



Planning Division

## MINUTES

### Planning Commission Meeting: February 22, 2021

<b>Application:</b>	<b><u>RZ20-0016:</u></b> Request approval for a rezoning from R-3 (Residential Low-Density Multifamily) District to R-1 Residential Single Family) District and preliminary plat for Battle Creek Estates on approximately 23.12 acres; located in the vicinity of E. 119th Street and S. Nelson Road.
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Commissioner Breen returned to the meeting, and Commissioner Essex recused herself from consideration and voting on RZ20-0016 and left the chamber.

**Jessica Schuller, AICP Senior Planner** presented a request for a rezoning and preliminary plat for Battle Creek Estates. The subject property is currently zoned R-3 (Residential Low-Density Multifamily). The applicant is requesting to rezone the subject property to the R-1 (Single Family Residential) District. The applicant proposes to replat the property to develop 31 single-family lots that range in size from approximately 10,000 square feet to 123,000 square feet.

**Ms. Schuller** reported that the neighborhood will have access to 119th Street and Nelson Road. Streets in the subdivision will be dedicated as public streets, and a black metal picket style fence is proposed along the perimeter of the southern lots.

**Ms. Schuller** stated that the applicant submitted a landscape plan with street trees and master landscaping along 119th Street and Nelson Road, meeting Unified Development Ordinance (UDO) requirements. About 46 percent of the trees are being preserved on the site, which exceeds UDO requirements for tree preservation. She added that a stormwater quality easement will be dedicated on the southern lots, which will prohibit permanent structures within the easement. She further explained that only the portions of the lots nearest to 120th Street will be developable.

The Future Land Use Map of the Plan Olathe Comprehensive Plan designates the proposed site as conventional neighborhood and primary greenway and the proposed rezoning aligns with the future land use designation and meets standards of the Golden Criteria as well.

The applicant held a neighborhood meeting as required by the UDO, and eight residents attended and asked questions about the development plan, as well as the fence proposed along the southern property line. Staff received some additional inquiries regarding the fence. Two residents do not want to see the fence constructed. One resident is concerned about the ability for wildlife to pass through the area; however, staff understands the fence is only proposed along the southern property line and will not enclose the creek area in any way.

Staff recommends approval of the proposed rezoning to the R-1 District and preliminary plat as stipulated.

**Mr. Fry** noted many times with developments questions come forth regarding transitional lot sizes. He pointed out that lot numbers 1 through 9 includes a great amount of square footage and then there are smaller lots. Since only part of the land is developable, he noted that concerns usually raised with new developments are with small lots coming next to a large development. He asked if there was any level of concern with the proposed lot sizes related to the other lots.

**Ms. Schuller** stated that, regarding the transitional lot policy, the UDO addresses smaller lots, but the proposal includes larger sized lots, and the transitional policy did not specifically apply. The southern portion of the site will be preserved, maintaining the same look and feel as it stands today, which creates a nice buffer to the residents to the south.

**Mr. Fry** referred to the designated stream corridor and understood since the land was privately owned, the responsibility to maintain those lots falls on the individual home owners.

**Ms. Schuller** noted that the southern lots will be part of a maintenance agreement to help maintain the stream corridor.

**Chair Vakas** asked about the height of the proposed fence.

**Ms. Schuller** stated the proposed fence is five to six feet tall, which is typical of what is permitted in a residential district and will consist of a wrought iron picket style fence.

**Chair Vakas** declared the public hearing open.

**Ms. Denise Baumgart**, 1704 North Hunter Drive, 66061, stated she lived on the south side of the proposed development. She expressed concern regarding the fence. When her parents purchased the land 30 years ago, they were told it would never be developed, but she understood that change occurs with development. She did not oppose the development as proposed. She was concerned about the wildlife in the area, as the fence will delineate the property lines. She did not see any delineation of property lines in the proposal on the other two sides of the proposed properties nor any perpendicular property fencing to her property. She also expressed concern with how the fence would be built

in terms of grading and tree preservation. If there is a tree on property lines, she questioned whether it would be preserved.

**Commissioner Fry** asked about what existing restrictions are in place regarding fencing on private property. He asked what regulation the City would have upon a private landowner installing a fence on their own property.

**Ms. Nassif** explained that fencing is allowed for residential property per the code, up to the allowable footage. She did not believe a permit was required if the fence meets the allowable height. When a fence is proposed, the location must be shown and has to be completely installed upon the private property owner's property.

**Commissioner Fry** did not feel issues with fences usually reach conversations at the Planning Commission level, and he wanted to clarify the fencing was part of the overall development request, but that it did not require a permit to be installed.

**Ms. Nassif** confirmed no permit was required for the installation of the fence.

**Commissioner Fry** understood a homeowner could install a fence at any time without permit.

**Ms. Nassif** agreed and noted a permit was not required in that scenario for zoning analysis or decision currently in front of the Planning Commission. She felt the applicant of the proposed request was only trying to show all details on the fence.

**Mr. Bill Oetting**, 1742 North Sunset Street, 66061, stated he lived on the southern side of the proposed property to be developed. He had received a letter from the City at some point in the past that said there would be any building on the south side of Battle Creek. He understood there would be no building in that area based on that communication, but he opposed the fence. He understood there was a lot of wildlife in that area and a fence would restrict movement in that area.

**Chair Vakas** asked if there was a copy of the letter in staff's possession that was referenced by Mr. Oetting.

**Ms. Nassif** stated staff is not aware of any such letter.

**Mr. Jerry Barlett**, 1724 North Hunter Drive, 66061, stated his home backs up to the proposed development. He referred to the fence and asked if it is to be built on the south side of Battle Creek, he understood at some point it would have to cross the creek in two places. He felt there was the possibility of the fence getting washed out of the area when they receive heavy rains. He asked for clarification of the exact location of the fence. He also referenced the 46 percent of the trees around the creek that will be preserved. He noted his home backs up to the top of the hill above the creek, and there is approximately a 45-degree angle down the back to the creek. If that topography is changed around the creek, he wanted some assurance the ground in that area will not erode to prevent causing problems to the foundation of his home as well as others residents in the area.

which could end up having an expensive replacement. He referred the Nelson property where it meets 119th Street and there is a natural rock wall in place and asked how that will be addressed. He referred to some comments made about the number of houses and population. He noted they recently went through issues with extremely low temperatures and getting involuntary shutoffs of power. If that kind of issue is not addressed up front, and a power company takes action to ensure they will have sufficient power for certain times, he did not want to have to face extreme circumstances. He asked how these issues will be handled.

**Chair Vakas** asked for further clarification on the fence from the applicant of the proposed project.

**Mr. Doug Ubben**, Phelps Engineering, 1270 North Winchester, Olathe, appeared on behalf of the applicant, stated the main reason for the fence along the south side is to create good neighbors in the future. There are nine homeowners along the back area and people could potentially start encroaching on property, which could lead to future disputes.

**Chair Vakas** asked where the fence would cross the actual waterline.

**Mr. Ubben** stated the fence would have to stop short of the stream corridor, as they cannot obstruct the stream, as it would cause flooding issues.

**Chair Vakas** understood there would be periodic breaks in the fence and that it was six feet in height.

**Mr. Ubben** felt the picket ornamental fence would be good for small wildlife to make it through, and short enough for deer to jump over it.

**Commissioner Nelson** referred to where trees are in place and asked if any modifications would be made in soiled areas.

**Mr. Ubben** noted no modifications would be made to soiled areas to preserve the health of the trees.

**Commissioner Nelson** understood they would also not changing the topography in that area as well.

**Mr. Ubben** agreed.

**Commissioner Nelson** felt the comments regarding power issues ranks above the Planning Commission level and asked if it was also above the developer's level and would be considered more of a regional and substation situation and discussion.

**Mr. Ubben** stated the proposed development is minor development with 31 lots, compared to other developments. The property is zoned for R-3, with 296 apartment units. He was comfortable with the 31 lots being added to the power grid.

**Chair Vakas** understood they were in a period of climate change, and they are seeing a tendency of weather extremes with hot and cold temperature, which is happening more on a routine level than it used to 20 to 25 years ago. The City Olathe has a good and aggressive program in the hardening of infrastructure to make them reliable where they provide utilities to the public. The Olathe water system, sewer system and other systems are being hardening to prevent disruption due to weather extremes.

In the case of public utilities as it relates to electricity or natural gas, that is entirely out of the City's control and scope, but the public utilities as part of a regional cooperative, are making plans to ensure these kinds of issues do not arise in the future. The population throughout the Kansas City metropolitan area and the country will continue to grow, and he felt the collective power industry is taking the appropriate steps. Although he appreciated the residents' comments regarding the power issues, those issues do not specifically pertain to the proposed application.

**Chair Vakas** called for a motion to close the public hearing.

A motion to close the public hearing was made by Commissioner Nelson and seconded by Commissioner Breen. The motion passed with a roll-call vote of 7 to 0.

**Ms. Nassif** announced if there were further questions by the public, they can contact the Planning Division directly tomorrow to provide additional information. She noted that this item would move forward to the City Council March 16, 2021.

There being no further discussion, **Chair Vakas** called for a motion.

A motion to approve RZ20-0016, subject to staff stipulations, was made by Commissioner Nelson and seconded by Commissioner Breen. The motion passed with a roll-call vote of 7 to 0, with no stipulations for the rezoning and the following stipulations for the preliminary plat:

1. A final plat must be approved and recorded prior to issuance of building permits.
2. A note will be included on the final plat stating that all mechanical equipment shall be screened per UDO requirements.
3. A master landscape and street tree plan in accordance with Section 18.30.130 of the UDO must be submitted with the final plat.
4. Prior to issuance of any City permit, a Stream Corridor Maintenance Agreement and an HOA Agreement describing maintenance responsibilities of the stormwater facility maintenance as per Title 17, Section 17.16.080 will be submitted to the City prior to recording with the county.