

**NORMAN PLANNING COMMISSION
REGULAR SESSION MINUTES**

APRIL 11, 2013

The Planning Commission of the City of Norman, Cleveland County, State of Oklahoma, met in Regular Session in the Council Chambers of the Norman Municipal Building, 201 West Gray Street, on the 11th day of April 2013. Notice and agenda of the meeting were posted at the Norman Municipal Building and online at <http://www.normanok.gov/content/boards-commissions> at least twenty-four hours prior to the beginning of the meeting.

Chairman Chris Lewis called the meeting to order at 6:30 p.m.

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Item No. 1, being:

ROLL CALL

MEMBERS PRESENT

Curtis McCarty
Jim Gasaway
Roberta Pailes
Cindy Gordon
Dave Boeck
Sandy Bahan
Tom Knotts
Chris Lewis

MEMBERS ABSENT

Andy Sherrer

A quorum was present.

STAFF MEMBERS PRESENT

Susan Connors, Director, Planning &
Community Development
Jane Hudson, Principal Planner
Ken Danner, Subdivision Development
Manager
Roné Tromble, Recording Secretary
Leah Messner, Asst. City Attorney
Larry Knapp, GIS Analyst II
Terry Floyd, Development Coordinator

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Item No.14, being:

CONSIDERATION OF AN APPLICATION SUBMITTED BY CHRISTIAN BROTHERS AUTOMOTIVE FOR PROPERTY GENERALLY LOCATED ON THE WEST SIDE OF INTERSTATE DRIVE IMMEDIATELY NORTH OF ROCK CREEK ROAD.

Item No.14a, being:

O-1213-40 – CHRISTIAN BROTHERS AUTOMOTIVE REQUESTS REZONING FROM PUD, PLANNED UNIT DEVELOPMENT, TO C-2, GENERAL COMMERCIAL DISTRICT, FOR PROPERTY GENERALLY LOCATED ON THE WEST SIDE OF INTERSTATE DRIVE IMMEDIATELY NORTH OF ROCK CREEK ROAD.

ITEMS SUBMITTED FOR THE RECORD:

1. Location Map
2. Staff Report
3. Site Plan
4. Project Proposal

Item No.14b, being:

PP-1213-15 – CONSIDERATION OF A PRELIMINARY PLAT SUBMITTED BY CHRISTIAN BROTHERS AUTOMOTIVE (SMC CONSULTING ENGINEERS, P.C.) FOR CHRISTIAN BROTHERS AUTOMOTIVE ADDITION, A REPLAT OF PART OF LOT 1 AND ALL OF LOT 2, BLOCK 1, LITTLE RIVER GREEN ADDITION, A PLANNED UNIT DEVELOPMENT, GENERALLY LOCATED ON THE WEST SIDE OF INTERSTATE DRIVE AND NORTH OF ROCK CREEK ROAD.

ITEMS SUBMITTED FOR THE RECORD:

1. Location Map
2. Preliminary Plat
3. Staff Report
4. Transportation Impacts
5. Request for Alley Waiver
6. Request for Waiver of Sidewalk
7. Preliminary Site Development Plan
8. Greenbelt Commission Comments
9. Pre-Development Summary

PRESENTATION BY STAFF:

1. Jane Hudson – The application before you is for rezoning from a Planned Unit Development to C-2, General Commercial District. This is the subject tract on the north side of Rock Creek Road. As you can see, there's Office to the north. On the other side of Rock Creek there are some apartments and there's some C-1, a strip mall there to the south. There is a single-family home to the north. This is a photo of the site looking to the north. This is looking over to the west. There's the walking trail there and a little further on will be where the neighborhood Wal-Mart store is going to be. This is a photo of the commercial strip mall that is south of Rock Creek Road, and you can see the multi-family area there in the distance. Staff does support this rezoning request. The applicant's representative is here if you have any questions of him. I'd be happy to answer any questions you might have.

PRESENTATION BY THE APPLICANT:

1. Tom McCaleb, representing the applicant – This is a fairly simple application on a very difficult piece of property. In your staff report, I think staff is recommending approval with an issue on the sidewalk. There's a sidewalk that's normally constructed along the frontage of the property. This piece of property has no connection to sidewalks, either north or south. South is requesting that the sidewalk be accommodated. My client has agreed to build the sidewalk to nowhere, or we will be glad to put up a bond and let the City build it when they build the rest from somewhere. So we don't object to constructing the sidewalk. We think it's silly to do that right now, because it doesn't connect to nothing and sometimes when you connect to nothing,

when you try to connect to something, it don't work very well. So we're obliged to either build it or give you a cash surety and a bond of some sort to give that guarantee that it can be given to the City so that when they construct it – and I believe staff said they may construct one starting at Rock Creek Road and going north one of these day, and they'll have the money to put that in then. So we're agreeable to go either way. So that exception of the sidewalk, we will gladly dismiss that requirement and acquiesce to either way. We're not going to ignore the sidewalk; it just don't go nowhere. I prefer it to be hooked up to something. Anyway, my client is agreeable to either put it in or give you the surety to guarantee it be put in when the City builds the sidewalk from Point X to this location to continue it. With that, Mr. Chairman, I'd be glad to answer any questions.

2. Ms. Pailes – This drains into the pond that is part of the park.

Mr. McCaleb – That is correct.

Ms. Pailes – Any place with a lot of cars parked, the parking lot is just greasy. Is there any plan to do something to filter the water before it hits the City pond?

Mr. McCaleb – If you'll look in your staff report, I think you'll see an accommodation. There's a report about how they operate their facilities. "The City of Norman will find that we operate our stores to the highest possible standards. Our shops floors are cleaned with a Zamboni style machine and no pollutants are ever released into the environment. All automotive fluids are contained in federal and state compliant EPA containment vessels." So they contain all that stuff. Grease jobs and oil changes is not what they really work on. They only work on a car or a truck that's in bad shape and has an emergency to get in and get out. Their main support is electronics in your automobile – fixing your computer, fixing that kind of stuff. That's the main forte. But as far as taking care of anything that could get in the pond, they have assured that that's not going to happen. It's on page 14a-7.

3. Ms. Gordon – I have a quick question. The sidewalk to nowhere. So, if I understand you correctly, you guys are willing to pay to build it now, when there's no other sidewalks around, or when the City decides to finish their sidewalks later, you'll be happy to pony up the money then to pay for your portion of the sidewalk.

Mr. McCaleb – We'll put the money up now. We'll give the cost – it's a 5-foot sidewalk and so the cost per foot – we'll give them a CD, a surety or a bond – any surety that satisfies staff and give it to them right now before we do the final plat – or at the final plat, which is the next step.

Ms. Gordon – And is the reason they want you to build it now is because potentially, if they decide to wait and build it later, if the cost increased, then the money you put up now won't cover the cost. Is that the reason?

Mr. McCaleb – Well, that's why you put the bond. We got the cost per foot is what the City allows and so the cost per foot – that number we agree to and say we'll give them that check, which we have done before.

4. Mr. Danner – The sidewalk is part of the public improvements and, thereby, it's part of the platting process. However, visiting with the City Engineer, we have agreed to what we would classify as a deferral. If they'll post the money, we'll take the money, apply it to this part of the property with the project that we intend to do south of this, under the overpass.

5. Mr. Boeck – I guess the one question I have – it gets back to the drainage thing, because there's a big pond at that corner and I've almost considered it kind of a wetlands, and I was driving around there looking at where that stuff goes, and we've got that big creek and wetlands that run all the way along 36th, all the way down to the river from there. It kind of starts up there. I guess that would be the question I have. They say they're a real clean company and they use a Zamboni, and that's great. But how do we know that they're not going to leak stuff – because car repair places just leak stuff – into parking lots, and parking lots go into drainage ditches, and drainage ditches go downstream.

Mr. Danner – I know, through the Building Officials, there will be required a mud and grease trap that collects the fluids from that facility.

6. Ms. Pailes – I'm not contesting that or anything, but I've watched just a parking lot – I mean, it's not a mechanical parking lot – cars are just parked there – that killed a creek. Twenty years ago it had fish in it. It had herons. It had everything. Now it's got grease and oil. And it's not from things done there; it's just from cars parking there and dripping the stuff that cars drip and it runs straight into the creek with no filtering, no bales, no swales, no nothing. And it has ruined it. Any parking lot next to a body of water is going to impact that body of water if you don't put a swale in between it. I'm sorry – it just does. There's nothing that says legally you have to do that, so it's okay.

Mr. Danner – We understand that this was intended for commercial activities, so there will be parking no matter what facility it is. I do know the detention pond was designed – and part of the contractual agreement with the City is that storm water would go into that detention pond from this facility.

AUDIENCE PARTICIPATION:

1. Neil Suneson, 1803 Peter Pan Street – Ms. Pailes and Dr. Boeck have sort of taken the wind out of my sails a little bit. But I would like to read something from the floodplain permit application number 517. It states that on March 15, 2010, the Floodplain Permit Committee approved floodplain permit blah-blah-blah-blah. These permits were for the construction of the Rock Creek Road overpass, the Brookhaven Creek Wetlands and improvement project, and access road from Interstate Drive to the S&S Family Properties land on the west side of the retention pond. And that's the Brookhaven – capital B – Creek – capital C – Wetlands – capital W. When I see the word wetlands, I kind of get interested and especially when it's a capital letter – it sounds like this is some sort of officially designated wetlands area. My concern, very similar to Ms. Pailes and Dr. Boeck here, is that any car repair facility is going to have fluids. They're going to have cleaning chemicals – it's going to have grease, be it in the parking lot, be it under the shelter where they're working on cars. My concern is that there be something to keep rain water washing on the parking lot – anything accidentally that gets hosed into the parking lot – be prevented, in some way, from getting into evidently what is officially designated as a wetlands. I was over there as part of the Floodplain Permit Committee process and there are ducks in that pond. There are turtles in that pond. I don't know what else is in that pond, but it is a lively place for wildlife. Thank you.

2. Bobby Sharp, 201 NW 63rd, Phillips 66 Pipeline Company – We have a 12-inch cross-country line that goes along the front of the property that has been an oversight in this project. We have not reviewed any of the plans to this point to know exactly what is going to be put on top of us – the sidewalk, the landscaping, and also from what I've seen, preliminarily, the building may be too close to this pipeline, because it is a DOT pipeline.

3. Harold Heiple, 218 E. Eufaula, attorney for the owner – I asked to speak last because I knew of two potential problems with this application, and I've heard a third one now. As the attorney for the owner, who has a contract to sell this to Christian Brothers, perhaps I can give you some historical background, and also some attention to the three points that have been raised tonight. If you will look at the map on your page 14a-1 – let me give you a little historical background. The proposed tract for Christian Brothers along the service road is shown cross-hatched called the subject tract. The staff report says that zoning to the west is A-2, Agricultural, but if you will look at the map it requires some explanation because the irregular shaped tract immediately left of the subject tract on the map is actually a drainage pond with a City-created trail and park area surrounding it. That's what Neil Suneson just had reference to. I would tell you that that is there and in the configuration that it is because of agreements that my clients made at the outset in order when Bob Hanger was the City Engineer and trying desperately to upgrade the status of this more from a simple drainage structure to what it has become – both

wetlands and something that you could have people walking around and enjoying. And as it says, it's a lively place.

I hadn't heard the concern about the drainage from the parking lots, but – and I don't dispute that cars in parking lots, some of them, drip fluids. What better tenant to have in there than one who uses a Zamboni on his interior shop and certainly has the capability of – upon being made aware of don't let your parking lot foul up the pond over there – and the pond is needed for the drainage of this property as well as the drainage of a whole lot of other area. It's draining from here to Texas and back.

Ms. Pailes – If the Zamboni uses soap, that's actually another concern.

Mr. Heiple – Well, thank you. I'm glad you pointed that out. We'll take that up with CB. You can't – one thing you can't do, Ms. Pailes – you can't create anything on that lot – any use at all without a parking lot. Because if somebody doesn't have a parking – well, I take it back. The genius who bought this thing first and had the sense to plat it as a PUD for a tree farm, which enabled him to absolutely make a killing when the City condemned it, as opposed to being – it was platted, as opposed to being in its A-2 configuration – that might not require a parking lot. But it never was a tree farm – never will be a tree farm. But you've got to have a parking lot. So let's, as Mr. McCaleb has said, he's talked to the Christian Brothers people about the sidewalk, and I'm sure we can address things that will at least do everything we can to mitigate any problems from the parking lot. I'm not going to say that there won't be some problems, but if you're going to lay that on me, let's go down and shut Highway 9 down, because it's tearing up Lake Thunderbird. Being realistic and practical and as honest as we can, I think that, all things considered, the applicant who proposes to go in there is probably best equipped to try to maintain the integrity of that pond of anybody that we could possibly put in there.

The tract was created because of the fact that the City did not have the money that it needed to pay for the land that it needed to condemn in order to install what was first the bridge to nowhere and to widen Rock Creek Road. And because they paid so much money to the former owner of this tract, they did not have the money to pay market value to my clients, so this is where this very unique contract in 2009 came from between my clients and the City – the likes of which you've never seen before and probably will never see again in the City of Norman. But, among other things, our clients agreed to take this particular piece of land as compensation – take the title to it directly from the former owner, rather than being paid by the City of Norman for all of the land which the City acquired, much of which was this drainage pond – drainage structure. You see, the City now owns that. The City now owns the land that widened Rock Creek Road and relocated Rock Creek Road. And, because of that contract, at the time the City Council colored the whole area to the west – all the way over to 36th Avenue – the 27 acres remaining that my client owned originally – colored it red on the Comp Plan with the understanding that it would be – it was intended to be commercial and included this piece in the same manner. So the intention of the City for the last four years has always been there could be solid commercial development both on this tract and on the remaining tracts to the west. Now, there was no rezoning done on the other tract, because we did not know what uses might be made of the other 27 acres. And the first that happened on that was recently when the 5 acres at the corner of 36th and Rock Creek was rezoned and was purchased by Wal-Mart where they're constructing a supermarket. This, likewise, requires a C-2 rezoning and, as the staff report says, the staff supports the rezoning, because it's consistent with the 2025 Plan and other developments along the service road. As part of this, as a matter of fact, this applicant is required as a part of this contract, to build a public street along the north boundary of this which will connect the service road to the interior piece to the west, and that's because the City demanded that, when they gave Wal-Mart two curb cuts on its five acres out on the corner, that there be only one other curb cut all along Rock Creek Road for the rest of this tract. One curb cut for 20-some acre tract is most unusual, but my clients agreed to that, because there was this agreement that the street would be built out – not at City expense – but would be built out privately to the service road in order to have further access – ingress and egress – to the interior property that still remains to be developed.

The second question, about the sidewalk – I was the one who put in a letter to the City asking for a waiver. My client is not the applicant; my client is the seller. But I put in a request for a waiver, and my justification was all the conditions and facts that went along with the 2009 contract. I won't belabor you with all of it, but it's on file with the City, and you may even have a copy of the application in your book – I don't know whether you do or not. But the point is that, while City staff – particularly the Engineering Department – wants a sidewalk out there, and they say they want to connect from the south, as they have acknowledged, they can't point to any plans that are now appropriated in any project that will guarantee that there's going to be a sidewalk built under that bridge to connect to the south boundary of the property. I said to them let's just, at best, bond it so that if you ever do get one in the next five years the money will be there and this client can build it on up. But, because of the current situation on capital funds in Norman and the priority of spending for those capital funds, I would be very surprised if the City does, in fact, build a sidewalk under that bridge to connect to the south road. If they do, this piece of property then will have a sidewalk along its east side. If they don't, then the money will ultimately come out of escrow, like it does on any deferred construction project. So that was the second item that I wanted to discuss with you.

The third item I found out about at 4:30 this afternoon, and that was the statement by Conoco that this building may be too close to their pipeline. It was the first we've heard of it. I tried to go online to the City's website to download some aerial photographs and the website was down for maintenance – the map site was down for maintenance this afternoon. I did go out there in my effort just about 5:30 to take some pictures to show various configurations. Make a long story short – and I've got a copy of the 1952 easement that the gentleman from Conoco was talking about here and I don't believe that – well, I know it doesn't say anything at all about a requirement for a 50' separation between the pipeline and a building. When you look up and down the road, you can see examples that there certainly are buildings that are closer than 50' to this thing. You can certainly see that the supports for that bridge, which is immediately south of our tract and go quite deep in the ground, are certainly within 50' of where this pipeline is going to go. As a lawyer standing up here talking about harmonic waves, I know just enough to know that maybe sometimes they can rattle the ground and tear up a structure and if you get harmonic waves out of a bridge structure, it could do just as much damage to a pipeline. So the bottom line is I don't agree with Conoco's belief that they have a legitimate complaint about the proximity of the building to that. But I've learned that, in a situation like this, always write the other side – which I'm going to give the man my card tonight as soon as I leave this stand – and I'm going to write the Conoco lawyers and I'm going to say, okay, here's the facts as I see them and here's the law that I believe applies, so you tell me what you disagree with or if you do disagree with any of this, and let's try to resolve it. Because the one thing I learned a long time ago is, if there is going to be litigation that my client is likely to lose, I want to know about it up front and not after the jury comes in, and if that be the case, make every effort to settle it. But, if I'm correct in this, I want Conoco to realize that and acknowledge it. So we will address that, just as we will address the sidewalk. By the time we get to the City Council, we'll have the sidewalk issue taken – and, by the way, the City Engineer told me, when I suggested the business about putting up a bond for the sidewalk, that that was satisfactory as far as they were concerned.

The reason I'm standing up here is to say please consider, from the Planning Commission requirements and the subdivision regulations, this application and don't get hung up on either the easement that's talked about or the sidewalk. Now, the third thing that's come up that we will also have to say will be resolved or addressed before we get to the City Council is going to be this question about the parking lot possibly polluting the pond over there. I can't guarantee 100% compliance, but I can tell you that these people will work in good faith and good effort and do a better job than anybody else would do. So that's the best I can say. With that, I would respectfully second the request that you recommend approval to the City Council. Thank you.

DISCUSSION AND ACTION BY THE PLANNING COMMISSION:

1. Ms. Gordon – I just want to mention that I'm not comfortable voting yes on something when there could potentially be a 12-inch – this isn't like an issue of whether or not we put in a sidewalk and when we put one in. We're talking about a potential pipeline here that we're not sure if we're going to interfere with or where it's at, based on you going out there and looking at plans from the 1950s. I mean, that's a lot of maybes.

Mr. Heiple – I said that there is no reference in that easement to a 50' required separation between a structure and the pipeline, and there's not. I've got a copy of the easement here. In my opinion, our building site is exactly in conformance with all applicable laws and regulations, including what is required under the easement.

2. Chairman Lewis – I want the City to address, specifically, the pipeline and was that taken into consideration when the application was reviewed?

Mr. Danner – If I'm not mistaken, a representative was at the Pre-Development meeting regarding the pipeline, so they were aware of the platting process.

Mr. McCarty – If you read the email, it's from the City to them dated back in February. They knew it was there.

Mr. Danner – The pipeline is shown on the preliminary plat.

Chairman Lewis – What is the City's stance on this, again?

Mr. Danner – City's stance is recommending approval. What we were objecting to was the waiver of the sidewalk. That was the only objection. We were in favor of the waiver of the alley.

Chairman Lewis – Is the City recommending approval, knowing full well that the pipeline is underneath this piece of property?

Mr. Danner – That's correct. From our understanding of what the engineer has shown is that the pipeline is near the frontage road – the location of it. This property has been previously platted with the plat filed of record relating to this property. So this is news to me in regards to the fact that they have come up with the 50' setback requirement.

Chairman Lewis – I guess, again, I'm clarifying the City was aware that this pipeline was there when this was proposed.

Mr. Danner – Yes. Pipeline is north/south, goes from Sooner Fashion Mall all the way up to probably Tecumseh Road and beyond, possibly.

3. Mr. McCarty – He didn't say 50', but if you look at what was presented to us, the pipeline goes behind some other buildings. It looks like it is within 10 or 15'. I would say that, if there's a 50' easement, there are a lot of buildings that have been built recently that are not complying with that.

Mr. Danner – If I'm not mistaken, there was a house on this property originally that was more than likely closer than that 50'. It is shown. We're aware of the pipeline.

4. Mr. Knotts – Do we need to include in this some recommendation for how the sidewalk is treated? Whether it's built or waived?

Ms. Messner – You're welcome to word the motion however you'd like. So if the person that makes the motion wants to stipulate that a bond be posted, or the sidewalks be put in prior to acceptance of the final plat – however you want the motion to read. Make the motion that way.

Ms. Connors – I think the question, Leah, is if we don't make the stipulation for the bond, and waive the sidewalk, then they don't have to put up the bond. That was the question.

Ms. Messner – If you make the motion that's written in the agenda book, the sidewalk would be waived.

Ms. Connors – And the bond would not be required.

Ms. Messner – So you would want to take that part of the motion out.

5. Mr. Gasaway – I will make the motion to approve Item 14a, and add to that, since there's some concern about the pipeline, but we want to move this project on and not hold it up, subject to the meeting of the actual legal requirements of the pipeline agreement.

Chairman Lewis – Let me ask clarification. I don't mean to hold this up, but that was my specific question for Mr. Danner, and maybe Leah wants to comment to this – hold on, Mr. Heiple. Maybe Leah wants to comment to this. That's why I asked specifically if staff was aware of this pipeline and if it met all the requirements of their proposal.

Ms. Messner – I don't want to put words in Mr. Danner's mouth, but staff is certainly aware of the pipeline and has reviewed its location prior to bringing this item to you all tonight. I do not believe staff has reviewed the easement that's been mentioned.

Mr. Gasaway – So do we need to address the easement?

Ms. Messner – That would certainly be your option to do so.

Mr. McCarty – Leah, if we approved it how it is as 14a and it moves on to Council, the pipeline is going to be addressed before any final plat could ever be done. If there's a building in violation of an existing easement, it would not be allowed to be permitted. So, really, we don't need to address that at this point, the way I understand it – but we can. I'm just saying that that's how it would work.

Ms. Messner – While the City is involved in this process, it's certainly an issue between the easement holder and the property owner and they have to come to a meeting of the minds and comply with the terms of the easement. Staff has not reviewed the easement, cannot speak to what the easement does or does not require. So staff is in the position of recommending this application tonight based on our code and our requirements, but if they then want to build this building and it violates the terms of the easement, that would be something that those two parties would have to resolve amongst themselves.

Mr. Heiple – That's why, Jim, I would encourage you and ask you to please make your motion subject to compliance with City of Norman regulations and laws with respect to pipelines. But don't make it subject to the easement agreement, because the chances are very, very good that two lawyers are going to disagree and they're going to end up in litigation. We'd like to move this forward and put the burden – if they think they've got a lawsuit and we don't, let them take us to court. But if you'll make it just subject to compliance with City regulations and laws regarding pipelines, that's fine.

Mr. Gasaway – I don't even think we need to do that; that's just assumed.

Jim Gasaway moved to recommend adoption of Ordinance No. O-1213-40 to City Council. Curtis McCarty seconded the motion.

There being no further discussion, a vote on the motion was taken with the following result:

YEAS	Curtis McCarty, Jim Gasaway, Roberta Pailles, Cindy Gordon, Dave Boeck, Sandy Bahan, Tom Knotts, Chris Lewis
NAYES	None
MEMBERS ABSENT	Andy Sherrer

Ms. Tromble announced that the motion, to recommend adoption of Ordinance No. O-1213-40 to City Council, passed by a vote of 8-0.

6. Mr. Heiple – Just for the record, we have no objection if you remove the waiver of the sidewalk requirements from your recommendation. That way you're not recommending one way or the other on that, and it lets us go forward and work out whatever we'll work out. Because it's either going to be built or it's going to be bonded. But if you just remove that from your recommendation, then you're not recommending a waiver of our sidewalk requirements.

Curtis McCarty moved to recommend approval of PP-1213-15, the Preliminary Plat for CHRISTIAN BROTHERS AUTOMOTIVE ADDITION, with waiver of alley improvements, but that the sidewalk bond is not waived, to City Council. Roberta Pailes seconded the motion.

There being no further discussion, a vote on the motion was taken with the following result:

YEAS	Curtis McCarty, Jim Gasaway, Roberta Pailes, Cindy Gordon, Dave Boeck, Sandy Bahan, Tom Knotts, Chris Lewis
NAYES	None
MEMBERS ABSENT	Andy Sherrer

Ms. Tromble announced that the motion, to recommend approval of PP-1213-15, with waiver of the alley improvements, but no waiver to sidewalk bonding, to City Council, passed by a vote of 8-0.

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