

EXCERPTS
PLANNING AND ZONING COMMISSION MEETING
COLUMBIA CITY HALL COUNCIL CHAMBER
701 EAST BROADWAY, COLUMBIA, MO

JULY 18, 2019

Case No. 158-2019

A request by A Civil Group (agent) on behalf of Bedrock Enterprises, LLC (applicant), to revise the Spring Creek Phase II PD Plan. The proposed revision would add a deck to the west end of the building that extends 16 feet out, and runs the entire length of the west wall. The applicant intends to use both levels of the building to house a bar and restaurant with a brewery.

MS. LOE: May we have a staff report, please.

Staff report was given by Mr. Rusty Palmer of the Planning and Development Department. Staff recommends approval of the revised "Spring Creek Phase II PD Plan," dated April 2019 and the revised statement of intent.

MS. LOE: Before we move to Commissioner questions, I would like to ask any Commissioner who has had any ex parte prior to this meeting related to this case to please disclose that now so all Commissioners have the same information to consider on behalf of this case in front of them. Seeing none, are there any questions for staff? Ms. Burns?

MS. BURNS: I had a question about the buffering. It's currently not in place. Correct? It will be added later?

MR. PALMER: No. It's existing and it's native --

MS. BURNS: Okay. Can you go back --

MR. PALMER: -- as far as I know.

MS. BURNS: So it's significant? Okay. That -- I was -- since it was oriented differently, I wasn't sure which way we were looking.

MR. PALMER: Yeah. There is existing vegetation there. It is not necessarily significant in place, but there is definitely the space that will be maintained. So whatever new vegetation grows there may fill it in, but I wouldn't say that it's, you know, densely wooded, but I think you can look on the aerial and see --

MR. ZENNER: The aerial is another --

MS. BURNS: I see the aerial now. I wondered about the standard for -- if the applicant places anything in there, is the buffering standard? Do they have to put in eight foot -- six foot?

MR. PALMER: No. I believe it's -- I believe it's acting like a tree preservation easement or a green space preservation easement. It's just that they're not going to remove vegetation from that area.

MS. BURNS: Thank you.

MS. LOE: Ms. Carroll?

MS. CARROLL: On their plan, on the edge closest to Deerfoot, is that the west edge or --

MR. PALMER: It's the -- it's the bottom here.

MS. CARROLL: Yeah. The bottom here. It looks -- it looked like there were intended to be trees added to the existing vegetation. Is that not the case?

MR. PALMER: Outside of the buffer, there's -- there's kind of screening vegetation --

MS. CARROLL: Yeah.

MR. PALMER: -- for the parking, but that's -- that's beside the -- the buffer area.

MS. CARROLL: When I drove this, I could see through the existing vegetation to the houses even with the trees in full growth now.

MS. LOE: Any additional questions, Ms. Carroll?

MS. CARROLL: That's all.

MS. LOE: Ms. Rushing?

MS. RUSHING: I'm having a little trouble placing this on the property. Does the building go past -- I mean, does it go further than halfway up that piece of --

MR. PALMER: So if you look at this map here, the lighter --

MS. RUSHING: Uh-huh.

MR. PALMER: -- greenish-tan area is the elevated pad site for the building.

MS. RUSHING: Okay.

MR. PALMER: And you can actually make out portions of that retaining wall in that aerial photograph.

MS. RUSHING: Okay.

MR. PALMER: So that's where the building will be. The greener area to the north and to the east and west of that, that's, you know, grassy area that will be outside of the building area.

MS. RUSHING: And where does that little strip mall appear on this?

MR. ZENNER: On the aerial? It -- the strip mall is approximately here.

MR. PALMER: Yeah. It would go -- yeah.

MR. ZENNER: It basically goes to the -- the lighter green that you see in the aerial photograph, then it comes down. It's about half of this lighter green area, because the front half of it is the parking.

MR. PALMER: Right.

MS. RUSHING: Now I'm more confused than before.

MR. ZENNER: Okay. Go back to the -- go here.

MS. RUSHING: The strip mall that's right behind -- this building is not in front of the strip mall; right? It's behind it?

MR. PALMER: No. This is the strip mall. It's currently being built, if you've been out there.

MS. RUSHING: Right. But -- but this building is going to be someplace in relation to that strip mall?

MR. PALMER: No. This is the strip mall.

MR. STRODTMAN: No. That is -- the same building.

MS. RUSHING: Oh. It's the same thing?

MR. PALMER: Yes.

MS. RUSHING: Okay. That helps.

MR. PALMER: The restaurant will occupy the west end of that strip-mall building.

MS. RUSHING: Okay.

MS. CARROLL: And the deck to be added is the highlighted portion only, it's not the length of the strip mall?

MR. ZENNER: Correct. Just this yellow area.

MS. LOE: Any additional questions? Mr. Strodtman?

MR. STRODTMAN: Just a couple for Mr. Palmer. I guess I didn't realize, is the entire building two stories?

MR. PALMER: No. I believe it's only two stories, at least exposed, in this location.

MR. STRODTMAN: On the -- on this -- on that end, on the west end?

MR. PALMER: Yeah.

MR. STRODTMAN: Okay. You probably don't know this answer yet, but what -- will there be any lighting on the back of the building?

MR. PALMER: I'm assuming there will have to be some -- some lighting, yeah.

MR. STRODTMAN: Just your typical building wall packs or sconces or something? Obviously, no parking lot poles of any height?

MR. PALMER: Right. Yeah. We don't -- we don't actually allow wall packs that don't have cutoffs, so --

MR. STRODTMAN: So the light bleed off would be very minimal?

MR. PALMER: I'm anticipate more like a restaurant lighting and not glaring, you know.

MR. STRODTMAN: Right. Especially since somebody should not be back there because there's no deliveries, there's no truck docks, trash.

MR. PALMER: Right. Yeah. There's no access vehicularwise behind the building at all.

MR. STRODTMAN: And this is maybe outside of the City's purview, and maybe it's more of a State thing. From a liquor license standpoint, will that -- will a patron be able to get off of that deck onto the ground, or will it be all fenced in from a liquor -- you know, they sometimes have to have a fence all the way around their area. I was just curious if people could get off that deck and wander, you know, around and behind the building doing something maybe they shouldn't be doing.

MR. PALMER: They -- they at least haven't indicated a stairway or anything like that, and so I don't believe so.

MR. STRODTMAN: Because that deck will be up high, or since that building is two-story there, it'll be --

MR. PALMER: Right. Yeah. Actually, the -- so that retaining wall -- maybe Mr. Gephardt can explain a little better. But I believe the retaining wall is -- it comes up to the level of the -- the first floor of the building. Yeah. And so the basement is kind of enclosed by that retaining wall, and then the deck will be over the top of that, so it'll be kind of hovering above the ground but not -- not significantly outside of the retaining wall there. That -- that ground level is higher than at the base of the building.

MR. STRODTMAN: When will the City know if there's going to be a staircase or will they know?

MR. PALMER: Well, it's not on the plan, so if they add one and it -- they'll have to come back to you guys.

MR. STRODTMAN: So, in theory, nobody should be able to get off that deck and wander around the back of the building without jumping -- in theory?

MR. PALMER: Right.

MR. STRODTMAN: I just wanted to make sure it wasn't easy for someone to go back there and do things that they shouldn't be doing when it's not properly lit, it's not -- you know. But obviously people can go anywhere they want, so I get that. But from a -- from the neighborhood standpoint, I was just trying to be protective as much as we could that, you know, there's not going to be a lot of spillover or issues that we can foresee and/or, more importantly, that we can control.

MR. ZENNER: I think to the extent, Mr. Strodtman, that you're -- you're concerned as it relates to the issue of ingress and egress off of the deck, the building code is going to have most likely some set of standards associated to that as it relates to the -- to the path of exit and the route of exit. And until we have something more formally submitted, I think, for our staff's review, it's going to be a little bit difficult to tell you if, in fact, there will be mandated some type of exit off of the deck for the purposes of emergency -- emergency purposes. I would imagine it would be the operator's intent probably to ensure that their patrons are secure and safely contained within the confines of the deck, because obviously it creates a liability issue for them, most likely.

MR. PALMER: Right.

MR. STRODTMAN: Well, and I think with the smoking ordinance, I see a lot of bars that have patios and they're fenced in so that patrons can go out and smoke a cigarette, but not leave the bar tab -- not that they would do that, but -- so -- and I think there's some liquor license, you know, that they have certain requirements that you just can't go anywhere with your -- with your alcohol. So, like I said -- you know, I'm not overly concerned about the neighbors that are impacted. I mean, I am, but I don't think it's as great, but I just want to make sure that we're trying to address as much as we can so that the neighbors to the east will be not as impacted as much as we can. So thank you.

MS. LOE: Mr. MacMann?

MR. MACMANN: Just real quick. I know it's not always possible, but can we try to orient everything north in the future. It just makes everything easier.

MR. PALMER: Since they gave us a -- a template for these slides, it became much more difficult, but --

MR. MACMANN: Well, send it to me and I'll -- I'll write them up. Okay? You guys have got my e-mail address.

MS. LOE: Ms. Carroll.

MS. CARROLL: Or maybe if it's -- sorry. If it's not oriented north, can we have an arrow?

MR. PALMER: Yeah. Typically, you would, but I just had to -- I cropped it out here, so it's my fault.

MS. LOE: There is an arrow on the plan that came with our -- for -- with our document, and this was taken out of that.

MS. CARROLL: Right.

MS. LOE: So if you refer back to the plan that came with our material, you'll find the north arrow.

MS. CARROLL: I have it right here.

MS. LOE: Any additional questions? Mr. Palmer, when we're talking about noise, is it just -- just vocally noise or do we know if there's going to be any equipment -- audible --

MR. PALMER: So the -- the vocal noise will be the -- the hardest one to police, if you will. There's going to be, you know, loud patrons probably.

MS. LOE: Will there be music?

MR. PALMER: I'm assuming there will be music, but that would fall under our standard noise ordinance decibel level requirements.

MS. LOE: Yes. I'm fully aware of those. I live across the street from a park with an open pavilion, and I'm more than 260 feet away from -- 236 feet away from that pavilion, and I hear any music that occurs because, believe it or not, trees are not a buffer to sound. Leaves, for some reason, don't absorb much when it comes to sound. So distance maybe, yes. Trees, bushes, no. So is there any other buffering that's going to be in place for sound if there is music?

MR. ZENNER: We have a use --

MS. LOE: I've called the police because I'm very aware of the decibel level, and it's subjective. It's when it bothers you, you can call the police. I get tired of calling the police.

MR. ZENNER: We have within the Code as part of the use specific standards, I believe, for a restaurant or a nightclub, we do have a provision that does deal with the issue of music cannot be audible, if I recall correctly, outside of the structure. I have to look up the standard specifically. I think it's at the property line, so you can -- if you have a restaurant that's got an outdoor seating area, your music is not supposed to be perceptible beyond the property line. That is a standard that exists, unless I am incorrect, I don't believe when this was amended, when the PD plan was amended to include all M-N uses, which would include, as Mr. Palmer pointed out, the restaurant as a permissible use, there were any exclusions of any use specific standards. So as is stated within our planned district process, if you do not request a use specific standard to be removed that's tied to a land use that is allowed, you are required to comply with all of those use specific standards, which means, from an enforcement perspective, if audible or recorded music is played or live music is played, for that matter, it would need to

be contained within the content of the boundaries of the property line. Now the property line here, this is a multi-tenanted building, is through the 50-foot buffer that is to the east. Again, as a planned district, there are potentially ways of addressing sound transmission through some type of baffling that may be recommended and, again, Mr. Gephardt may be able to respond to that as it relates to the project and his representation of the client, on the eastern end of this deck to where there can be some type of sound baffling or some type of solid structural wall extended out to basically baffle that noise to be being projected further east. Based on the graphic here, it does not look as though the deck area itself is really, truly large enough to accommodate an outdoor band or some type of music venue to occur out there. They may have just regular music playing through a speaker for patrons that are sitting out there. But the boisterous patrons that may be there enjoying libation and food, they may be just as obnoxious as, you know, the Motley Crew playing the background to you as a residential property owner.

MS. LOE: Thank you. Any additional questions? Ms. Carroll?

MS. CARROLL: So the addition of bar as a usage, does that change the operating hours that would be allowable?

MR. ZENNER: We do not have operating hour limitations within the zoning code. We have found that implementing operating hour limitations is a significant administrative enforcement nightmare. We generally do not suggest that they be added. There are standards that relate to the licensing standards for alcohol sales, for example, that you can only have a bar open until, if I recall correctly, 2:00 a.m., and that may be Friday, Saturday, and there may be other hours of operation limitations during other days of the week.

MR. PALMER: Their advertised hours are till -- until 1:30 a.m. so -- on the weekends.

MS. CARROLL: For this --

MR. PALMER: Yeah. This potential use here.

MS. LOE: Any additional questions? I see none.

MR. PALMER: I just wanted to point out --

MS. LOE: Mr. Palmer?

MR. PALMER: Yeah. I forgot to mention that you do have a public comment that I placed in front of you on the dais that was received yesterday, I believe. So that is there for your consideration, and that's all I have.

MS. LOE: Thank you.

MR. PALMER: Yeah.

MS. LOE: We will now open up the public comment period. As with the other cases, if you can give your name and address for the record.

PUBLIC HEARING OPENED

MR. GEBHARDT: Yes. My name is Jay Gebhardt; I'm a civil engineer with A Civil Group. I'm here representing Terry Wilson and Greg Crites who own the building and also Walker with Broadway Brewery, who could not be here tonight. But to kind of go through this to answer questions that you guys

have raised. First, the restaurant use, this is a restaurant, but Walker is afraid that there's a certain percentage of alcohol sales that have to occur to be considered a restaurant and not a bar. And right now, Broadway Brewery is about 60 percent food and 40 percent alcohol sales, and that's what he kind of expects here, but it could drop, you know, and alcohol sales -- he just doesn't want any issues if he's going to sign a lease and build here. So that's the reason we're asking for the bar use. The restaurant use and the brewery is allowed. We don't -- we wouldn't be here if it was just that. We're here because we want to add a deck and mainly the deck is on the west side of this 50-foot long building. We are -- Rusty's drawing shows it wrapping all the way around our space. That's not Walker's intent. He intends for it to turn around the corner and that to be used as a storage area for outdoor chairs, heaters, patio equipment, you know, all those kinds of things that stay on the patio, but that may not be used all the time. The seating area would be on the -- completely on the west side, so the wall of the building will be -- which is 16, 18 feet tall will be -- act as a -- the buffer of sound. There will be no bands on the deck. There are no stairways from the deck down. There's a door into the building from the deck and -- but that is it. There's no exit for that. There is a staircase on the -- that will go underneath the deck for access from the basement in an emergency so people in the basement have a way in or firemen have a way in to the basement area, but it's not accessible to the deck area. So mainly we're here to ask for a 2,000-square-foot deck, which is -- ends up being about a 16 foot wide deck on the -- on the end of the building, and that's really the purpose of it is to just provide the patrons able to go out and have a seating area that looks out over the Hinkson Creek area, and it is a pretty, pretty view from there. As far as noise, it is -- it is an issue, but, for example, Addison's across the street has a patio area that faces Nifong without any obstructions, and they're open till 1:30 at night. I don't anticipate this being a -- a bar scene, as you say, like you would see downtown. This is going to be a restaurant. It's going to be a nice restaurant by a reputable owner and they will be brewing beer mainly in the basement. They will have some display things at the top, but, yes. That's -- that's why we're here and the -- you know, the whole bar thing is just because I think it's 50 percent; is that correct -- to food sales? So we're at 60 percent now downtown. We're thinking that it might -- might be a little bit less and we just want to try to put a belt and suspenders on this and not have that problem later. So does that, I think, answer all the questions that were raised?

MS. LOE: Any questions for Mr. Gephardt? Mr. Strodtman?

MR. STRODTMAN: Mr. Gephardt can you -- you described where this -- the -- the yellow line or yellow is not correct. The majority of your patio is going to be on the western end of the building, or just wraps around the west and then dies off?

MR. GEPHARDT: It's completely on the west end and it just wraps a little bit on the north side.

MR. STRODTMAN: Right where his -- where Mr. Palmer's marker is is approximately about where it ends.

MR. GEPHARDT: Yeah. It would be --

MR. STRODTMAN: So that would help -- that would help with our concern with noise going to the residents to the east because the majority of the deck is going to be on the west end of the building with the building being the buffer; is that --

MR. GEPHARDT: Exactly. Walker doesn't want neighbors complaining and so he wants to contain to people talking and -- and being outside buffered by the building. That's why he chose this end and that's why we're proposing this the way we are.

MR. STRODTMAN: Mr. Palmer, was your -- was your rendering just not to scale or --

MR. PALMER: No. That -- that area is based on their plan. They may have gone overboard on their plan to make sure they had enough space.

MR. ZENNER: There's a leader line. The leader line that Mr. Palmer utilized is actually ends here. If you look, this is the -- the end of the leader and that, I think -- we may have misinterpreted that that was the deck, but it definitely starts with the radiuses here and comes all the way to this point down here. If what Mr. Gephardt is suggesting that the applicant would like is just something that is more up here, I would suggest that as a part of this motion that the Commission makes is that a revised PD plan be submitted to accurately reflect what was communicated during the public hearing to the scale of the deck so we have a document that is moving forward to Council that's consistent with what you've been presented here tonight.

MS. LOE: Mr. Zenner, is it within our purview -- I mean, based on Mr. Gephardt, on what you've said, the seating will be contained on the west side of the building. I agree that would address my acoustic issues. Can -- can we include that, that seating is restricting to the west end of the deck?

MR. ZENNER: From a practical perspective -- from a practical perspective, yes. You're more than -- you're more than welcome to do that. Being able to ensure that that happens once the deck is built, it's not identified -- I mean, I think that the -- what Mr. Gephardt has indicated is that this portion on the northern side of the building would be used for storage. What I would probably recommend as a more meaningful way of depicting the area allocation of seating versus storage is the plan, if we have to have a revised plan anyway to reduce the area of the deck, is to potentially just identify the northern portion of the deck where it wraps around the building to be for outdoor furniture and equipment storage and have that denoted, and then have seating area denoted on the western side of the deck. That would be probably a more appropriate method of ensuring then that if we're going out getting a complaint, we could take the plan set with us and say you're plan clearly showed that you weren't having seating over here. You've got seating here. Please comply with the plan.

MS. LOE: Correct. That would be my intent, that should it become an issue, there is some means to correct that.

MR. ZENNER: We have documentation -- we have documentation that shows the difference. And if I may ask a question of Mr. Gephardt, would it be the intention of the -- of the operator to have the outdoor storage area as an enclosed area or is he looking at just leaving it as an unenclosed space?

MR. GEPHARDT: It would be unenclosed. It would be identical to the rest of the deck.

MR. ZENNER: Okay.

MR. GEPHARDT: But it would -- his plan is to use -- to stick that stuff around the corner, you know, the heaters and the chairs and all that kind of stuff, out of -- out of the way.

MR. ZENNER: Is there -- would there be any reason that he would be unwilling to potentially do an eight-foot wall section on the end of the deck to block the view from the residential neighborhood?

MR. GEPHARDT: I don't think that would be a problem.

MR. ZENNER: Because that then further would reduce the acoustical extent of the noise.

MR. GEPHARDT: Yeah. That wouldn't be a problem. And I -- I don't have a problem with the revisions that Pat mentioned to the plan.

MS. LOE: Great. Any -- Ms. Rushing?

MS. RUSHING: Well, you're saying it's a 2,000-square-foot deck and what I'm seeing is it's 16 feet wide; is that correct?

MR. GEPHARDT: That's the current plan, yes.

MS. RUSHING: Then it would appear to me that the west portion is only 992 square feet, approximately. So you've got an equal amount that's going to come down around on the north side?

MR. GEPHARDT: Right. When this was originally done, they envisioned a larger deck than that they envision now, so the plan has not been revised. We left the 2,000 square feet in the statement of intent and in the plan, but, right now, they're planning on 16, no more than 18 feet, of width. It has something to do with the way tables sit and things like that on the -- how they place tables.

MS. RUSHING: Well, and I'm not talking about the width. I mean, the width times length gives you the square feet. I'm just saying that the width times the length that's shown up there is only half of 2,000 square feet, so you've got to build around an equal distance.

MR. GEPHARDT: Right. And what I'm trying to explain is that the 2,000 square feet is larger now than what we need or plan to execute.

MS. RUSHING: So it's going to be less than 2,000 square feet?

MR. GEPHARDT: Yes. Yes.

MS. RUSHING: The actual outdoor seating?

MR. GEPHARDT: Yes. Yes.

MS. RUSHING: Okay.

MR. ZENNER: Given -- I think, furthermore, given the revision to the plan, which will depict actually the deck area that would be approved as a part of the plan amendment, any expansion of that deck -- while the statement of intent will include a 2,000 square foot allotment if we don't change the statement of intent, the plan will drive what our staff will review for the purposes of approval. So if we only have 1,000 square feet of deck area shown on the approved PD plan, that's all we're going to allow to be built, Ms. Rushing. We won't allow them to build an additional 1,000 square feet that we had no idea where it was.

MS. RUSHING: But they could put 2,000.

MR. ZENNER: If they -- if they enlarge the deck to have it wider, for example, on the western end to accommodate for that lost 1,000 square feet, given what we've talked about tonight, that they don't want to wrap around the north side of the building, yes. But at -- what I'm hearing Mr. Gephardt say on behalf of the client is that that's not their intention at this juncture. They just want the 16 by whatever the length is, the 900 or so square feet of deck space, plus this little appendage on the north side for outside storage.

MS. RUSHING: But that would be more than the overhang that they're requesting, wouldn't it?

MR. ZENNER: It would be less.

MR. PALMER: So what they're showing on the plan essentially is -- let me back up. The statement of intent states the 2,000 square feet as a maximum and they are depicting that 2,000 square feet on the plan. And basically what I understand you guys would like to see possibly is that they show a more definitive location for that outdoor space, and since they've indicated that it is smaller, that may work in their favor. But is that -- is that right? Does that make --

MS. RUSHING: Well, I think what -- what I'm hearing is not consistent with what I'm seeing in the report,

MS. LOE: Correct.

MR. ZENNER: We reviewed the -- we wrote the report based upon what was provided to us on the plan and in the statement of intent. Those intentions have changed.

MS. RUSHING: Well -- okay. So we would need to reflect that in any motion that we make?

MR. ZENNER: If Mr. Gephardt, on behalf of his client, is willing to reduce the maximum square footage that they are seeking, that would be appropriate. If Mr. Gephardt would like to leave the 2,000 square feet, but amend the plan as recommended by the Commission to more accurately depict the actual deck to be constructed before forwarding to City Council, that actually will get us at what we want. You'll have a plan that depicts 1,000 square feet of deck area, but you will have a statement of intent that does allow for some added flexibility should an expansion of the deck arise at a point in the future, but that expansion of the deck may not be on the north side of the building.

MS. RUSHING: Okay. So if we were to make a motion consistent with what's in the staff report, the proposed revision would add a deck to the west end of the building that extends eight feet out?

MR. ZENNER: Yes. An additional eight feet further in order to compensate.

MS. RUSHING: And runs the entire length of the west wall. That's not going to be consistent with what they're actually requesting.

MR. PALMER: The west -- the west portion of that is consistent with what they're proposing in the -- in the report.

MR. ZENNER: Am I to understand, however, Ms. Rushing, you're trying to absorb the entire 2,000 square feet?

MS. RUSHING: Right. I'm --

MR. ZENNER: Yeah. So what I would suggest, I think the way to handle this is is request -- make an amendment to have the plan revised to reflect the deck desired for 16 feet by the length of the building, the western facade of the building, with a small wrapped portion on the north that would be baffled with at least eight-foot-tall wall for outside storage, denote on the plan seating area and outside storage, and indicate any remaining square footage allocated to the deck area to only be added to the western facade of the building. Because right now, I think what -- what I see this as, this is an opportunity for us as a staff and the Commission to basically approve a deck -- approve a deck area greater than what is needed by the applicant at this time. If they do have a demand, they can always add on to the deck. They don't have to come back to us, the Commission, to do so. It would be what we would consider at that point a minor amendment because you're adding onto the deck, but I think we need to be very clear that the only area that you want added on to that deck is westward, nothing to the north because that then comes back and interferes with what the adjacent eastern neighborhood has. Now, I think that gets you to the -- that gets you to the end point of where you may be at is --

MS. RUSHING: It doesn't look like there would be any setback issues.

MR. ZENNER: No. The dark black line that you see here to the very far west where the water retention facility is, this is actually the -- if I'm not incorrect, this is the property line right here, and this is the property -- the property line here as well.

MR. PALMER: Buffer, yeah.

MR. ZENNER: Or the buffer line. This is a somewhat -- this is a somewhat unique -- this is a somewhat unique parcel that when it was replatted, we had to have it replatted at one point here over the course of the last couple of years in order to deal with the retaining wall because the retaining wall at one point -- and I think this was just after we adopted the UDC. The retaining wall is considered a structure and in order to be able to get the corner of the property far enough away from the structure to comply with our structural setbacks, the property line at this corner needed to be moved, but it comes and flares back out down here is where that property line is. And so --

MS. RUSHING: And they do have some slope issues.

MR. ZENNER: Yeah. They have slope issues. The deck is a -- the deck is an excellent option here given the fact that the topography, as it falls off towards Hinkson Creek, and an expansion of a deck toward Hinkson does nothing to impact any residential development. It would only impact the Break Time and then the -- the open space that's to the north.

MR. PALMER: And the fire station to the west.

MR. ZENNER: Yeah.

MS. LOE: Any additional questions for this speaker? I see none. Thank you, Mr. Gephardt.

MR. GEPHARDT: Thank you. Are there any additional speakers on this case? Please come forward and give your name and address for the record.

MR. FENNELL: My name is John Fennell, F-e-n-n-e-l-l, and I live at 3806 Deerfoot Way, which is one of the properties.

MS. FENNELL: Excuse me. 3807.

MR. FENNELL: I'm sorry. 3807.

MS. LOE: We did get your letter, Mr. Fennell.

MR. FENNELL: You did get my letter? Okay.

MS. LOE: Yes.

MR. FENNELL: Actually, there's some more concerns that I would even have that I didn't include in that letter. This is -- this neighborhood -- if you show -- if would show the -- the houses right there. Now, if you look at this neighborhood, it's a one -- basically, one round -- you know, one circle, one circle street. It is a neighborhood of families, of children. In fact, the school buses on this thing, they start in the morning and then they -- then they continue, you know, all afternoon dropping -- dropping off the kids. It -- they're on the street all the time. Now it has nothing really to do with this, but my point is that this is a neighborhood of children. And the concern that I think that I have and many of my neighbors have is that this -- if you're having an outside deck that's going to be open till 1:30 in the morning with lights on, with potential music on this thing, it really does interfere with -- with living, you know. As you say, you live in an area of this 200 -- you know, further than 200 square feet either way. If you can hear this noise, you know, you're really impacting, I think families and the way they live. We have some concern, too, about -- about, you know, this area, in the wintertime, of course, there are no trees as you -- I mean, no leaves, as you say. So there's a clear view from all of these houses that back up here of that -- of that area. Lights would, of course, be brighter in the wintertime because of what -- what you see there, also impacting what is now a very kind of quiet lighting area. There's not that much light. There is a big light on the -- behind this veterinarian building that's going to be there. They're going to -- that is move in. Another concern is that we don't know how many people fit on this deck. It's not clear what would be the capacity. And I don't know if any of you have thought about that capacity.

MS. LOE: That's regulated by building code.

MR. FENNELL: And so -- so you wouldn't -- we really don't know that, what kind of capacity it would --

MS. LOE: It depends, as you heard earlier, we are discussing what the area would be and it would be based on whatever that area is.

MR. FENNELL: Right. The -- this area, too, there's a long a slope there and there's a lot of trees that the leaves fall in the fall. If smoking is allowed there and people flick their cigarette butts off there, there is a potential, I think, for -- for smoldering, for fire, or whatever if smoking is allowed on that deck. So I think that should really be a consideration because, you know, it is densely -- you know, it's not a heavily wooded area, but you can see the trees. It's been -- it's been -- some of the trees have been removed in order for that building to -- that building to exist right now, so it's lighter, but still, there's a lot of -- there's a lot of leaves that fall there. The other thing I think is, if this is open until 1:30, the traffic that you would have. You have Addison's across the street. The comparison with Addison's and this -- and this deck -- Addison's has a -- does have a deck right -- you know, this is the one on -- right on Vawter

School Road. It faces the street. Okay? This deck is in the back there, so it's -- you know, it's a very kind of quiet area. You know, right now, it's a very quiet area, where that is a very public area. So the comparison between that deck and this deck is -- is very, very different. I think can't even consider the -- I'm sure that if Addison's had tried to put their deck in the back, you know, instead of on the front facing the street, they would have gotten a lot of complaints from some -- from some of the people who live in that -- in that area right behind there.

MS. LOE: Mr. Fennell, are you willing to take some questions from Commissioners?

MR. FENNELL: Sure.

MS. LOE: Are there any questions for this speaker? I see none at this time. Thank you, Mr. Fennell, for your comments. Are there any other speakers that would like to make comments on this case? I see none. We're going to close the public comment period.

PUBLIC HEARING CLOSED

MS. LOE: Commissioner discussion?

MR. STRODTMAN: I just want to make a comment that, you know, I support Mr. Fennell, and I think that was what we were trying to do tonight was try to make sure that the majority, if not -- the majority of the deck would be on the west side of the building and not on the north side, because I wouldn't support this project if that deck was shown -- is -- is -- if the actual deck comes back to be as shown on that rendering, I'm not in support of it because it's too much on the north side of the building, which would impact your residents. But if you work with Mr. Gephardt and get the deck on the west side of the building, with the building being a buffer, that's going to take care of a lot of your lights and noise issues, plus that little storage area that would be for your outside seating is going to have a wall on it, too. So that would help buffer your side of the building, too. You're going to be able to see it, you know, in the wintertime. There's -- unfortunately, that's, you know, when the trees falls -- the leaves fall, you will see that building, but I think our effort was to try to keep it all on the west side of the building so that it doesn't impact you as much and hopefully that that is the case. So if we could a motion that would do something like that, then I'm in favor of it. If it wraps around the building like it shows in the picture, then I'm not going to support it due to the noise and potentially -- that it might cause your neighborhood. Though as staff did mention, there are going to be wall -- you know, wall packs in the back of those buildings, but they're -- they're not parking lot lights. They're made to, you know, basically just light up the back of the building and not project out into the trees or into your neighborhood. So you're going to see some lights, but I think it's going to be very minimal compared to the parking lot lights or other things like that. So I plan on supporting it as long as we can keep that deck on the west side.

MS. LOE: Ms. Burns?

MS. BURNS: I agree with Mr. Strodman. I also would like to see -- I think it is a concern of music or talking going on until 1:30 in the morning. I think Mr. Fennell made a point in his letter about asking the restaurant to turn off lights and possibly close the deck at an earlier time, and I would encourage that the homeowners' association talk with the developers and make those wishes known

earlier rather than later and get some sort of agreement with that. I know that Addison's and the neighborhood entered into extreme discussions and really, I think came to the best possible products for both parties, so that would be a suggestion.

MS. LOE: Any additional comments? I understand your concern and agree that while leaves may have limited capacity to buffer noise, they do buffer vision and, in the winter, obviously, do so even less. But I have a feeling that the deck won't be quite as popular during mid-winter season, so I think it will be hopefully less of an issue at that time. Ms. Russell?

MS. RUSSELL: I'm going to try a motion. In the Case of 158-2019, the Spring Creek Phase II PD Plan, I move to approve the revised Spring Creek Phase II PD Plan dated April 2019, and the revised statement of intent amended to read that it limits the seating area on the deck to the west side of the building and the remainder of the deck utilized as a small outdoor storage area.

MS. LOE: With the wall?

MS. RUSSELL: With a wall.

MR. STRODTMAN: Second.

MS. RUSHING: Second.

MS. LOE: Mr. Strodman. I'm going to give it to Mr. Strodman. Sorry, Ms. Rushing. We have a motion on the floor. Any discussion on this motion?

MR. ZENNER: You'll need to include within that motion that a revised site plan be submitted prior to forwarding to City Council.

MR. PALMER: And a statement of intent, also. Right? Because it states the 2,000 square feet.

MS. RUSSELL: That too.

MR. PALMER: Yeah.

MS. LOE: Ms. Russell accepts the amendment. Mr. Strodman?

MR. STRODTMAN: I also do.

MS. LOE: We have an amended motion on the floor. Any comments, discussion?

Mr. MacMann?

MR. MACMANN: Knowing the folks at the brewery, they're really good neighbors. If the HOA wants to communicate with them, I think you'll have success.

MS. LOE: Any additional discussion? Seeing none. Ms. Burns, may we have a roll call, please.

MS. BURNS: Yes.

Roll Call Vote (Voting "yes" is to recommend approval.) Voting Yes: Ms. Russell, Ms. Burns, Ms. Carroll, Ms. Loe, Mr. MacMann, Mr. Stanton, Mr. Strodman, Ms. Rushing. Motion carries 8-0.

MS. BURNS: Eight to zero; motion carries.