the back yard. Mr. Fernandez said all public notice requirements have been met. Staff received one call from a resident who was concerned about the dogs barking, the dogs getting out, and the number of dogs being requested. Mr. Fernandez said Animal Control has been contacted and learned that an animal control officer has visited and inspected the site, finding no violations. Animal Control noted that the property and the dogs are both well maintained.

Mr. Fernandez stated that due to the number of dogs being requested, staff recommends six permanent dogs for this site, which is the number of licensed dogs the applicant currently has. Staff also recommends the applicant be allowed to foster up to four additional dogs because they are only there on a temporary basis. Staff is also recommending a two-year time limit on the special use permit because it will give the applicant an opportunity to show that they can meet the stipulations and municipal code requirements.

Mr. Fernandez concluded by saying that staff is recommending approval of the special use permit.

Comm. Fry asked Mr. Fernandez to review the current special use permit. **Mr. Fernandez** responded that this is the first special use permit and not a renewal. Comm. Fry asked how six dogs get licensed in a situation where the UDO only allows four. Mr. Fernandez responded that in this situation, three dogs were licensed by different people, so it may have been overlooked. Staff is recommending approval of six dogs because that is what is currently licensed for the property.

Chair Vakas opened the public hearing and asked the applicants to come forward. **David and Cynthia Czernik,** 813 East Wabash Street, approached the podium. Mrs. Czernik said they are requesting up to 10 dogs because they regularly foster dogs. She said only six dogs have been licensed because at the time those were licensed, the other two dogs were under six months old. She said they are new to this process. The applicants provided the Planning Commission a short PowerPoint showing who they are. She said she takes neighbors' concerns very seriously. They are passionate about fostering for dogs, especially those with special needs. The PowerPoint outlined their qualifications for caring for a number of animals. They also presented a slide noting that there are 24 dogs on their street, not including theirs, meaning that barking dogs come from many different places. Mrs. Czernik said that there is less than a 50 percent chance that their dogs are the source of the barking. She added that their dogs are walked two to three times a day and they often take the dogs to the dog park. She said their back yard is undergoing improvements, including a biodegradable waste system.

Mrs. Czernik said they are asking to keep nine dogs, not 10, because they want to keep their family together. She said they believe they do what's best for the dogs and their neighbors. She said they have re-homed dogs in the past. One was when a neighbor complained about excessive barking, and in order to keep peace in the neighborhood, Mr. and Mrs. Czernik re-homed that dog.

Comm. Rinke asked for clarification on the number of dogs the applicants own at this time. **Mrs. Czernik** said that right now, they have nine dogs in their house. They have twin dogs that are nine months old, which they have tried to re-home but have been unsuccessful. They are asking permission to keep those two dogs, as well. Therefore, they are asking for a special use permit to keep nine dogs, but they would no longer foster other dogs. **Mr. Czernik** noted that their home is large and they have room for all the dogs. **Comm. Fry** wants to be sure that the right precedent is being set and asked the applicant what sets them apart from others applying for the same type of special use permit. Mrs. Czernik noted that most people do not have the extensive and rigorous training they do. She believes they understand the dogs' behavioral and health needs. Mrs. Czernik has also taken veterinarian training classes on line and is working towards her veterinarian technician certification. Comm. Fry believes the idea of fostering dogs is a fantastic service to the city, as well as the dogs, and questions why they would give that up. He notes that staff recommends allowing six dogs and four more foster dogs, which he believes is a more ideal for approval. **Mrs. Czernik** said that was their initial plan, but they have grown attached to their two foster dogs and they are having difficulty rehoming them. The foster dogs have had difficulty adjusting to a permanent situation and have been returned to the Czerniks. She wants what is best for the animals, above all. Comm. Fry asked what the applicants would do if the application was approved as written, with six licensed dogs and four foster dogs. Mrs. Czernik said she didn't know, but she would have to weigh out what is best for the dogs and what might happen medically with them, as well as what other potential owners could handle in terms of health issues.

Aimee Nassif, Chief Planning and Development Officer, added that when formulating original recommendations, staff was not aware of the medical conditions of the dogs, as well as other factors. Therefore, staff is not opposed to changing the number, but keeping the same time period in case there are issues.

Comm. Rinke asked if nine were approved, if the number would decrease as the dogs pass away. **Mrs. Czernik** said yes, that the dogs would not be replaced with more dogs. **Chair Vakas** said he would be more comfortable knowing that the end result would be to bring the number down to four pets. Mrs. Czernik agreed. **Mr. Czernik** added that when they rescued the dogs, they were not aware of the health conditions.

James Brackett, Animal Control Officer, City of Olathe, approached the podium. He said he comes across many people who are over the limit on pets, and there are very few cases where there isn't some sort of concern about the welfare of the animal. He said in this case, he was called to make a welfare check because someone was concerned about the large number of dogs. He said when he visited the residence, he noted that the yard was clean, which is rare given the number of

dogs. He said all the dogs were in good health and were licensed. He had no concerns about the number of dogs in the house and told the applicants that as long as there were no complaints, he would not cite them for being over the limit. A few months later, he received a call from a neighbor who said that the Czerniks were not picking up animal waste when walking their dogs. He said that complaint proved to be unfounded. However, at that time, he did issue a citation for over the limit, and then, explained how to get a special use permit.

Chair Vakas asked if anyone in the audience wished to speak about this application. There being none, he called for a motion to close the public hearing.

Motion by Vice Chair Rinke, seconded by Comm. Munoz, to close the public hearing.

Motion passed 6-0.

Comm. Munoz noted that it would be difficult to approve such a dramatic increase, from four to nine dogs. He is hoping in the next two years, they will be able to re-home some of the dogs. He questioned what would happen if the special use permit is permitted but there are issues. **Mr. Fernandez** responded that any special use permit can be brought back by the planning official for revocation if there are complaints. Therefore, the same could happen here any time within the two-year timeframe of the permit. Comm. Munoz asked if the applicants' goal was to ultimately end up with four dogs or six dogs. Mr. Fernandez responded that the City's goal would be four dogs. **Chair Vakas** commented that even if the number was brought down to four, the applicants would still want to foster. Therefore, he believes they would seek to renew the special use permit in order to foster additional dogs. **Comm. Rinke** commended the applicants for the great care they are providing to these dogs. He appreciates that Officer Brackett has observed the property and had nothing negative to report. He is in support of the special use permit.

Motion by Vice Chairman Rinke, seconded by Comm. Sutherland, to recommend approval of SU18-0008, for the following reasons:

(1) The proposal conforms to the Goals, Objectives and Policies of the *Comprehensive Plan*.

(2) The proposal complies with the *Unified Development Ordinance (UDO)* criteria for considering special use permit requests.

Vice Chair Rinke's motion included recommending that the following stipulations be included in the ordinance, as amended:

(1) The Special Use Permit is valid for a period of 2 years following Governing Body approval, with an expiration date of February 19, 2020.

(2) The property shall be subject to all requirements of *Title 8 (Animals)* of the *Olathe Municipal Code.*

(3) A maximum of 10 dogs, one (1) of which may be a foster dog, may be kept on the property at one time.

(4) A 6-foot privacy fence shall be constructed around the backyard prior to April 1, 2019. Failure to do so may result in revocation of this SUP.

Prior to the vote, **Comm. Munoz** noted that the applicant stated earlier that she was only going to keep nine dogs licensed and she was not taking on any more foster dogs. Now, the motion is to

approve 10 dogs, not 9. **Chair Vakas** asked if another motion should be entertained. He stated that the motion on the floor needs to be voted on first; City counsel agreed.

Aye: Rinke (1)

No: Sutherland, Fry, Munoz, Corcoran, Vakas (5)

Motion failed 1-5.

Chair Vakas called for a second motion.

Motion by Comm. Munoz, seconded by Comm. Corcoran, to recommend approval of SU18-0008, for the following reasons:

(1) The proposal conforms to the Goals, Objectives and Policies of the *Comprehensive Plan*.

(2) The proposal complies with the *Unified Development Ordinance (UDO)* criteria for considering special use permit requests.

Comm. Munoz's motion included recommending that the following stipulations be included in the ordinance, as amended.

(1) The Special Use Permit is valid for a period of 2 years following Governing Body approval, with an expiration date of February 19, 2020.

(2) The property shall be subject to all requirements of *Title 8 (Animals)* of the *Olathe Municipal Code.*

(3) A maximum of nine (9) dogs may be kept on the property at one time.

(4) A 6-foot privacy fence shall be constructed around the backyard prior to April 1, 2019. Failure to do so may result in revocation of this SUP.

Aye: Sutherland, Rinke, Munoz, Corcoran, Vakas (5)

No: Fry

Motion was approved 5-1.