

**City of Leawood  
Planning Commission Minutes**

**June 24, 2008  
Meeting - 6:00 p.m.  
Leawood City Hall Council Chambers  
4800 Town Center Drive**

**CALL TO ORDER/ROLL CALL:** Shaw, Roberson, Jackson, Neff-Brain, Rohlf, Munson, Elkins, and Heiman. Absent: Williams.

Chair Rohlf: I would like to welcome our newest Planning Commissioner this evening, Jane Neff-Brain. It's nice to have you here.

**APPROVAL OF THE AGENDA:**

Chair Rohlf: You will note that we do have a revised agenda this evening. I believe it is the same cases under New Business this evening, but we have reordered the items.

**A motion to approve the revised agenda was made by Elkins, seconded by Roberson. Motion approved unanimously.**

**APPROVAL OF MINUTES:** Approval of the minutes from the May 27, 2008 meeting.

**A motion to approve the minutes from the May 27, 2008, Planning Commission meeting was made by Munson, seconded by Elkins. The motion was approved following a unanimous vote.**

**CONTINUED TO JULY 8, 2008 MEETING:**

CASE 35-08 – LEAWOOD PUBLIC LIBRARY ADDITION – Request for a preliminary plan, final plan, and final plat; located at the northwest corner of Roe Avenue and Town Center Drive. **PUBLIC HEARING**

CASE 39-08 – TOWN CENTER BUSINESS PARK – WALGREENS – Request for approval of a rezoning, special use permit, and preliminary site plan; located at the northeast corner of 117<sup>th</sup> Street and Roe Ave. **PUBLIC HEARING**

CASE 44-08 – TOWN CENTER BUSINESS PARK – DISCOVER O – Request for approval of a preliminary site plan; located north of 117<sup>th</sup> Street and east of Roe Ave. **PUBLIC HEARING**

**CONTINUED TO JULY 22, 2008 MEETING:**

CASE 122-07 – PARK PLACE – THE ELEMENT HOTEL – Request for approval of a final site plan; located at the northeast corner of 117<sup>th</sup> Street and Nall Avenue.

CASE 127-07 – PARK PLACE TOWNHOMES – Request for approval of a preliminary site plan and final site plan; located at the northeast corner of 117<sup>th</sup> Street and Nall Avenue. **PUBLIC HEARING**

CASE 05-08 – ONE NINETEEN – GREEN EARTH DRY CLEANERS (BLDG A) – Request for approval of a special use permit, preliminary site plan, and final site plan; located at the southeast corner of 119<sup>th</sup> Street and Roe Avenue.

**PUBLIC HEARING**

42-08 PARK PLACE – INGREDIENT SIGN PLAN – Request for approval of a final site plan; located at the northeast corner of 117<sup>th</sup> Street and Nall Avenue.

47-08 MOLLE OFF SITE PARKING – Request for approval of a special use permit; located south of 103<sup>rd</sup> Street and east of State Line Road. **PUBLIC HEARING**

**CONSENT AGENDA:**

36-08 ONE NINETEEN – HABITAT SHOE STORE – Request for approval of a final site plan; located at the southeast corner of 119<sup>th</sup> Street and Roe Avenue.

49-08 ONE NINETEEN – SALON ONE 19 & SPA – Request for approval of a final site plan; located at the southeast corner of 119<sup>th</sup> Street and Roe Ave.

50-08 ONE NINETEEN – MITZY LONDON’S – Request for approval of a final plan for signage; located at the southeast corner of 119<sup>th</sup> Street and Roe Ave.

53-08 PARKWAY 134 OFFICE CONDOMINIUMS SECOND PLAT – Request for approval of a final plat; located at the northwest corner of 135<sup>th</sup> Street and Roe Avenue.

54-08 PARK PLACE SIGN CRITERIA – Request for approval of a revised final site plan for sign guidelines; located at the northeast corner of 117<sup>th</sup> Street and Roe Ave.

55-08 MISSION FARMS – ZEST RESTAURANT – TENANT FINISH – Request for approval of a final site plan; located at the southeast corner of 105<sup>th</sup> Street and Mission.

**A motion to approve the Consent Agenda was made by Elkins, seconded by Munson. The motion was approved following a unanimous vote.**

**NEW BUSINESS:**

48-08 PARK PLACE CALIFORNIA PIZZA KITCHEN – Request for approval of a final site plan; located north of 117<sup>th</sup> Street and east of Nall Ave.

**Staff Presentation:**

Assistant to the Director Mark Klein made the following presentation:

Mr. Klein: Madam Chair and members of the Planning Commission, this is Case 48-08, Park Place California Pizza Kitchen. The applicant is requesting approval to modify the site plan that was recommended by the Planning Commission on July 11, 2006, and was approved by the City Council on August 7, 2006. The applicant is proposing to not construct a large planter that was located on the south side of the building but to provide a number of potted plants in its place. A copy of the currently approved plan has been provided in your packets so that you can see where the planter was located. It contained a number of evergreens as well as some seasonal color. I also included a picture of the potted plants that are currently there, which the applicant is requesting to keep.

Staff is recommending denial of this application so that it would be constructed as originally approved, due in part to its prominent proximity off of 117<sup>th</sup> Street as well as to the entrance into the Park Place development. Staff would be happy to answer any questions.

Comm. Munson: Why didn't they construct the planter as per the approved plan?

Mr. Klein: You might ask the applicant that question. Staff first noticed that it wasn't constructed when we went out and did a final site inspection after the building was constructed.

Comm. Jackson: When you drive around there, there is a big trash bin sitting in the back. Where is the trash enclosure supposed to be?

Mr. Klein: The trash enclosure was actually supposed to be located on the east side, or backside, of the building.

Comm. Jackson: There is a trash bin sitting in that spot. Did they not make the enclosure around it?

Mr. Klein: It is my understanding that it was there. That might be another question that you could ask the applicant.

**Applicant Presentation:**

Nina Raey, representative of California Pizza Kitchen, appeared before the Planning Commission and provided the following presentation:

Ms. Raey: The reason why the landscaped planter was removed was because there was an amendment made to the plans during the plan check process. We did submit the revised plans to the City as part of the plan check submittal on January 9, 2007. We received plan check comments from all of the departments, including Planning. It was specifically noted in the comments that they had noticed that the landscaping planter was removed, but there was no specific directions indicating that we were supposed to put it back. We provided a response letter when we resubmitted the plans on March 5<sup>th</sup>. There was a letter from the landscape architect that indicated that the planter was being removed and replaced with the potted plants. The building permits were issued with the revised plans. We went ahead and installed the plans per the approved drawings. Specifically, when we were receiving comments from the Planning Staff, it was our understanding that the plans were then approved and we were to build per these plans. We have a set of the drawings where the permit is at that contained the modification showing the planters. During the time when we were getting our final inspections, it was brought up that it did not match the overall site plan that was originally approved. We thought we were going through the correct procedure. We have copies of the response letters from the landscape architect. There was no indication that it was not approved and we received a building permit. We thought we had gone through the proper procedures and installed what was approved by the building permit.

Chair Rohlf: For clarification, when did you open the restaurant?

Ms. Raey: We started construction on April 27, 2007, and I think we opened somewhere in November 2007.

Chair Rohlf: When did you submit the revised plans?

Ms. Raey: It was submitted during the plan check process, which was on January 9, 2007. The building permits were issued on April 27, 2007.

Chair Rohlf: I thought it was my understanding that you opened with a temporary occupancy.

Ms. Raey: We did open with a temporary occupancy as we could not get our final from the Planning Department because they felt that we had deviated from the approved landscape plans. They felt that we needed to get approval from the Planning Commission and City Council for the modification before we could get a final. We are still operating under a TCO [Temporary Certificate of Occupancy].

Chair Rohlf: You believed that you had received the approval that you needed?

Ms. Raey: As part of our building permit, when we submitted the plans showing the revisions. There were responses to which responses were sent back by the landscape architect. When the permit was issued, it was our understanding that we were getting approval for the modification.

Chair Rohlf: But then you wouldn't be operating under a Temporary Certificate of Occupancy, would you?

Ms. Raey: That is the only time it was brought up. That is the reason we have submitted the application to get approval to keep what we have installed.

Chair Rohlf: Mark, can you shed any light on the timing of this set of revised plans?

Mr. Klein: Basically the process is that it after it gets approved by the Planning Commission and City Council, they then submit forth a building permit. At that time, the plans get reviewed and normally they submit several sets of plans going to the Building Department, Planning Department, Fire Department, and Public Works Department. The Planning Department did make comments regarding the absent planter. The comment was meant to state that it was not per the approved plans. Other than that, Staff never really saw anything back after that stating that they had no intentions of building it or anything to that effect. I have no documentation indicating that the Planning Department signed off on it. They have indicated that they did pull a building permit and went ahead and constructed. When I first became aware of it is when Planning was called out to do the final inspection. Typically what happens after they receive a building permit is that they start construction of the building. The Planning Department isn't called until the very end because we check the exterior of the elevations, landscaping, parking spaces, and general layout. It was at that point that I noticed the absent planter. I discussed this with the supervisor on site. I also discussed it with the Building Inspector, Geoff Bowen, who was also doing an inspection for the Building Department. At that point, we indicated that the planter needed to go in. I spoke with City Administrator Scott Lambers and made him aware of the situation.

It was decided in order to get California Pizza Kitchen open that the City would go ahead and issue them a TCO with the understanding that they would construct the planter. At that point, they led us to believe that they would go ahead and do that. Therefore, Mr. Lambers was willing to allow the TCO to go forward.

The TCO was initially set for 30 days. As it was starting to expire, they made a request to have it extended. The TCO was granted an extension. Again, the City was under the impression that they were going to go ahead and put in the landscaping. At that point, we also received contact from California Pizza Kitchen indicating that they would prefer not to put in the planters and keep the potted plants that are currently there. I do have some documentation that I will pass around.

Chair Rohlf: This is the only issue that is outstanding with regard to extending the TCO, correct?

Mr. Klein: Correct. This is the only one that I am aware of, which is why the Planning Department isn't signing off on it.

Ms. Raey: When we submit plans, as Mark indicated, it gets routed to all departments. It goes to the Building Department, the Planning Department, the Fire Department, and the Public Works Department. When we received the correction letter from Roland Grigsby, it included all of the departments plan check comments. When we resubmitted, there were responses from each department. The Planning Department comments, specifically Item No. 6, states, "The landscaped area on the south side of the building approved in the final development plan has been removed." That is all it says. It does not say that it needs to be put back in. When we resubmitted the plans, a letter was sent back with the drawings stating, "The planter bed on the south side of the building has been removed. In its place, larger planters with seasonal plantings have been added." When they were resubmitted back to the Building Department, we were not able to get our building permit released until the Building Department had indicated that they received approval from all of the departments. As an applicant, we were relying on information that was provided to us, which was that now everyone has signed off and you are ready to pick up your permit. Our understanding was that when we sent the plans back to the planner, he was satisfied by the comment that we received, we were okay, and we got the building permit.

Chair Rohlf: Regardless of the interpretation and timing of all of this, what is your position now with respect to putting in the planter that was originally approved?

Ms. Raey: We feel that the planter boxes we have installed now are consistent with what is in the rest of the center. They compliment what already exists. With all of the planters and colors, I think it looks better than just having a planter bed. We would like to see if we could keep those planter boxes.

Comm. Neff-Brain: In the normal course of things, what would have been the process that the applicant should have taken to request such a change?

Mr. Klein: It is the Planning Department's position that the City Council ultimately approves things, therefore we don't have a lot of leniency with granting deviations. However, you do have situations where things change slightly. At that point, we bring it to the attention of the City Administrator, who is also the acting Planning Director, and he would make a determination of whether it is just a slight deviation that had to be adjusted because of the site or if it was something that would have to go back before the Planning Commission and City Council. A change like this typically would have to go back before the Planning Commission and City Council for approval.

Comm. Neff-Brain: Is there anything in the ordinances or statute that sets out the procedure?

Mr. Klein: There is a section in the ordinance regarding minor deviations. It primarily focuses on differences between the preliminary and final site plan. If they change a certain percentage or change in certain ways, it is considered a substantial change and they would be required to go back to a preliminary. I believe there is language that allows the director to make some sorts of interpretations. As far as a case like this where you have a fairly major change, I don't think there is anything in there other than going back through the process.

Comm. Roberson: If I understand correctly, you all noted that there was a change and the building permit was granted anyway. Is that appropriate procedure?

Mr. Klein: No. The building permit should not have been released.

Comm. Roberson: So, the City made an error in that case?

Mr. Klein: I would say yes. It should have been caught somewhere.

Comm. Roberson: In the letter that she (Ms. Raey) referred to from the City, it indicated that there was a removal of the planter. Nowhere did it say that you can't do this, or you need to get approval to do this, or you have to go through the planning process again. Is that correct?

Mr. Roberson: Correct. I would have to take a look at the letter that we sent them. The way that we write our letters now, oftentimes the first bullet point in the comments back is "these plans have been approved by the Governing Body, therefore everything is expected to meet the approved plans." This was written a while ago, so I would have to take a look at it to see if that is the case on this particular letter.

Comm. Roberson: Would you do that please.

Ms. Raey: I have a copy (*Gives Mr. Klein copy of letter*).

Mr. Klein: Actually, the first bullet states, "Note that all plans must match the final plans approved by the City of Leawood Governing Body. If any changes have been made to the approved plans, including the site plan, landscape plan, and elevations, please provide a bulleted document that lists all changes and states that these are the only changes made. This document shall be signed and dated." Basically, this is an effort to try and make them understand that these have been approved by the City Council and we do expect them to match. However, if there were any changes, we would want them called out to determine how major they were.

Comm. Roberson: It strikes me that this is exactly what they did. They sent in revised plans and there was a change on those plans. They sent the documents back in and nobody caught it. I mean, you caught the change but you didn't tell them that they needed to go through the process again.

Mr. Klein: Typically what happens when we make a comment like that and they aren't receiving their building permit, they ask if they can make the change. They are told no as they have to follow the approved plans unless they want to go back through the process. You are correct in this case, they were actually able to get the building permit without going through the process.

Comm. Jackson: Going back to the trash bins, was the enclosure made?

Ms. Raey: There is a trash enclosure and all of the bins are supposed to be in the trash enclosure. I haven't been to the restaurant. I can check with the manager to see if they have any bins out, but there is an enclosure in the back.

Comm. Jackson: There is bin sitting out in that area.

Ms. Raey: We will talk to operations about it.

Comm. Jackson: Thank you.

Comm. Elkins: I have a couple of questions. First, the plan that was approved by the Planning Commission and City Council included the planter, correct?

Ms. Raey: Yes it did.

Comm. Elkins: After those approvals, you decided you would change the plan?

Ms. Raey: Yes.

Comm. Elkins: Why?

Ms. Raey: Clint Coleman from CPK [California Pizza Kitchen] is here and he may be able to explain why the change was made.

Clint Coleman, Senior Vice President of Development with California Pizza Kitchen, 6053 W. Century Blvd, Los Angeles, California, appeared before the Planning Commission and made the following comments:

Mr. Coleman: In reference to the change, we felt that it was more in keeping with what was going on within the rest of the center with the hardscape to the base of the buildings. There were potted plants approved on other sides of the building. Nowhere do we have a hardscape go to a planted bed and then to the base of the building. We felt that it incorporated the rest of the pots on the perimeter of the building and gave a little bit of height to that elevation.

Comm. Elkins: Is there a difference in cost for constructing the permanent planter versus the pots?

Mr. Coleman: During initial construction, no. I think these pots probably cost us a little more than we thought they would. Both are irrigated. It is about 516 sq. ft. less of flat work. It is 70 linear feet of a 6-inch curb. At the end of the day, it is probably a wash, to be quite honest with you. It was a discussion between our architects and Chris Dring at Young & Dring Architects, who is landscape architect for us and the overall center.

Chair Rohlf: I think it is time to have further discussion points on this. As Mark stated, Staff is recommending denial. If we feel differently about that, we need to come up with our own stipulations or comments.

Comm. Munson: In view of what has gone on here, I don't really detect treachery by the developer. If not a mistake, I think it was an honest difference. The bureaucracy didn't catch it and I don't think that California Pizza Kitchen should necessarily have to pay for that error. Additionally, from the presentation in the pictures, I think that the planters are certainly pleasant. I would say that they maybe are even better than a planter box. I would tend to support the request and so forth of the applicant.

Comm. Heiman: I would like to see the original plan. Is this the original plan?

Mr. Klein: No. There is an original plan on 8.5 x 11.

Comm. Heiman: I take it these were boxed planters in front of the building.

*Mr. Klein Submits original plan to Comm. Heiman for distribution and review by the entire Planning Commission.*

Comm. Heiman: My only other comment is that I had lunch in there the other day and when I walked in, it certainly didn't look bad to me. From my standpoint, it looks like a square planter versus the round pots. The round seems to fit better around the front of the building anyway. I think there was some miscommunication and personally would probably be for the applicant in this situation.

Comm. Neff-Brain: My general view of the process is that these sorts of things go before the Planning Commission prior to the City Council. Staff doesn't have the authority to make such a deviation and maybe there was a slip up, but I feel that the applicant is very savvy. The process isn't different in Leawood than it is anywhere else. I would like to look at the plan, but my general thought would be that this request should be denied.

Chair Rohlf: What happens to these planters in the winter? Are they weather resilient or do they need to be warehoused?

Mr. Coleman: They are plumbed and irrigated.

Chair Rohlf: So, they will stay there?

Mr. Coleman: Yes. We will just change the plantings out.

Chair Rohlf: In the winter, would there be more evergreen-type things?

Mr. Coleman: Unfortunately, I'm not up to speed on that, but it would be something hardy and more stem-like. Something that would endure the winter.

Chair Rohlf: You are planning to truly put things in for the different seasons?

Mr. Coleman: I don't know when the photograph being circulated amongst the Planning Commission was taken.

Mr. Klein: It is a photograph that I took a couple of days ago.

Mr. Coleman: I think it has been changed once or twice since we opened in October. I think there were some winter plantings during those months. It would be spring, summer, and fall type of plantings.

Chair Rohlf: One of the comments that I would make regarding the procedure here is that we have been inundated with changes to this plan even as commissioners over the last couple of years whether it was a change in tenant occupancy, tenant signage, or tenant finish. It has been an incredible set of plans. I can understand why something like this might have happened. The fact that the City had bent over backwards to allow this Temporary Certificate of Occupancy to allow them to open, they must have known there was still a problem when an extension had to be granted. Is that correct, Mark?

Mr. Klein: I believe there is a letter circulating on the dais indicating that they intended to put in the planter, but they needed a little bit more time.

Chair Rohlf: Regardless of the plans and how they came in, it gets back to what we think would be in compliance with the original documents. I don't think that burden has been met. It then comes to discussion by those of us who have an opinion regarding the planter versus the pots. Procedurally, I think that Staff had put the applicant on notice that there was a problem when they granted an extension of the temporary permit. I think we have something else on the agenda this evening and a couple of things next week on this particular development.

Mr. Coleman: It has been a difficult building. I'm sure it is just a drop in the bucket in terms of the overall project. I was really happy to see the project start to gain life and traction. We didn't look at this as a slight of hand and it was not intended. It is really something that we are happy to be involved in. We are very happy to be part of the center. I know it has been a difficult building but from our perspective, as we went through the processes, beginning with submission on January 9, 2007, if we had installed the planter bed, it would have been different than what we were permitted for and we would have been in violation. It is an unfortunate situation, but there is no ill will intended.

Chair Rohlf: I believe that. Mr. Alpert, since you're in the audience this evening, would you care to comment on your thoughts about the bed versus the pots.

Jeff Alpert, Park Place Developers, LLC, 11551 Ash Street, Leawood, appeared before the Planning Commission and made the following comments:

Mr. Alpert: First of all, we are in support of the change. If you look at the underlying landscape concept, you can walk up and down the street and have hardscape all the way up to the edge of the building. That is really our basic design criteria. What they have done with running pavement up to the edge of the building is consistent in that regard. The fact that they have freestanding planters, we actually have about a dozen of them that are ready to be put out. I have a display board.

Chair Rohlf: Are these to be in other areas of the development?

Mr. Alpert: Exactly (*Referring to display board*). Everywhere you see the green dots, we are adding that element to the streetscape. What they've done at California Pizza Kitchen is actually ahead of us in that regard. It will be consistent with elements that we are introducing onto our streetscape. From that standpoint, we are totally supportive and have no problem at all. The only other comment I would make is that I understand it is a procedural issue, but it seems to me that it is also an issue of whether this is an acceptable alternative. I think that is what is being asked. Would you have approved it if it had been on the original plan? Like I said, we are very supportive of it from our standpoint. We think it is fine. It adds a level of interest that is more urban than a typical cut-out planter bed on the concrete sidewalk.

Comm. Elkins: Had the outdoor planter been built per the approved plan, what would it have looked like? Was it above grade and about the same height as the pots?

Mr. Coleman: Actually it would be at grade with a 6-inch concrete curb around it that would come out 6-ft., continue the radius, and turn back 6-ft. You would have a curb about 6-inches tall.

Comm. Elkins: As Mr. Alpert put it, it is almost literally a cut-out.

Mr. Coleman: Correct. I am not sure how it is referred to as I'm not a landscape architect, but I think it is just a curbed planter bed.

Comm. Neff-Brain: I know that Staff has a problem with this from a procedural standpoint. From an aesthetics standpoint, what is your feeling if it had come in this way in the first place? I understand that it wasn't procedurally done properly.

Mr. Klein: It is always hard when you first see something to go back, evaluate, and take it away. Staff's position is that the original planter would have provided more softening to the base. If you look at the pots, you see the spaces in between and the concrete going up next to the building, which definitely offers a different effect from a landscaped bed in front with plant material growing out. Staff prefers the landscaped bed. Again, it is hard after seeing what was originally proposed.

Comm. Neff-Brain: If this is approved by the Planning Commission, would it go back to the City Council?

Mr. Klein: Yes. Everything since 2002 goes to the City Council.

Comm. Jackson: Would the original bed have had evergreens? My only concern is that this won't look so good in the winter.

Mr. Coleman: Again, not being a landscape architect, I believe it called for some low boxwoods, which are a green hedge style. Also, there will be some seasonal color throughout as well.

Comm. Jackson: There are no evergreens in the planters?

Mr. Coleman: I don't think that was ever intended. I don't mean to delineate, but when you get outside of the tenant scope of work and get out into the berms and more common areas that the developer is responsible for, the larger scale trees such as evergreens are in those areas. I don't think anything that large was ever intended to be that close to the building itself in our beds or planters.

Comm. Jackson: The boxwoods stay green all year, don't they?

Mr. Coleman: Yes they do.

Comm. Elkins: I tend to agree with Commissioner Neff-Brain. We have a process by which the Planning Commission approves and the Governing Body approves. I think it is incumbent upon the applicant at that point and time to follow through with the plan that is approved. It is unfortunate that a building permit was issued under these circumstances but, again, once the process is complete, the process is complete. If indeed, what I would view as a very late stage, the applicant wants to make a fairly significant change to their plan, it requires more than what I have seen here. At the same time, in looking at the letters that Mark passed around, when the Temporary Certificate of Occupancy was given, there was very clear notice to the applicant that there was a deficiency in the construction. Having said all of that, I find myself in the uncomfortable position of actually preferring what was done over the plan that was approved. I think that much of Park Place, as Mr. Alpert put it, is to put an urban streetscape in the middle of the Kansas prairies. It seems to be very tastefully done and is consistent with what Mr. Alpert showed will be happening with the rest of the development.

I find myself in a bit of a dilemma because typically I am a very strong rule follower. I think that Staff deserves our support because we have made it clear as a City that the authority rests with the Governing Body with advice and consent from our body. Having said that, I tend to like the way this looks. I am concerned about what it may look like in the wintertime because I think it may just be empty planters then. Those are my thoughts.

Chair Rohlf: They are good ones. I think they are well stated. My fear would be that if the pots were taken out and we went back to the bed, it perhaps may not look as good as this does. This is a given, we know what it looks like. We know that it is consistent with what the plans are now and in the future. I am a little concerned about the fact that I know this is not an inexpensive way to display planting.

Mr. Coleman: If I could comment on that. As Ms. Raey was going through the timeline, I would like to reaffirm that one more time. When we submitted the plans on January 9, 2007, those plans reflect what was permitted and built. The issue is that they don't reflect what was agreed upon during the meeting of June 2006. The change that we made was prior to the original submission. The dialogue went back and forth with Mr. Grigsby examining the plans and through each of the disciplines. The responses from our architects, engineers, and landscape architects followed the system, because I believe in the system as well. From our perspective, we look at the issue of would it not have looked as nice if it were a planter bed. I think that is everyone's opinion to each their own. We did it because we thought it would look nice. We didn't do it to slight. It was a change that we made probably in December 2006 prior to submission. I think we got our permit on April 27, 2007. When the inspection happens in October 2007, the final week before we hand it over to our operators, it is an extremely costly proposition. As that came about, we internally did two things. One, we started to price it out. Two, we started to dig back through our process. As you mentioned earlier, it was a lengthy process to get our building built. So, we did our due diligence in applying this and at the end of it, we thought – this looks good, the restaurant is operating well, and we think we did things correctly as requested by the City and the systems that are in place. I think just by nature, coming before a commission like this, it can be contentious and I don't want it to be. We are kind of hat in hand saying, we did what we were told and things happen. What is the best course of action for CPK, Park Place, and the City of Leawood? I think that is the resolution.

Chair Rohlf: I would ask my fellow commissioners to think of it in those terms. I think there was enough misunderstanding on both sides that we could finger point all night. I think we can reach a decision on whether this is a better aesthetically looking plan or not. Let's try to get out from under the rules on this one because it is already there. If we don't like it because it doesn't fit in or doesn't work, that is a whole different issue. I would like to put the procedural issue to rest. We have beaten that up and could continue with it all night.

Comm. Elkins: Madam Chair, I very much appreciate your comments, but I do feel compelled to at least make the record clear when it goes to the City Council, and they will be aware of this as well, that I do take a little bit of issue with the applicant in that the original submission was not in January 2007. The original and final submission was in August 2006. That is where the chronology should start. Having said that, I completely agree with the chairman and voice my support in favor of the case. I do think the end result, regardless of how it got there, in my view is the better result.

Comm. Neff-Brain: I think the boxwoods would soften the project. Did you say that in the winter there would be anything in the planters or are they just going to be bare?

Mr. Coleman: They will be planted. If I may speak freely, maybe you could put some conditions on what is planted in them. Again, unfortunately, I am not a landscape architect but I know that I have worked with a lot of them. Young & Dring are doing a great job on this project. I would be happy to say that we will plant them with boxwoods or something that would look as best it could during the winter months.

Comm. Neff-Brain: That is my concern because empty planters tend to get trash and cigarette butts in them.

Mr. Coleman: That hurts nobody more than us because it is the first thing you see when you are walking up to the restaurant. To that point, we would be fine with this becoming part of a written discussion. We would be happy to do that anyway.

Comm. Munson: I am wondering if this case should be continued until such time that the applicant can come back with a proposed list of seasonal plantings that will satisfactory. We don't have that information.

Comm. Roberson: I'm not sure I would agree with that. I don't think we need to continue it.

Chair Rohlf: I think we have enough information from other cases with the listings of plantings. My best guess would be that they would be putting winterized plantings in a bed arrangement. I think we have a pretty good idea of what is going to grow here and what is not.

Comm. Roberson: Mr. Alpert, are you going to plant your planters in the winter?

Mr. Alpert: Actually, some will be planted and some will not. I'm not sure exactly what goes in which planters, but the intent was to have some that would stay green all year round and some would probably have seasonal color. I appreciate the comment about what happens to the planters when they are not planted. I can tell you that this happens to them when they are planted. We have a porter on the Park Place grounds daily doing nothing but picking up trash and cigarette butts, wiping down the street furniture, and things like that. That would be one of their responsibilities, to make sure that trash is taken out of the planters as well as all of the other places that it accumulates. We can certainly make the representation that we will maintain all of the planters in the proper manner.

A motion to recommend approval to the Governing Body of Case 48-08, Park Place California Pizza Kitchen, request for approval of a final site plan, located north of 117<sup>th</sup> Street and east of Nall Avenue, was made by Elkins; seconded by Munson.

**Comm. Neff-Brain:** I would like there to be seasonal plantings and that the pots remain green and planted during the winter.

**Comm. Elkins:** I will accept that as a friendly amendment to the motion.

**Comm. Munson:** I agree.

The motion passed unanimously.

51a-08 LDO AMENDMENT ARTICLE 9 – Request for approval to amend Article 9, Definitions, of the Leawood Development Ordinance. **PUBLIC HEARING**

51b-08 LDO AMENDMENT SECTION 16-4-1 – Request for approval to amend Section 16-4-1, Accessory Uses, of the Leawood Development Ordinance. **PUBLIC HEARING**

**Staff Presentation:**

Assistant to the Director Mark Klein provided the following presentation:

**Mr. Klein:** Madam Chair and members of the Planning Commission, this is actually an amendment to Article 9 and then the next case is an amendment to the Accessory Uses, Article 16-4-1.2. The amendments are also related to the case coming up after these, which is the final site plan and final plat for Glen Abbey of Leawood. Specifically, these amendments are to allow an accessory structure within a front yard. The one in Article 9 is actually to address docks within the City of Leawood. The current Leawood Development Ordinance [LDO] has no definition of a dock. The only real amendment to Article 9 is to add the definition of a dock.

The other amendment is located to the Accessory Uses section. Again, the amendment is to allow an accessory structure. In this case, it would have to also be part of a dock. It would have to be intimately connected to a dock. It also has limitations in that the amount of acreage it is upon would have to be a minimum of three acres. It would have to be on the same lot as the primary house and would have to be located a minimum of 250-ft. from any public right-of-way. It would also have to be a maximum area of 300 sq. ft. and 15-ft. in height. Staff is recommending approval of these amendments and would be happy to answer any questions.

**Chair Rohlf:** Case 51a-08 is strictly clarifying the definition of “dock.”

**Mr. Klein:** Correct. It is to actually add “dock” as a definition.

**Comm. Jackson:** Mark, what brought up the need for these amendments?

Mr. Klein: This was a situation, which is actually on the following case, in where you have a detention basin that is fairly large and has an existing dock located there. The applicant wants to be able to have something that anchors the dock to the shore and be able to have some sort of structure that would maybe provide shade and a level area. There could be other situations in which this would occur. I am certain there are other ponds or detention basins that are used for a recreational purpose. This would allow those uses even if they did happen to be in the front yard. However, this would allow them just in general as currently we don't have anything in the LDO that would allow anything quite this large as far as area let alone in the front yard. This is a way of maintaining trying to ensure that the lot area is large enough and that it is far enough away from a public street. Obviously, we wouldn't want a structure like this to be located 10-25 feet from a street front. It is tailored to be in those areas where the lot is substantial enough to support a use such as this.

Comm. Jackson: It was specific for Glen Abbey?

Mr. Klein: It was primarily instigated as a result of Glen Abbey but there are other situations where it could come into play.

Comm. Jackson: Are there any docks anywhere else in Leawood?

Mr. Klein: I believe on the southwest corner of 143<sup>rd</sup> Street and Mission Road there is a large detention pond, but the house is sitting way back. I haven't looked at it specifically but, again, it would have to be a minimum of 250-ft. away from any public right-of-way. This one is located on a corner, so I am not sure if it would work or not. There are some very large lots that are very deep off of Mission Road that extend way back off of the road. In a lot of those areas, you can't even see what is up there.

Comm. Roberson: In terms of material, have you considered what the dock should be constructed out of. I notice that you mention wood, but this would encompass a lot of different things that would rot very quickly. In terms of structure, have you considered whether or not it should be a floating dock, an attached dock, a fixed dock, or any of those issues? The Corps of Engineers are now banning the Styrofoam-types of floating docks. Have we considered all of those types of issues?

Mr. Klein: I don't think we went into the specifics as far as the different types of docks. The effort was more to provide a definition of a dock. Since there is a structure associated with these docks, there would be something to tie it to, which was the primary intent at this point. No, we didn't go into specifics of the various types of docks such as Styrofoam.

Comm. Roberson: Although I realize that the pond at 143<sup>rd</sup> Street stays full, if it is a detention pond, is it possible that the water levels fluctuate greatly?

Mr. Klein: I would imagine that you would have some sort of fluctuation involved with it due to the function of what a detention pond does as far as when a heavy rain comes up, which is to hold it and release it at a slower rate. I am sure there would be some fluctuation.

Comm. Elkins: I guess that I have some concern about the need for a specific provision in the ordinance for docks in Leawood. Mark, as I understand it, if I were to meet all of these other criteria and I built a pier, which I would call a non-floating structure that goes out into the detention pond in my front yard, you are saying that this would be a prohibited use under our current ordinance?

Mr. Klein: Currently it is not listed as an accessory use and as such, we typically would consider it as being prohibited. There may be some that are out there and have been around for some time, which we would consider legal nonconforming uses if they were built prior to December 2002 when the current ordinance went into effect.

Comm. Elkins: Anything that is not listed in 16-4-1.3 is a prohibited use under our ordinance?

Mr. Klein: That is Staff's interpretation.

Comm. Elkins: I am also just a little bit troubled about the detention pond being part of the front yard. I guess we will get to the specifics in a moment. As an example, you have a detention pond in common space but, in my mind, it wouldn't be in anyone's front yard. Does this amendment to the ordinance anticipate and approve that, or deny that? What is your view of that circumstance? What would seem to be the more likely circumstance for us to run into?

Mr. Klein: This is a little bit of an unusual circumstance in the fact that you have a detention pond that is partially located on a private homeowner's lot and the majority of it is actually located on a common tract within the subdivision itself. It would not allow one if the detention pond were completely located within the common area tract because then the dock would have to be located in the water, therefore it would not be located on the same property as the primary residence.

Comm. Elkins: What would Staff's view of that be? If I'm a developer and have a huge detention pond that I want to make look better by putting a dock in it, what is Staff's view of that?

Mr. Klein: We see similar circumstances where the developer will have a detention pond and will want to use it as an amenity. We haven't really seen docks before, but we have seen pergolas or gazebo-like structures. Everything in the City of Leawood is a planned district. As they went through the process for the subdivision and showed the details on the final plan of what that particular amenity would look like, it is Staff's position that it is part of the plan and is what gets approved/denied by the Planning Commission and City Council. Therefore, it would be allowed. In that case, it would be an amenity for the overall subdivision as it would be located on a common tract.

Comm. Elkins: In that context it would not be an accessory use and we wouldn't run into this issue?

Mr. Klein: It would be something that would be reviewed by the City Council, who would have the ability to approve it. We do require that it meet the 15-ft. height limit of accessory uses.

Ms. Shearer: I would just like to add to Mr. Klein's comments. We are not at this time contemplating allowing anyone to have a dock and an ancillary accessory structure to that dock on a tract of land that is not owned by the primary residential homeowner. Subsection B of the new section discusses this, "Docks and any ancillary accessory structures to any docks on separate lots will not be considered as standalone structures." What we have planned at this time it to only allow it when there is a primary residence who is applying to have it as an accessory use on the same tract of land that the primary residence is located.

Comm. Roberson: If I have a development with a pond surrounded by houses, are you telling me that each one of those homes could have a gazebo and a dock if they were on three acres?

Mr. Klein: They would have to be on three acres and meet all of the stipulations. If you had a detention pond located in the middle with houses surrounding the perimeter, they would have to have frontage onto a public street. I would imagine that the public street would be on the other side of the houses. In that case, it would actually be located in the back yard of most of the houses. There are so many permeantations that you could actually go through as far as the lot configurations that it would be difficult to answer. That would not be the intent. I don't know that there are that many three acre lots that also have detention ponds and are 250-ft. away from a public street, but I couldn't tell you that for sure.

Comm. Neff-Brain: Is the purpose of this ordinance pretty much just to address this one property? I think someone asked the question if it is necessary for just one property. Are they a planned district?

Mr. Klein: They are a planned district. This was part of a subdivision that originally was two 10-acre pieces of property. This house was an existing house on one of those 10-acres. As the subdivision came in and was platted, they included this lot with the existing house on the 10-acres. At that point, the homeowner sold a portion of their land to the developer to include within the subdivision. They more or less incorporated their house into the subdivision, which became Glen Abbey of Leawood.

Comm. Roberson: Do we have the authority to deny this change and yet give permission in this one time case?

Mr. Klein: No. That was really the reason for the change in the agenda order as the next application is dependent upon these ordinance changes being approved. Otherwise, it wouldn't meet any of the criteria.

Chair Rohlf: Didn't we have something similar to this when we were dealing with the pool house? Did that come under an accessory use? Remember the large pool house that was more than a pool house and was truly a house?

Mr. Klein: Right. We did have a case that came forward, which Staff actually recommended denial. Staff's concern at that point is that the pool house was very large and at one point it was indicated that there would be a Murphy bed inside. Staff was concerned that it was not so much a pool house but potentially a guest house.

Chair Rohlf: What happened with that case?

Mr. Klein: I believe that case was denied. It went away.

Chair Rohlf: I think we were under the same situation where we were going to modify the accessory uses because we knew that we could potentially have a pool house application again. I am not so sure we will have this again. If you follow the pattern of accessory uses, you can see how they came in. We started dealing with sport courts and had to make amendments.

This case does require a Public Hearing. Is there anyone in the audience who wishes to speak about this case?

**As there were no witnesses present to speak on Case 51a-08, a motion to close the Public Hearing was made by Elkins; seconded by Jackson. The motion passed unanimously.**

Chair Rohlf: Is there anyone in the audience who wishes to speak regarding Case 51b-08? If so, please raise your hand.

**As there were witnesses to comment on Case 51b-08, a motion to close the Public Hearing was made by Elkins; seconded by Roberson. The motion passed unanimously.**

Comm. Neff-Brain: How did you come up with the 15-ft. in height?

Mr. Klein: The 15-ft. is actually part of the current ordinance for accessory uses. They are limited to 15-ft. in height.

Comm. Neff-Brain: You just added it to this one?

Mr. Klein: Correct. As it is an accessory use, the City wanted to maintain the restriction.

Ms. Shearer: We wanted it added to reinforce that this use is to follow the other accessory structure guidelines within the ordinance.

**A motion to recommend approval for Case 51a-08, LDO Amendment, Article 9, request for approval to amend Article 9, Definitions, of the Leawood Development Ordinance was made by Jackson; seconded by Elkins.**

**The motion passed following a vote of 6-1. Nay: Roberson.**

**A motion to recommend approval for Case 51b-08, LDO Amendment, Section 16-4-1, request for approval to amend Section 16-4-1, Accessory Uses, of the Leawood Development Ordinance, was made by Jackson; seconded by Elkins.**

**The motion passed following a vote of 6-1. Nay: Roberson.**

52-08 GLEN ABBEY OF LEAWOOD – Request for approval of a revised final plat and final plan; located north of 143rd Street and east of Nall Ave.

**Staff Presentation:**

Assistant to the Director Mark Klein provided the following presentation:

Mr. Klein: Madam Chair and members of the Planning Commission, this is Case 52-08, Glen Abbey of Leawood. The applicant is requesting approval of a final plan and final plat. This relates to an accessory use structure that is located in the front yard. Currently the lot is part of the Glen Abbey subdivision. It does gain access off of a public street that runs along the west side of the Glen Abbey subdivision. The house does face south toward the detention pond. A portion of the detention pond is currently located on the applicant's property. The applicant is proposing both a final site plan and final plat. The final plat would actually enlarge the area that would be located with his property. This is being done for a couple of reasons. One is to increase the setback from the proposed structures. It is also to provide area and place it in his control so that he has the ability to maintain the shores of that area. I will let the applicant expand on that further. The structure that the applicant is asking for meets the criteria that we just discussed in the previous two cases. It is under 15-ft. in height, closer to 14-ft. It is 172 sq. ft., less than the 300 sq. ft. restriction. It is much more than 250-ft. from a public right-of-way as the closest is to the south at 143<sup>rd</sup> Street. The applicant does have about four acres, so they do meet the three acre criteria. It is an accessory to the dock. The dock is actually attached to the accessory structure. It is on the same lot as the primary resident. Staff is recommending approval of this application and would be happy to answer any questions.

Comm. Neff-Brain: Is the pond just a detention pond or does the stormwater system of the City flow in and out?

Mr. Ley: The City's stormwater system does flow in through the pond, but it is the homeowners association's responsibility to maintain that. Public Works would like to add a stipulation in that an easement is granted to Glen Abbey from the tract that is being dedicated to the Oltjen's for maintenance and inspection of the detention pond.

Comm. Neff-Brain: The City maintains the detention pond?

Mr. Ley: It would be granted to Glen Abbey so that Glen Abbey could maintain it. They would need to have access to this property that is being dedicated to the Oltjen's.

Comm. Neff-Brain: Is there an underground pipe that goes in and out of the lake?

Mr. Ley: No. It is an open channel that flows to this lake. There is a weir on the downstream side that controls the flow out of the lake.

Comm. Neff-Brain: Will we make sure that any dock or structure doesn't obstruct that flow?

Mr. Ley: The flow wouldn't be obstructed with the way it is designed.

**Applicant Presentation:**

Jay Oltjen, 14163 Juniper Street, Leawood, KS, appeared before the Planning Commission and made the following comments:

Mr. Oltjen: I approached the City Staff 3-4 months ago wanting to seek approval for putting my dock back in after expansion of the lake. I wanted to add a stone pavilion. I had originally had it drawn up with a pitched copper roof but it exceeded the height limitation, so I have modified the drawing to get it within compliance. I think that I have a very nice structure that the City will be proud of. It will be very appealing from 143<sup>rd</sup> Street and will add to the overall aesthetics of the Glen Abbey of Leawood subdivision. I have tried to work with the City and apologize that it has taken so many hurdles to get this accomplished, but I wanted to get it done by the book.

Chair Rohlf: Do you happen to have a better rendering of this than what we have in our drawings? We typically have more of a schematic as to what it going to look like.

Mr. Oltjen: I can give you a side view, but I don't have anything like that from the property itself.

Chair Rohlf: That is your home, right?

Mr. Oltjen: Yes.

Chair Rohlf: Do these materials correlate with what you have been doing with your expansion?

Mr. Oltjen: Part of the reason it was brought up now is that I am currently remodeling my house. I wanted to use the same stone out of the same quarry so that it will have the same look as what is on my house.

Chair Rohlf: I guess that I am having a hard time trying to visualize what this is going to look like around the pond. Would you be inviting people to be in this area? Is it more decorative?

Mr. Oltjen: It won't have large crowds. It is more for the personal use of my family. It is not that big of a structure for entertainment purposes. I could see possibly ten people there. The dock will be used primarily for fishing. I stocked the lake about four years ago.

Chair Rohlf: Where is the fence? I know there is a concern about the height of the fence. Mark, is that right?

Mr. Klein: I believe there is a fence with a stone floor and a small stone wall that circumscribes it. I believe the fence is 36-inches in height going around the structure. It does have some wood pillars, for lack of a better term, with open rafters that would go along. Technically, it probably meets the definition of what we have as a garden structure as far as the open rafters, however it is close to 300 sq. ft. Currently the ordinance includes a gazebo, however a gazebo would have a solid roof that would offer weather protection. Gazebos are also limited to 64 sq. ft. I don't believe that there is any limitation for a garden structure within the accessory use ordinance.

Chair Rohlf: How far away from your home will this structure be built?

Mr. Oltjen: It is approximately 200-ft. from my front door down to the lake.

Chair Rohlf: I just have some concerns about people being there uninvited, unobserved, or unsupervised children.

Mr. Oltjen: When I decided to work with the developer on selling part of my property to Glen Abbey, one of the stipulations of the development was that the north and east sides of the lake were private use for my family. They are restricted from other Glen Abbey residents. The public side of the lake is the south and west sides of the lake. The spillway is not crossable and is a good separator between the two.

There are a couple of things that I thought we should discuss on the approval. One is that there is a little area of property south of my property line that is not accessible for Glen Abbey of Leawood to take care of it. I thought there probably should be something for the homeowners' protection in that I will commit to the care and mowing of this property. Part of the problem is that the developer subsequently realized that he cannot get across the spillway to mow the entire east side of the lake. He wanted me to have this back as he can't mow or maintain it without access. The only way to get to this side is if someone were to go down my private driveway. I said that I would be willing to do that. There is a small section that I think should be addressed. I am definitely willing to take care of it, but I don't own it.

Comm. Neff-Brain: That is all on private property, right?

Mr. Oltjen: There is a small section south of the spillway that butts up against 143<sup>rd</sup> Street on the east side that cannot be accessed by the crews that will mow and maintain the Glen Abbey of Leawood common spaces.

Comm. Neff-Brain: Who owns that little section?

Mr. Oltjen: It is owned by the subdivision.

Comm. Neff-Brain: So, it is private property. It is not public property.

Mr. Oltjen: Yes. I am willing to maintain it. There is one other thing that I wanted the Planning Commission to contemplate. I think it is obvious in talking with Mr. Lambers and Mr. Klein that this is my front yard. My driveway used to come in from 143<sup>rd</sup> Street but when the lake was expanded, my driveway moved to the west. Everybody else's front yard in the subdivision will be off of Juniper Street. While my driveway comes off of Juniper Street, it is obvious when you look at my property that this is my side yard. However, my address comes off of Juniper. I think there should be some type of statement in recognition that this is my front yard and not my side yard. It is an unusual situation with the entry. We discussed this and there was some confusion as to technically it is my front yard.

Chair Rohlf: Mark, is there some concern about that?

Mr. Klein: Actually, it is a situation where his driveway does come off of Juniper. There are a number of lots adjacent to him on the north and south that also front onto Juniper. The question came down to interpretation as to whether the front yard was the way his house faces or where he took his access and was addressed from. At one point, we did have that conversation. I believe the ultimate interpretation by Staff is that the front yard is where the house faces.

Chair Rohlf: I don't see why that would be a problem.

Mr. Oltjen: In reference to a pier versus a dock, a fixed pier won't function because in a 100-year flood, the volume changes the surface level height of the lake. It changes almost 4-ft. The fixed pier would be completely recessed. That is why it will float. I did send some stipulations in per Staff's request on what the materials would be. It is certainly going to be very nice. The steel will be enclosed and I won't be using any Styrofoam. The floats will be similar to what you see being replaced at the Lake of the Ozarks. They will be the encapsulated plastic and will last forever. We will use a high quality material for the decking, probably some time of a Trex, which is a composite material that will maintain its aesthetics for years and years without requiring repair.

Chair Rohlf: Something tells me that we probably won't have another one of these. You are probably very unique to Leawood.

**A motion to approve Case 52-08, Glen Abbey of Leawood, with all Staff stated stipulations including the request by the Public Works Department for an easement to be granted to Glen Abbey by the Oltjen's was made by Neff-Brain; seconded by Heiman.**

**The motion passed following a vote of 6-0-1. Abstain: Roberson.**

*MEETING ADJOURNED.*