

**City of Leawood
Planning Commission Minutes
March 27, 2012
Meeting - 6:00 p.m.
Dinner Session – No Discussion of Items – 5:30 p.m.
Leawood City Hall Council Chambers
4800 Town Center Drive
Leawood, KS 66211
913.339.6700 x 160**

CALL TO ORDER/ROLL CALL: Pateidl, Roberson, Jackson, Neff-Brain, Rohlf, Williams, Elkins, Strauss and Ramsey.

APPROVAL OF THE AGENDA:

A motion to approve the agenda was made by Williams; seconded by Elkins. Motion approved with a unanimous vote of 8-0. For: Pateidl, Roberson, Jackson, Neff-Brain, Williams, Elkins, Strauss and Ramsey.

APPROVAL OF MINUTES:

Approval of the minutes from the February 28, 2012 Planning Commission meeting.

A motion to approve the minutes of the February 28, 2012 Planning Commission meeting was made by Williams; seconded by Elkins. Motion approved with a unanimous vote of 8-0. For: Pateidl, Roberson, Jackson, Neff-Brain, Williams, Elkins, Strauss and Ramsey.

CONTINUED TO APRIL 24, 2012 MEETING:

CASE 119-11 – LEAWOOD DEVELOPMENT ORDINANCE – SECTION 16-4-9, FENCES AND WALLS – Request for approval of an amendment to the Leawood Development Ordinance, pertaining to fences constructed on top of a deck. **PUBLIC HEARING**

CASE 33-12 – LEAWOOD SOUTH COUNTRY CLUB – MAINTENANCE BUILDING – SPRINT WIRELESS – Request for approval of a Special Use Permit for wireless communication antenna use and associated equipment, located south of 123rd Street and east of Mission Road. **PUBLIC HEARING**

CASE 35-12 – HALLBROOK COUNTRY CLUB – Request for approval of a Preliminary Plan, located north of 114th Street and west of Overbrook Road. **PUBLIC HEARING**

CONSENT AGENDA:

CASE 36-12 – HALBROOK OFFICE CENTER – ASCEND LEARNING – Request for approval of a Final Sign Plan, located at 11161 Overbrook Road.

Comm. Strauss: I have a question for staff on the Orvis case.

A motion to recommend approval of the Consent Agenda as amended was made by Williams; seconded by Elkins. Motion approved with a unanimous vote of 8-0. For: Pateidl, Roberson, Jackson, Neff-Brain, Williams, Elkins, Strauss and Ramsey.

CASE 17-12 – ONE NINETEEN – ORVIS – Request for approval of a Final Plan for a Tenant Finish, located south of 119th Street and east of Roe Avenue.

Comm. Strauss: I see on the windows, the Orvis name is on each windowpane. I just wanted to know if that met the city's sign criteria.

Mr. Rexwinkle: It appears that it does, but we haven't measured it. They resubmitted this to us late last week. It slipped by us. It is allowed if it is within the 5% rule; we just haven't verified it.

Comm. Strauss: Thank you.

Comm. Elkins: What does the LDO state about the number of signs?

Mr. Rexwinkle: Ordinarily, the LDO allows for two signs. In this development, tenants are allowed one wall sign for this section of the development.

Comm. Elkins: Given that, how do the signs etched into the glass work?

Mr. Rexwinkle: The only limitation on number of signs is with wall or blade signs and not window signs.

Chair Rohlf: Would anyone like to hear from the applicant? Then I would ask for a motion to approve this case.

A motion to recommend approval of CASE 17-12 – ONE NINETEEN – ORVIS – Request for approval of a Final Plan for a Tenant Finish, located south of 119th Street and east of Roe Avenue with all five staff stipulations – was made by Williams; seconded by Neff-Brain. Motion approved with a unanimous vote of 8-0. For: Pateidl, Roberson, Jackson, Neff-Brain, Williams, Elkins, Strauss and Ramsey.

NEW BUSINESS

CASE 92-11 – PARKWAY PLAZA – RETIREMENT HOMES – Request for approval of a Special Use Permit, Preliminary Plan and Preliminary Plat for a nursing or convalescent home use, located at the northwest corner of 135th Street and Roe Avenue. **PUBLIC HEARING**

Staff Presentation:

Senior Planner Joe Rexwinkle made the following presentation:

Mr. Rexwinkle: Madame Chair and members of the Planning Commission, this is Case 92-11 – Request for approval of a Special Use Permit, Preliminary Plan and Preliminary Plat for a nursing or convalescent home use within the Parkway Plaza development. The proposed use is described as a senior living facility that provides care for residents in need of care, ranging from assisted living through certain levels of skilled nursing. This description fits within the definition of a nursing or convalescent home use within the Leawood Development Ordinance. The facility is proposed to be staffed 24 hours a day with a certified nurse's aide and a certified medication aide who are overseen by a registered nurse that works 40 hours per week. A site manager will also work 40 hours a week, as well as other support staff. The subject property is located on the block bounded by 133rd Street on the north, 134th Street on the south, Roe Avenue on the east and Briar Street on the west. It consists of two parcels that are divided by the existing storm water detention pond and two condominium buildings. The facility is a 96-bedroom, 58,246 sq. ft. development that consists of eight one-story buildings that are proposed to be located on the west parcel and three on the east parcel. Each building is proposed to contain twelve bedrooms and common open space, including a living room, kitchen, dining room and bathing room. Each bedroom is proposed to be 181 sq. ft. in area and include a closet and a toilet.

The subject property is zoned Mixed Use, the intent of which is to allow a mixture of uses in a pedestrian-oriented environment. As a method of implementing the stated intent, the Mixed Use regulations require a minimum of 20% of the total floor area be reserved for residential uses. All of the residential floor area approved for Parkway Plaza is to be located on the block on which the subject property is located. The approved residential use on this block consists of eight three-story condominium buildings with a total of 96 residential dwelling units. This development is known as the Parkway 133 Condominiums. The remainder of the Parkway Plaza development is allocated for retail and office uses. Two of the eight condominium buildings have been constructed on this residential block, and the subject property makes up the rest of the block. Staff would like to note one clarification since the report was completed pertaining to the total amount of residential floor area required. The report references a total of 124,000 square feet of residential floor area being required. This number is based on the approved plan's total floor area. The approved plan was approved in 2007, and that plan proposed 678,000 square feet of floor area. The proposed plan is substantially less floor area because the residential use component in the 2007 plan was substantially larger than what is proposed today. The reduction in overall floor area reduces the total amount of residential floor area that is required, and it is less than 124,000 square feet at about 100,000 square feet, and the proposed plan would meet that requirement.

A summary of the Interact Meeting is attached. Staff has received one written letter in opposition to this proposal, and it is also attached. We have also spoken with several individuals that live within the Parkway 133 Condominiums, all of whom are in opposition to the development. Staff is not supportive of this application for a number of reasons. First, the proposed residential use type does not satisfy the intent of the Mixed-Use District. Each of the eight proposed buildings will contain twelve bedrooms, which do not meet the definition of a dwelling unit under the Leawood Development Ordinance. Only residential use types that consist of dwelling units are intended to fulfill the residential requirements of the Mixed-Use District because the standards of the district reference only dwelling units. For instance, 80% of the dwelling units must be a minimum of 1,000 square feet in area with the remaining being at least 750 square feet in area. Therefore, even if the bedrooms fit within the definition of a dwelling unit, it would not meet this floor area requirement. The subject property is not the appropriate location for the proposed use as well. Parkway Plaza was originally envisioned to contain 96 residential units and eight three-level condominium buildings, all located within the block containing the subject property. Two of these buildings have been constructed. The proposed use would consume the remainder of the residential block within Parkway Plaza and thus would preclude the opportunity for the future development of more appropriate residential use within Parkway Plaza. Further, Parkway Plaza was designed and is intended to be an active, Mixed-Use pedestrian-oriented development. Fulfillment of the stated intent requires complimentary use types, and within a Mixed-Use development, that is one in which the residents are able to walk to surrounding uses. The proposed use neither contributes to nor benefits from the surrounding uses to the extent necessary to create a pedestrian-oriented environment. While staff finds merit in the proposed use, we do not believe this use type is appropriate in a Mixed-Use District, particularly when the use occupies a majority of the land dedicated for residential use. The proposed use may be appropriate in some Mixed-Use developments if its inclusion in the development is contemplated at the time that the development is initially proposed or if the development accommodates significantly greater amount of floor area to active residential use types. For these reasons, staff is recommending denial of this application. Should the Planning Commission wish to recommend approval of the application, we are recommending stipulations provided in the Staff Report.

Comm. Elkins: Several times, you referenced the intent of the Mixed-Use zoning classification. Is that intent expressed in the ordinance itself?

Mr. Rexwinkle: Yes, it is in the text of the ordinance.

Comm. Williams: Could you refresh our memories on the assisted living facility that was approved for the Villaggio development?

Mr. Klein: The Villaggio development was different than Parkway Plaza in that it was actually zoned not MX-D, which had a residential element. It was divided into several zoning districts: SD-O (Planned Office), SD-CR (Planned General Retail) and also RP-4 and RP-3. The RP-3 section was on the south side of 137th Street, which is where they were proposing the assisted and independent living facility.

Chair Rohlf: Could you repeat the square footage discrepancy?

Mr. Rexwinkle: The plan approved in 2007, which is the existing approved plan for Parkway Plaza, proposes a total of 678,366 total square feet. About 53% of that total floor area was residential, according to that plan, was 363,000 square feet. That is being reduced substantially down to a total of 124,000 square feet. That difference reduces the total floor area, which thereby reduces the amount of residential floor area that's required.

Chair Rohlf: How many units are in the two existing condominium buildings?

Mr. Rexwinkle: I'm not 100% sure. I believe it is twelve in each one.

Chair Rohlf: Given the remaining square footage available for the residential component, under the Mixed-Use ordinance, what would be allowed in there that is not a continuation of the condominium buildings?

Mr. Rexwinkle: It could be townhouses, apartments, condos in another format or single-family homes.

Chair Rohlf: Any other questions from staff? Then we'll hear from the applicant.

Applicant Presentation:

Richard Wetzler, 3000 W. 121st Street, Leawood, KS, appeared before the Planning Commission and made the following comments:

Mr. Wetzler: I represent the developer of this project, Max Cole, who is here with us this evening. He has built similar facilities in Wichita and other parts of the country. We also have Dan Foster with Schlegel Architectural Engineering. He will fill you in on the details of this project and why we think it's a good project that this body should approve. Chris Vick is representing the owner of the property, North American Savings Bank. They have been involved in this property for a number of years and are well aware of the issues associated with it.

This particular development was originally approved by the city in 2003. Originally, it was approved for pretty much all condominium units. In 2005, the western portion of the plan was changed, and it is the site of the Demdaco building that you all know. In that period of time following 2005, the two existing condominium units were constructed, and they are high-quality structures. At the time they were built, everyone assumed that type of facility would continue to be popular for many years and would hold and add value and be able to satisfy substantial special assessments that are occurring on this property. As we all know, the world changed over the last few years, and things that were possible in 2005 are no longer feasible. North American Savings Bank and my client, Mr. Cole, have come to the city with a proposed use that we think is compatible with the other properties in the area. We would be the first to agree with staff that it is not the same thing that was originally proposed. What you have offered to you is a high-quality project by a qualified developer who is willing to work with the city to come up with a plan and project that will meet the high standards that you have all come to expect. I'm going to turn this over to Dan Foster, who will go through the plan. After he finishes up, we are all happy to answer questions.

Dan Foster, Schlegel and Associates, 14920 W. 107th Street, Lenexa, KS, appeared before the Planning Commission and made the following comments:

Mr. Foster: (Refers to aerial renderings) As the staff outlined, the site is about eight acres in size, comprised of a parcel on the east and a parcel on the west, divided by a green space that contains an existing detention facility between the two condos and then also along 134th Street. The project does consist of eight buildings with five on the west and three on the east, for a total building area of 59,336 square feet. Each building will have twelve bedrooms that will have a common living area, kitchen area, nursing station and that type of thing. The site access on this plan is located in the same location as it was on the previous two approved plans for the condos, off the special intersections at 134th Street, which is a private drive. There is no vehicular access off 133rd Street. The layout for the parking areas is similar to what was laid out on the original plan where you came in and had a cul-de-sac with parking around it. You have that plan in your Staff Report. We have provided 57 parking spaces for the total site, which is calculated based on the use that the staff identified as nursing convalescent care facility. Those spaces exceed the parking requirement for that. Each building will have a secured entry. On the west side, the buildings will have a courtyard in the center that will have some walking paths and some private patio spaces. The entire area will be fenced in, but there will be no perimeter fencing. The buildings that back up to the lake and the ones on the east side also have that patio area that will be fenced in. The residents are monitored in terms of entering and exiting; they are not allowed to exit without signing out or without being accompanied by somebody. It's a very secure facility. On the Site Plan, we have indicated the location of the trash enclosures, which are adjacent to and tucked in behind buildings, away from the condo buildings. These are along 134th Street on the west side and then toward Roe Avenue on the east side between the two buildings that back up to Roe. The landscaping and buffer area is substantially more than what was in the original plan. The setback between the condo building now and the one that was going to be immediately to the south of that was 21 feet, and we are now at 31 feet. We have increased that by 10 feet. Additionally, we have added a substantial amount of evergreen shrubs and trees to provide more of a buffer between the two uses. We have increased the setbacks on those. The remainder of the landscaping will meet all the code and will probably exceed it. Max has built a couple of these in Wichita, and both of those are well landscaped and are very attractive. The development will be completed in two phases, with the first phase being the western portion with those five buildings and the second phase with the eastern portion with those three buildings. The storm water detention facilities have already been sized on this site to accommodate any development here, so there will be no additional storm water requirements needed. We have complied with the city's B&P code and are proposing to provide some rain gardens in order to comply with the water quality portion of that.

We feel that this project will have no additional impact on the condo owners for a couple of reasons. First, this use is a less intense use. You had nine three-story buildings originally approved on this site, and our plan is to add eight one-story buildings, which creates a much different scale in terms of mass and proximity to neighbors. We have made great efforts to locate all of those utilitarian facilities that are needed for any development, such as trash collection, deliveries and that type of thing. They will all be away from the condo owners on 134th. We have increased the setbacks and the landscaping. The buildings will be similar architecturally in the stucco, stone and tile roofing comparable to what is on the condos. From that standpoint, we feel this is a compatible use with the surrounding development. As far as supporting the commercial, even the condo uses would not provide 100% support for the retail uses. When retailers are looking to locate in places, they are looking for a large number of rooftops and users. The idea that this project alone would support that type of retail is not feasible. It would definitely compliment it, and I think this project would compliment it from the standpoint that those people have family members that will come visit them. There is staff there as well. They will drive by Starbuck's and buy a latte before visiting family. We feel that whether the condos or this project is there, the use of the commercial area and the types of people going in and out will probably be very comparable. The Staff Report spent a lot of time talking about the use in the MX-D district, and I'm glad Mr. Elkins brought it up because that's something we disagree with staff on. Under 16-2-6.4(a), that purpose of the MX-D district is stated in the first paragraph, which says, "This section establishes a zoning classification which permits planned developments that include a mixture of residential, commercial and cultural uses." It does not say those residential uses have to be classified as dwelling units. Secondly, in the next section, it says, "Permitted land uses in the MX-D shall be established

in conditions of the ordinance. Specific uses may include uses designated as permitted, planned or special use," which this project would be, "in any of the RP-2, RP-3, RP-4, SD-O, SD-NCR and SD-CR districts." All of the senior housing facilities, whether it is assisted living, convalescent, or nursing care are all classified as residential uses in the zoning code. That is specifically in the table under 16-2-7 that lists residential uses. I don't disagree with staff that the criteria underneath some of that speak to specific sizes of units, but that's if you're providing units. In this case, we're providing bedrooms. The question is the intent of the code. We feel the intent was that special uses are allowed in those underlying districts, and this use would be classified as such. From that perspective, we feel this does meet the intent of the MX-D from a residential perspective. I'm glad that staff noted that there was an error in the calculation because I was also going to bring that up. We do meet the floor area required in the MX-D.

The last thing that appeared in the Staff Report that caught the development team a little off-guard was the memo from the fire marshal. That information had not been provided to us previously in the staff comments, in any of the meetings or through any of the correspondence. To date, the only way I have it is by logging online and downloading the Staff Report. It was dated March 21st, and we downloaded the report the 22nd or the 23rd.

I would like to address a couple of the staff comments. The first has to do with access. Again, the access to this site, which is shown on the originally approved plan on Page 5 of the Staff Report is two cul-de-sacs. This plan has a similar arrangement. On the east side, we have a cul-de-sac, and the west side has two. From that perspective, this actually provides a little more access to those buildings. Secondly, we put on the SU30 template once we found that the fire marshal had a concern. On the eastern side, the bulb is large enough that the fire truck can actually drive through it completely without ever having to back up. They could not do that on the previous plan. On the west side, it is set up the same way as the condo plan was or what any other development in Leawood with cul-de-sacs have, where they have to do a three-point turnaround in that area. We've shown that it is a Y shape. We feel there is adequate turnaround for the fire truck in that zone. The second issue is dealing with the number of emergency calls. I think you probably saw this as a concern of some of the neighbors, and we addressed that. We talked to Max about the number of calls they've had or the number of times the ambulance has visited the facilities in Wichita. Most of those calls are non-emergency, meaning people are not calling 911; they are basically transport calls where somebody is sick and needs to get to the hospital. They don't have sirens blaring and lights flashing for those. In Wichita, they maybe have had five of those types of calls the 18 months those two have been open. The third point brought up was that we are a heavy user of emergency facilities. I wish we had gotten this sooner because I would have asked for backup call data on facilities like Sterling House or Sunrise as to how many calls a year the fire marshal actually has that are emergency calls. We just don't see it at the facility they have there. In my experience of doing a number of these assisted living, we just don't see those types of calls where they're coming once a week or once a month. The parking was also brought up, and I know the city has struggled with a project in terms of parking requirements. There have been some improvements, but that is a different use and setup than what we are talking about here; that is more of an assisted living situation with more people able to drive. Most of the residents are people who have mobility issues, so their transportation is typically done by a family member or another method in which they are not driving themselves. In the facility in Wichita, they have one person who drives there, and that is a spouse of one of the members. We feel that the parking on this site is plenty adequate. In fact, this has more parking than the facilities in Wichita, and they don't even fill up the parking lot. The idea of people parking in the drive aisle is not something you will see.

That covers the items addressed in the staff report. If you have any other questions, we would be happy to answer them.

Comm. Ramsey: In your layout on the west side, I understand you have the cul-de-sacs with access to Buildings 1, 4 and 5. I think what the fire marshal was looking for was a dedicated fire/ambulance lane near the entrance to each building. How does this design facilitate that?

Mr. Foster: Each entrance has a handicap space and an island with the sidewalk. That area is wide enough to park an ambulance, if necessary, at each entrance.

Comm. Ramsey: Do you mean to drive on the sidewalk?

Mr. Foster: (*Refers to display boards*) No, at each of these entry points, there is an island that is at least 10 feet wide where the ambulance could pull up into the drive, stop, get the gurney out and go into the building.

Comm. Ramsey: I understand that and am not arguing. I'm just trying to find out how Buildings 2 and 3 are covered.

Mr. Foster: They can come through the back side.

Comm. Ramsey: But they don't have direct access by way of a fire truck or ambulance?

Mr. Foster: If you mean to park immediately in front of the door, then they don't.

Comm. Ramsey: That's what I mean.

Mr. Foster: As far as the fire service, these are fire-compressed buildings, and they also can park and utilize, both in this plan and the approved condo plan, Briar, 133rd and 134th Streets for their access.

Comm. Williams: You've talked at length about residential use being compatible and allowed in this particular area, but what I haven't heard from you is the compatibility with this type of residential use with the type of existing high-quality, upper-end residential use that exists in the condos.

Mr. Foster: First of all, I would consider these buildings to be high quality because they're very similar in style.

Comm. Williams: I'm not arguing about the way they're built; I'm talking about the way they are used and how they relate to a facility next door.

Mr. Foster: These residents are paying a substantial amount of money to locate in these facilities. This is not a \$600 rent deal; this is upwards of \$5,000 a month. These folks are putting out a substantial amount of money to be able to live in this type of facility, which is trying to get more toward a single-family use in style so as they are moving out of their single-family home, where they have been comfortable for a long period of time, they are moving into something that is similar to a single-family home, which is allowed in this district. It has a very similar character in that it is set up like a home with a single living area, kitchen area and bedroom. In my mind, it is a different way for them to be able to carry on their lifestyle in this home, even though they are not able to be as mobile as they used to be. I do think they are comparable from the standpoint of high end.

Comm. Williams: Would the bank that owns this property and wants to sell it for this development take the same approach on lending to a borrower for the condominiums and treat it as a high-end comparable use for appraisal purposes to where the people buying the condominiums can sell at a reasonable price, and a purchaser can get the financing for that purchase?

Mr. Foster: From an appraisal standpoint, I don't think you can legally count the two as equal. You are right in that one is ownership while the other is not. The bank is not going to lend, using them as a comparable appraisal.

Comm. Williams: When it comes down to determining appropriate use on a site and within a given zoning classification, you do have to consider the property values that will be affected by a use coming into the area. When you have the condos surrounded by this use versus another spot on the development, it might affect the lending.

Mr. Foster: First of all, there are other permitted uses, which by staff's own admission tonight, would be allowed and supported, such as multi-family rental. That is the same type of scenario. How can you say that you will support rental apartments next to the condo units but not a single-story, single-family style rental situation? I don't see that as being a valid argument. There are many places in the city where you have areas that are owned next to rentals. The value of the condos is going to be solely based on the value of the condos and what they are selling for in the market. It is not going to be based on the market value of this use or apartment use or a townhome use. Nothing restricts townhomes or condos from renting.

Comm. Elkins: Could you comment on the availability of public transportation to this facility?

Mr. Foster: Do you mean Johnson County Bus Service and that type of thing?

Comm. Elkins: Exactly; as you point out, these folks you anticipate living there are probably not going to have mobility of their own, so I'm curious about what is available.

Mr. Foster: To my knowledge, there is not any Johnson County transit. Anything they may need as far as transportation outside the building would be provided by companies that do just that. They come in with a small van and transport them to appointments and such. I don't see these folks as being able to utilize the public transportation because most of them have mobility issues.

Comm. Elkins: I would like to follow up on the question about compatibility. In your response, you seemed to equate permitted uses to satisfy the compatibility standard. What I am struggling with is that a major distinction I see in the ordinance is, for the use you propose, a Special Use Permit is required. Certainly, there are a variety of permitted uses for residential, but what distinguishes your use is the permit. One of the criteria you have an obligation to establish to support a recommendation from us for the issuance of the Special Use Permit is, indeed, compatibility with the use that is currently in use in the surrounding areas. I'm looking for more from you because I feel the standard for you is a little higher than it would be for others because you're asking us for a Special Use Permit. I'd like for you to go more into what your thoughts are with respect to the compatibility of the use, given the current use of the condominiums that are there.

Mr. Foster: Again, from an architectural standpoint, it is similar higher-end materials. From a residential use perspective, by right, somebody could come into this district and put an apartment complex or rental unit in. Even though this requires a Special Use Permit, it is a similar type of use in that it is a rental-type situation. Those are comparable. If you allow one, by right, then this should be allowed as well. I think where the special use comes in is some of the concerns that have been raised by staff and the fire marshal and the neighbors. If you have nursing care facilities, what is the operation of those? We have addressed the emergency vehicles. Those are concerns that come up, and I think what is different about this facility is it does not have that level of emergency calls. A hospital is another example of something that requires a Special Use Permit because it is a medical facility that has a lot of different types of emergency traffic. That is on the extreme end of the scale.

Comm. Ramsey: My fellow commissioners have struck a chord with me. I think what we're struggling with on compatibility is if this is the best you all can do in terms of use because what we're interested in seeing and have a responsibility to expect is to make sure that the best and highest use is going to be developed on that property and not to facilitate someone coming along and saying, "I've got a business plan. I know the bank would like to sell the property." I'm not saying there is anything wrong with these types of applications

or this type of commerce because it is a business. I am asking if this is a reasonable place to put this type of operation, and if this is the highest use for this particular land.

Mr. Foster: I think it is for a number of reasons. This use and an apartment use could potentially be equal. This provides an opportunity for your residents who live in the area to stay in the area. That is one of the big things people look for when they are looking for an assisted living facility. They want to stay in that same neighborhood. Within this area, it makes a lot of sense when you look at what is out there regionally. This site makes good sense because you're utilizing it as a transition zone from commercial to single-family residential, which is exactly what the condos were set there for. Could you put an apartment project there? It's probably not going to happen for a long time. Chris has said that he doesn't have people beating down the door to purchase the land and definitely not to build condos there. That market is long past, and we are not going to see that anytime soon. The next possible thing might be a rental situation. In my mind, I think this use would be compatible. There is also a big need for it in the community and the region, as the population is aging.

Comm. Roberson: Is this foreclosed property?

Mr. Foster: No.

Comm. Roberson: You are describing this as an assisted living facility. This is not an assisted living facility; this is a convalescent nursing home. Will this property also accommodate memory/dementia care?

Mr. Foster: It could, but it will not.

Comm. Roberson: So what you've got is a sedentary community that you're proposing where these individuals will not be part of the community but will be pretty much confined to a building. In essence, you have no activity; whereas, if you were to put some of these other types of units in here, such as townhomes or single-family homes, you would have an active community at that point in time with individuals coming and going from their homes. In this situation, you may have an occasional visitor coming, but the vast majority of the time, you will see no activity. Quite frankly, the staff is not going to be active anywhere but inside. I still don't understand how you view this as compatible.

Mr. Foster: I think it goes back to visitors. Even if there were condo units there, my experience has been that even though I may live next to a restaurant, I may not frequent the restaurant; I may drive somewhere else. Just because there are people living next to the commercial, it doesn't mean they will be going to it.

Comm. Roberson: But they may, and they have the opportunity and the ability to do that. The 96 individuals in these units do not have that capability.

Mr. Foster: That's a fair statement.

Comm. Roberson: They don't have the capability of the walking paths that are currently being used or of just wandering around the area and taking a walk, even if they're not going to visit the businesses. You've already said they don't have the capability or the permission to do that. I still don't understand the compatibility, even with the area.

Chair Rohlf: Any other questions for the applicant? Then this case does require a Public Hearing. Is there anyone who would like to speak?

PUBLIC HEARING

Marcus Jackson, 4901 W. 133rd Street, Leawood, KS, appeared before the Planning Commission and made the following comments:

Mr. Jackson: I would like to start and say that we moved to Leawood because of the well-kept neighborhoods, the shopping centers, the great residential homes, strong city programs and the emphasis on separation from residential homes and retirement homes. Within a two-mile area of us are presently four retirement homes: 119th and Lamar, 119th and Rosewood, 123rd and Nall and 130th and Metcalf. All of these retirement homes have good separation between the retirement home and the residential areas. All four have vacancies at this time. When I first moved to town, we moved to Bridgewood, which is right across from 133rd Street. We lived there for 16 years, and that's because we were living where we wanted to live, which was in the City of Leawood. We had opportunities to go, like most people have had, but we chose to live in Leawood. At that time, we noticed the condominiums being built across the street. After 16 years of living in Bridgewood, we thought it was time to downsize. I was one of the first individuals to sign a contract at Parkway because it had everything that a person wanted. Also, we had to look at the future, and the future looked terrific living right there in the area. After three or four weeks, I received an assessment letter from the city for \$14,000. I didn't expect to receive it because, as you know, \$14,000 right off the top is pretty heavy for anyone. After further review, I found that the \$14,000 was going to help complete the development of the Parkway Plaza area between 133rd and 135th Street and Roe on one side and Briar on the other side. Having heard that, it made my move feel better.

I would say let's keep Leawood number one, particularly for all the residents who are living here, and let's encourage people that want to live in a great area and a great city to move into Leawood. But with the retirement home that's being proposed, I just don't think there is enough land there. It's too tight. With it being that tight, there is no separation between what everyone is calling the condominiums that are homes to us. There is not enough separation between the homes of condominiums and the retirement homes. Then when you think about the pond in the middle, it even makes it tighter. We that live in the backside there might as well not go out on the patio because there is no view, and we won't get fresh air because all of it will be blocked out. There is not enough separation there. If I go back and look at these other four retirement homes that I visited, I noticed separation. With this one here, it's just too tight. I'm not against a mixed development; I think it's great. We have it there with the shopping center, businesses, doctors' offices and Demdaco. The mix is good, but I don't think this is a fit at all. I also don't agree with the fact that there is not going to be interest in building some residential situation there. It doesn't have to be a condo; it could be a patio home. There are a lot of developers out there that I think would be interested if they knew more about what was going on. I don't think a lot of them know the land is available and all these different things. Thank you.

Stanley Armbruster, President of Parkway 133 Condominium Association, 4801 W. 133rd Street, Unit 102, Leawood, KS, appeared before the Planning Commission and made the following comments:

Mr. Armbruster: Thanks for the opportunity to address the Planning Commission in opposition to the Special Use Permit for this facility at Parkway Plaza. Residents of Parkway 133 are out here in force against this facility. I'd like to mention some of the impacts to the facility. Like the rest of the country, Parkway 133 suffered the impact of the Great Recession. When it hit, we were about 50% sold out, and nothing has happened since then. Rentals do happen, but the rental people are starting to move out. In the last year, we've had two short sales, one market-price sale and an investor come in and buy up the mortgages on the rest of the units. This investor has finished off the remaining units and is paying dues on all the units. The homes association took over control from the developer last fall. Now, we have three pending market sales that are going to close the next couple months. We're starting to come back. The residents have hope. We feel this project will kill that revival and kill our hope.

I don't know about emergency facilities, but I would have to think the fire marshal knows the frequency of emergency vehicles for this type of establishment. Again, they come flying in there with sirens and flashing lights all hours of the day, particularly at night, and it will be right outside our bedroom windows.

That will impact our quality, and we think it will impact the potential of the homes, too. He mentioned a business plan. I don't know what that is. We've asked them to give us some indication about why they think the facility is viable here. The response has been like a line from the movie Field of Dreams, "Build it and they will come." Their comment was, "We built the first facility in Wichita, and it filled up in three months." Well, this isn't Wichita, and the facility they're building here isn't the Wichita facility. The comment was made that people want to move to this facility to stay in the area. Well, the first facility they built in Wichita had a median annual income of \$34,000. The second one they built had a median annual income of \$64,000. Parkway Plaza area has a median income of \$107,000. The type of facility the local residents are going to choose to move into for this type of care is definitely going to be influenced by the money that they have to do it. I guess we question it. Also, if you look at the Kansas Department of Aging licensing of home plus facilities like this, you will see there are 53 home plus facilities in Wichita and only twelve in Johnson County. In all of Kansas, there are 114, and almost half are in Wichita. Wichita seems to accept these facilities; I don't think Johnson County does. It was mentioned this would have eight buildings with twelve bedrooms. The facility they point to in Wichita is only four buildings with eight bedrooms and a clubhouse. The facilities in Wichita are not in mixed-use areas but rather in commercial areas. In fact, the first facility they built is just north of the airport across Kellogg Avenue. Regarding viability, the original Kansas law, until changed recently, allowed six bedrooms per home. Then it got changed to eight bedrooms per home. Now, it has been changed to twelve bedrooms per home. What they are proposing here is going to be the first twelve-bedroom complex with more than twice the buildings of their Wichita facilities, and it won't have a clubhouse. Are we going to be the test area for the first high-density home plus facility? They opened their first facility 18 months ago, so they don't have a lot of experience. They have the only two facilities in the state of Kansas that are not single homes; they have two four-plexes. We don't know if it's a proven concept, and do we want to be a test facility here? You seriously need to question the viability of this facility at Parkway Plaza. Additionally, they mentioned that nobody has expressed an interest in the property. Since the recession started, the entire 135th Street Corridor has had nothing happening. Now, in the last year, a couple buildings have been built at Parkway Plaza, so that's starting up. Parkway 133 is reviving with market sales occurring. Now is not the time to abandon the mixed-use concept just when it's starting to recover. Finally, I have a request. In June, Phil Acuff and I met with Max Cole, and he described the facility to us. We said we would look at it. He said, "If you don't want it, we won't build it." Well, the homeowners don't want it, and we ask Max Cole not to build it. Thank you.

Richard C. Hawk, 4801 W. 133rd Street, Leawood, KS, appeared before the Planning Commission and made the following comments:

Mr. Hawk: I live in the 133 condominium complex. One of my businesses is the Gaslight Grill, an upscale eating facility with live entertainment five nights each week, and it is located just four blocks from the proposed site of this project. When my wife and I decided to sell our home in Hallbrook Farms and invest \$2 million in a residence in Parkway 133, we did so without hesitation because of the tradition of the Leawood city government in protecting the integrity not only of the city, but of areas within the city. Even though there was vacant land around Parkway 133, we proceeded with great confidence that the integrity of the area would be protected by the city government. Similarly, when I decided to invest many millions of dollars in the Gaslight Grill, I did so with great confidence in the tradition of Leawood city government in protecting the integrity of areas within the city. Had this facility that is proposed tonight been in existence when we made the decision to invest \$2 million in a residence in Parkway 133, would we have made that decision? Absolutely not. If this project had been in consideration when I made a decision to make a much more substantial investment in the Gaslight Grill, would I have proceeded with the development in that location? Highly doubtful. People who reside in Leawood do so because of the quality of life, which is a result of many factors, not the least of which is the action and tradition of city government in protecting the integrity of areas within the city. I have to say, this Planning Commission, along with the planning staff and City Council deserves great credit and appreciation for your having established that tradition. I strongly believe that the proposed project would change the character of the area in which I reside and in which I have a business.

I'm not so sure that it wouldn't destroy the integrity of that area. Accordingly, I strongly urge you not to approve the proposed project.

Mary McCoy, 4901 W. 133rd Street, Leawood, KS, appeared before the Planning Commission and made the following comments:

Ms. McCoy: I own two condominiums in that building. My small part of this program is just to tell you I do know a lot about nursing, nursing care, nursing homes and hospitals. What you get from the university hospitals and the hospitals like we have around here are fine people to work. I must say, without any prejudice at all, that the level of quality of the help in a nursing care facility is the rock bottom of the barrel, and that is particularly true with the aides, not that they're not good if they're supervised, but they are the bottom of the barrel. People just don't want to work there unless they can't work anyplace else. Also at the boyfriend time, when they're being picked up at 11:00 or 7:00 in the morning, the night shift is always the dregs of the earth. I don't mean that as people but as far as quality of help. You will get ambulances coming in during the night. We are bringing in another group of people that aren't Leawood people, and it's just an element that we haven't faced before. Thank you.

Paul Cory, 4965 W. 132nd Terrace, Leawood, KS, appeared before the Planning Commission and made the following comments:

Mr. Cory: I represent the Bridgewood Homes Association. We are opposed to the development of the retirement community between Roe and Briar on 133rd Street. The reason we are opposed to this is when Parkway Plaza started, we had an original plan with a nice landscaping plan on the north side of 133rd Street. A lot of people think the north side of 133rd Street is owned by Bridgewood. It's not; it's part of the Parkway Plaza project. Since the development has had problems, that area has been forgotten. The irrigation system doesn't work; 75% of the trees are dying or dead. There is basically no one taking care of it. When people walk down that walking path, people think that belongs to Bridgewood. It's giving a negative view of Bridgewood. We are excited that someone from the bank is here and they can start hopefully taking care of that land. We've had meetings with the old owner and talked to him about taking care of it and replacing the dead trees. We have talked to our City Council people, but it seems like the city has forgotten that piece of land, also. We need somebody to help us put some pressure on the new owners or with the new bank to take care of that piece of land for us. Thank you.

Lindsay Olson, 4901 W. 133rd, Leawood, KS, appeared before the Planning Commission and made the following comments:

Mr. Olson: My company is Mortgage Investment Trust Corporation, and we are the one that Mr. Armbruster referred to earlier when we came in and acquired the development loan for the Parkway 133 condos. We are in the process of finishing that out in cooperation with the original developers in getting those units sold. Before I acquired that loan, in my due diligence process, one of the things I looked at was that surrounding land, what could happen on it and if it would be detrimental to our investment in this loan and in the property. We were able to rely on the existing zoning plans for that property and felt comfortable that even if the condominium projects that were originally planned weren't feasible, what was permitted in that spot would be in character with the existing development and would help support the values that are there. In my opinion, this particular proposal would have a detrimental impact on the existing property values. I would hope the commission would recommend against it. Thank you for your time.

Chris Vick, North American Savings Bank appeared before the Planning Commission and made the following comments:

Mr. Vick: With regard to this project as a whole with property values going down if this happened, the property values have already gone down. This is not a situation where, if we don't do anything with this site, the property values will stay the same. We've had the property for a little over 16 months, and over that time, we've had zero calls for someone interested in doing condos, despite the fact that the price of the ground is pennies on the dollar compared to what it once was. This is an issue where, dealing with city staff, we've yet to get one use they would permit, other than condos. The only calls we've gotten so far that are interested in this site are senior living developments such as this. To me, that means this is a compatible use because the only people interested in investing money are calling for this use. That's all I have.

As no one else was present to speak, a motion to close the Public Hearing was made by Jackson; seconded by Neff-Brain. Motion approved with a unanimous vote of 8-0. For: Pateidl, Roberson, Jackson, Neff-Brain, Williams, Elkins, Strauss and Ramsey.

Chair Rohlf: That takes us up to our discussion.

Comm. Neff-Brain: In the definition of Mixed Use, it talks about the mixture of residential, commercial and cultural uses in a single structure or multi structures. If all of these buildings had developed as condos, there would have been no mixed use. Is the mixed use the commercial?

Mr. Klein: This entire property is actually zoned Mixed Use. This was a time in the development when we had Mission Farms that was located up north, and we had vertical integration of mixed uses. Then this particular project was proposing a residential along the north side of 134th Street, which technically is a private drive. I remember, as this project was going forward, there was a lot of discussion about why it wasn't integrated, how we could tie it together more and how we could encourage pedestrian traffic. It was also insinuated that this wasn't intended to be a place where people live, work and play. There is plenty of planning literature out there that more or less defines Mixed Use in that light. However, it does state that "The district allows for a traditional town center marketplace development and other coordinated pedestrian-oriented Mixed-Use development by authorizing interrelated uses, structures and specific additional regulations of design, architecture, lighting, green space and other site requirements appropriate to ensure that the location of the employment and retail centers in proximity to higher-density housing." It goes on to say in Item B, "Each Mixed Use Development district shall include a mix of both multi-family residential and commercial uses, but not less than 20% of the total gross floor area constructed dedicated to residential uses." The whole intent of this development at the time that it actually went through approval was to ensure that there was a lot of pedestrian connection between the homes on that north side of 134th Street. Staff agrees that the use they are proposing is very necessary and nice. It's just that the reason that it requires a Special Use Permit is so that it allows the Planning Commission and City Council to take a look at that particular use and see if it fits within that development. Staff would be supportive if it were integrated in a way that was originally thought of or didn't replace the residential component, which kind of wipes out the whole idea of allowing the pedestrian connection and interaction with living, working and shopping. We've had the assisted and independent living used as transitional zones in other parts of the city. Commissioner Williams talked about Villaggio. In that case, we actually had 137th Street that separated. There was no opportunity for a pedestrian connection; 134th Street is a different animal. It's private with on-street parking. They had nodes with pedestrian connections shown. There was a lot of discussion about that as this development got approved. Staff is afraid that, if this gets approved, we lose that opportunity. We would have a lot less parking. It's not like these will be converted into condominiums or apartments down the road because the parking will not be there.

Comm. Neff-Brain: Back to my question, where is the Mixed Use defined?

Mr. Klein: It is 133rd down to 135th Street and then Roe to where it joins Overland Park.

Chair Rohlf: Any other questions? Then we are up to the discussion part of this case.

Comm. Elkins: I think I will be voting to side with staff and recommend to the Governing Body that the application be denied. I, too, would share staff's view that there is a need in the community of Leawood for this particular use. I think it's an area that we're underserved in at this point in time, but I would also agree that this isn't the place for it. I'm not sure I agree with staff on their perception or their analysis that, under the definition of MX-D that this is not a residential use; I think it is probably a residential use. I would agree that the MX-D description in the ordinance emphasizes the pedestrian-oriented development. In complete candor, the applicant has advised us that the residents of the facility they're contemplating would not be in a position to take advantage of that pedestrian-oriented development. Secondly and of greater importance, our ordinance recognizes that the convalescent nursing home use is such a use that it requires the approval of a Special Use Permit. Certainly, the standards that I mentioned in the questioning of the applicant relating to the Special Use Permit and the requirements they have to demonstrate the Special Use Permit is warranted really relates to this idea of compatibility. I would disagree respectfully that a permitted use is a compatible use. I think they failed to make the showing necessary to justify that the use they propose is compatible with the pre-existing use of the residential facilities that are there and with the idea that the Mixed-Use Development district. For that reason as well, the application does not warrant approval.

Comm. Neff-Brain: I will also be voting against the application. I feel elder care in this area is very important, and I think an elder care facility off 135th Street is a good location normally because of the emergency vehicles that would come down a large highway. However, the residential owners of the condo bought those units depending on this definition of Mixed-Use. I feel very strongly that they should have been able to rely on that zoning district in making their purchases. I don't feel like what is proposed to go in there fits within the definition as this plan now sits. If it was maybe one high rise elder care unit and there was other residential around it, it might be a different story, but not as it is presented.

Comm. Jackson: I think we have to look at the health and welfare of the entire community, which includes our elderly, of course. We are a quickly aging population. I don't have an issue with putting a facility like this in the area. My issue with this particular one is the layout. I do have an issue with the building. In the upper northwest corner, I don't think it has sufficient access for ambulance and fire. As immobile as these people will be, we need to have easy access for the fire department and easy access for moving them out of the building if necessary. I think it could be planned so it would work, but this isn't the plan.

Comm. Strauss: I want to add to Commissioner Neff-Brain's comment that the plan was set out, and the residential buyers understood the plan. In addition to that, I'd like to add that the commercial businesses also understood it to be more of a residential use, and that's what they were counting on when they moved into the area. By definition, what we're talking about is a business. If it doesn't turn a profit, then it wouldn't survive, so I think of it more as a business and not meeting the definition of pedestrian unit with pedestrian-oriented residences to be able to use the businesses. Yes, the comment was made that the businesses won't rely 100% on this residential area, but they moved into the area with the understanding that it was going to be a market they could tap into where people could walk to their businesses and frequent them. I would also vote against this plan.

Comm. Williams: I don't have a lot to add after the fine comments; I would just like to say that I concur with my colleagues on many of the issues. I think we do need to look at the health and welfare of the aging population in Leawood. Having facilities like these close to the community is good for the residents and their families, but the issue does come down to where to put them in relation to other developments. We have an existing development with the condos and businesses. I could see this type of business within this development, as I think I commented earlier, where it's onsite but not wrapped around two very nice upper-end condos. That's the real issue here. It's not an appropriate plan and use for what is there in the immediate facility. With that in mind, I can't support this application.

Comm. Roberson: I would encourage the applicant not to give up in terms of looking for a location for this facility in Leawood. I agree with Commissioner Jackson that this type of facility probably is a viable business for Leawood; I just think that you need to look at a different location. I encourage you to keep looking and don't give up with this process.

Comm. Jackson: It sounds like we want to move the elderly off into secluded spots. I think it's very important for their health that they're in an area that's more vital and energetic than a secluded area. It's better for the entire family and the health of the elderly to be around that vitality. I don't think it needs to be off in its own little neck of the woods.

Chair Rohlf: If there are no other comments, I would ask for a motion.

A motion to recommend denial of CASE 92-11 – PARKWAY PLAZA – RETIREMENT HOMES – Request for approval of a Special Use Permit, Preliminary Plan and Preliminary Plat, located at the northwest corner of 135th Street and Roe Avenue – was made by Williams; seconded by Neff-Brain. Motion approved with a unanimous vote of 8-0. For: Pateidl, Roberson, Jackson, Neff-Brain, Williams, Elkins, Strauss and Ramsey.

CASE 49-12 – LEAWOOD DEVELOPMENT ORDINANCE AMENDMENT – ARTICLE 9, DEFINITIONS – Request for approval of an amendment to the Leawood Development Ordinance pertaining to definitions for signage. **PUBLIC HEARING**

Staff Presentation:

Assistant Director Mark Klein made the following presentation:

Mr. Klein: Madame Chair and members of the Planning Commission, this is Case 49-12 – Leawood Development Ordinance Amendment to Article 9 – Definitions pertaining to signage associated with menus and drive-throughs. This particular case is focused on the definition portion. The Planning Commission has had a number of Work Sessions with regard to signage associated with drive-throughs and menu displays, which are currently not addressed in the LDO. This case and the following case are trying to address that type of signage. This case is an attempt to design three types of signage. The proposed definitions are as follows:

- Drive-Through Menu Board: A vehicular-scaled sign provided with the drive-through that lists products and services offered.
- Drive-Through Order Confirmation Display: An electronic display used within a drive-through and lists information for the purposes of confirming information regarding orders, products and services.
- Menu Display: A pedestrian-scaled sign displayed at the entrance of a sit-down restaurant that lists the products and services offered.

Staff is recommending approval of this application and would be happy to answer any questions.

Chair Rohlf: Questions for staff? Then I will move to the Public Hearing.

PUBLIC HEARING

As no one was present to speak, a motion to close the Public Hearing was made by Williams; seconded by Elkins. Motion approved with a unanimous vote of 8-0. For: Pateidl, Roberson, Jackson, Neff-Brain, Williams, Elkins, Strauss and Ramsey.

A motion to recommend approval of CASE 49-12 – LEAWOOD DEVELOPMENT ORDINANCE AMENDMENT – ARTICLE 9 – DEFINITIONS – Request for approval of an amendment to the Leawood Development ordinance pertaining to definitions of signage – was made by Williams; seconded by Elkins. Motion approved with a unanimous vote of 8-0. For: Pateidl, Roberson, Jackson, Neff-Brain, Williams, Elkins, Strauss and Ramsey.

CASE 50-12 – LEAWOOD DEVELOPMENT ORDINANCE AMENDMENT – SECTION 16-4-6 – SIGN REGULATIONS – Request for approval of an amendment to the Leawood Development Ordinance pertaining to signage. **PUBLIC HEARING**

Staff Presentation:

Assistant Director Mark Klein made the following presentation:

Mr. Klein: Madame Chair and members of the Planning Commission, this is Case 50-12 – Leawood Development Ordinance Amendment to Section 16-4-6 – Sign Regulations. This particular amendment is proposing to do several things:

- Address signage that currently is not addressed in the LDO, specifically, drive-through menu boards, drive-through order confirmation displays and menu displays.
- Ensure compatibility with the rest of the sign ordinances, such that, in the prohibited sign list, it did not conflict with the new types of signage.
- Change the format of the table for signage because the old format listed the various sign types in boxes, creating difficulty in getting descriptive or detailed in order to adequately describe what we were trying to regulate. This new format provides more room, making it easier to amend.

With regard to the various changes to the ordinance, within the Prohibited Sign section, we tried to provide exceptions to the types of signs that are proposed with this ordinance, specifically, electronic graphic signs. We do add an exception for drive-through order confirmation displays, as they typically are electronic displays that will confirm your order, digital readout signs, with the exception of the drive-through order confirmation displays, as the confirmation displays can change automatically, and it could be interpreted as changeable copy. We also added signage associated with a drive-through other than explicitly permitted within this ordinance. The reason for that was to address things such as promotional signage or signage other than what is contemplated as far as the menu board. We then went on and had a change on Z, “Box or other sign types where the entire surface is illuminated” because typically menu boards have the entire face illuminated to list their products and services, so we added an exception with regard to that as well. The next change is striking the old table in the old layout with regard to permanent signage listed in 16-4-6.13. With the exception of adding the three sections we talked about with regard to drive-through menu boards, drive-through order confirmation displays and menu displays, we took the existing information within that old table and transferred it over to the new table. With regard to the drive-through menu boards, which is one of the sections that was added, we have a structural type as far as monument signs, so it would require it to be a monument and not a pole sign. Maximum number is one per drive-through lane, not to exceed two per establishment. Maximum area of sign would be 62 square feet. Maximum height would be 7 feet, maximum height of lettering would be 6 inches. Lighting would be either none, indirect or internally illuminated. Motion would not be allowed. Location shall be adjacent to or oriented toward the drive-through lane and shall be oriented away from adjacent areas that are used, zoned or master-planned as residential. It also has a screen requirement that the backs of the menu boards shall be screened with a masonry structure or evergreen landscaping of sufficient height to screen the back of the menu board.

The next category we added was drive-through order confirmation display. Again, the structure type would have to be a monument and not a pole sign. The maximum number would be one per drive-through lane, not to exceed two per establishment. Maximum area of the display where you see the screen would be 3 square feet. Maximum size of support structure would be 8 square feet and 5 feet in height for structures whose sole purpose is to house the order confirmation display, or as approved by the Governing Body if the order confirmation display is incorporated into another structure approved as part of the

development plan for the drive-through. What this is really trying to get at is if you have a separate structure that has the order confirmation, it limits the size of that structure to no more than 5 feet in height and 8 square feet in area. However, if they want to incorporate it into something like a canopy that offers weather protection, they would be allowed to have the order confirmation within there as long as it was approved by the Planning Commission and Governing Body.

Finally, the last item we added in this table is menu display. The structure type shall be placed inside a display case that should be integrated into the façade of the building, so it would not be allowed to be freestanding outside of the façade. Maximum number would be one per entrance, not to exceed two per tenant. Maximum area would be 2 square feet. Lighting would be none or indirect only. Motion would be none and location, none. Staff is recommending approval of this amendment, and we'll be happy to answer any questions.

Comm. Roberson: With this menu display, what if I had a chalkboard and stuck it outside and had my menu on that? What does that constitute?

Mr. Klein: I think it would be labor-intensive, but they might have somebody out there to erase and write it on. Typically, they are electronic, and that is what this is intended to cover.

Chair Rohlf: Any other questions for staff? This case also requires a Public Hearing.

PUBLIC HEARING

As no one was present to speak, a motion to close the Public Hearing was made by Roberson; seconded by Neff-Brain. Motion approved with a unanimous vote of 8-0. For: Pateidl, Roberson, Jackson, Neff-Brain, Williams, Elkins, Strauss and Ramsey.

Chair Rohlf: That leads us up to further discussion, and if there is none, I would ask for a motion.

A motion to recommend approval of CASE 50-12 – LEAWOOD DEVELOPMENT ORDINANCE AMENDMENT – SECTION 16-4-6, SIGN REGULATIONS – Request for approval of an amendment to the Leawood Development Ordinance pertaining to signage – was made by Roberson; seconded by Neff-Brain. Motion approved with a unanimous vote of 8-0. For: Pateidl, Roberson, Jackson, Neff-Brain, Williams, Elkins, Strauss and Ramsey.

Comm. Elkins: As a matter of privilege here, I'd like to commend staff for delivering to us this last week an updated version of the Leawood Development Ordinance. My personal copy had gotten almost unusable. Along that line, I'd also make a request. Since we all have current copies, assuming the Governing Body follows our recommendation and adopts these amendments to the ordinance, it would be very helpful if staff could distribute, after it's been approved, the updated pages so we can keep our personal copies of the ordinance current.

CASE 126-11 – CAMELOT COURT – MCDONALDS – Request for approval of a Preliminary Plan, Final Plan and Special Use Permit for a drive-through associated with a fast food restaurant use, located north of 119th Street and east of Roe Avenue. PUBLIC HEARING

Staff Presentation

Senior Planner Joe Rexwinkle made the following presentation:

Mr. Rexwinkle: Madame Chair and members of the Planning Commission, this is Case 126-11 – Request for approval of a Special Use Permit, Preliminary Plan and Final Plan for the McDonald's restaurant at the northeast corner of 119th Street and Roe Avenue. The applicant is proposing the addition of a second drive-

through lane, a building remodel and associated site improvements. The restaurant does not currently have a Special Use Permit for the existing drive-through; however, because the applicant is currently requesting to add an additional drive-through, a Special Use Permit is required at this time. The proposed building remodel will retain a majority of the existing red brick walls and a small portion of the red tile mansard roof. The plans propose the construction of a golden buff colored brick parapet above the existing red tile mansard roof, leaving a small portion of the roof remaining around the building. A majority of the north elevation and a smaller portion of the west elevation are proposed to consist of light colored ceramic tile walls, each accented with down-lit yellow canopies and yellow arched roof cap elements. The remainder of the north and west elevations will consist of clear glass storefront.

Associated with the drive-through lane and store remodel, the applicant will construct a right turn lane on northbound Roe Avenue to the private drive north of the site. This private drive provides access to the McDonald's site. As a consequence of the construction of this lane, the existing sidewalk along Roe Avenue will shift eastward. An additional sidewalk along the south side of the private drive will also be constructed along with the connection from this sidewalk to the building entrance. Crosswalks will be constructed of brick pavers.

A sign package has been submitted which proposes to retain the existing monument sign, add new directional signs, add a new building wall sign which consists of an internally illuminated yellow arch logo, a menu board for each of the two drive-through and a canopy sign on the west elevation reading, "Welcome." Regarding the directional signage, the ordinance permits a maximum of two directional signs and states that such signs must be monument signs. The sign package does not specify the quantity of the proposed directional signs, nor does it identify which two are proposed. Furthermore, the ordinance requires that these signs are monument signs, and the plans show pole signs. We understand the applicant intends to comply with the ordinance requirements, but as of the day the Planning Commission packet was prepared, we had not received revised plans.

The menu boards shown on the sign package are considered pole signs, and the text amendment that you just approved requires them to be monument signs. The welcome sign on the canopy on the west elevation is not permitted and should be removed. Regarding these signage issues, staff recommends stipulations 2 and 3. This afternoon, the applicant did submit sign plans showing the directional signs and the menu board signs; however, staff has not had time to review them, therefore, we recommend retaining stipulations 2 and 3. Though staff understands that only one wall sign is proposed, there are different plan sheets showing different quantities of wall signs. Because only one of these signs is permitted, staff recommends stipulation 4 to address this. The applicant is also proposing a deviation from the minimum required interior property line parking lot setback. The required minimum setback is 10 feet, and the existing parking lot is 4 feet from the property line. The applicant is requesting a deviation to allow the parking lot to remain at a 4-foot setback. Staff is supportive of this request.

Staff also has not been provided with full lighting details, and therefore, we are recommending stipulations 6-8 to address this. We recommend approval of this request, subject to the stipulations stated in the Staff Report, and I'd be happy to answer any questions you might have.

Comm. Elkins: Which sign is it that staff is recommending be omitted?

Mr. Rexwinkle: There is an architectural plan sheet that showed a sign that read "McDonald's" and an arch logo on the north elevation and an additional arch logo on the west elevation. That was what was submitted with the recent package, but it conflicts with the sign plan that shows one arch logo on the west elevation. That is the one that should be approved.

Comm. Elkins: In the plans I have with the case, I don't see the sign with "McDonald's" spelled out. What are we dealing with? Are we dealing with what we are all looking at here?

Mr. Rexwinkle: Yes, and now that I look through it again, I see that there is just one plan sheet that shows the arch logo on the west elevation. We had previously received a plan that showed those three additional

signs. When the staff report was written, that conflict existed; at the time the packet was put together, we had received one plan with the one sign.

Comm. Elkins: Just to make sure I am tracking, given what we have in front of us, there is not a staff recommendation that any of those signs be stricken.

Mr. Rexwinkle: A2.0 on the 7th plan sheet in shows one arch logo on the north elevation and one on the west elevation. The following page does as well, and within the sign package, which is several pages thereafter, it just shows the arch logo on the west elevation. We are saying the one that is in the sign package that just shows the arch logo on the west elevation is the one that should be approved.

Comm. Neff-Brain: I have a traffic question. I know I've seen these double lanes before and have even driven in them. It concerns me where the two cars merge into one right at the corner of that building from a traffic standpoint.

Mr. Rexwinkle: You could have the applicant answer any operational or functional issues with regard to that. We don't have an answer for that, really.

Mr. Coleman: They just alternate between the order box and the window.

Comm. Roberson: Why was there no traffic study? The traffic is a serious problem in that area, especially at busy hours.

Mr. Ley: We discussed that with the applicant, and by constructing that northbound right turn lane, it addresses and queuing onto Roe. Then they are providing additional storage onsite by creating the dual order windows. Lastly, they are providing No Parking signs on the private street. From what we've observed in the peak hours, people will park on the street, which blocks traffic on the private drive.

Comm. Roberson: That is correct, especially landscaping trucks and things with long trailers.

Mr. Ley: That's why we are stipulating that they put the No Parking signs on the street.

Comm. Roberson: But then they'll come in and take up the parking spots inside. That is a mess during busy hours, blocking traffic on the private street. I've not really seen it on Roe, although I've seen people slam on their brakes.

Comm. Jackson: What about this sign?

Mr. Rexwinkle: That's an existing monument sign that they're keeping.

Comm. Jackson: It doesn't comply with any new regulations, since it says "Drive Through," right?

Mr. Rexwinkle: That's true.

Comm. Jackson: If they're redoing everything, don't they have to comply with all these signs now?

Mr. Rexwinkle: Since they are not modifying that sign, it would just be a non-conforming sign, and they don't have to bring it into compliance.

Comm. Jackson: Even though they're modifying so many other things?

Mr. Rexwinkle: Correct.

Chair Rohlf: Any other questions for staff? Then we will hear from the applicant.

Applicant Presentation

John Petersen, Polsinelli Shughart, 6201 College Boulevard, Overland Park, KS, appeared before the Planning Commission and made the following comments:

Mr. Petersen: I am representing McDonald's in regard to this Special Use Permit, Revised Preliminary and Final Plan for the remodeling and efforts to improve efficiency. The staff presentation has adequately walked you through all the details, both in terms of the architectural changes to the building itself, the site operation issues involving adding a second drive-through lane as well as the sign package. We have reviewed all stipulations, and both in terms of their statement and requirement, we are in full compliance with your design guidelines with your architectural features, your newly passed sign ordinance, and public improvements that have been identified as necessary for safety and efficiency. I would like to address the two points raised by commissioners to staff. Regarding the divergence back into one lane, 65% of the McDonald's in the city utilize the dual lanes now, both for efficiency for the customers and free flow. The design allows for people to look, and staff indicated the ordering sequence. McDonald's has had no reported situation of any vehicles making any contact with another vehicle. In terms of the traffic, we want to make sure we get as many customers through the restaurant as we can. One of the primary reasons for going to a dual facility was to address, to the best extent possible, the situation you indicated, which is to make sure we move cars through safely, quickly and efficiently so we don't have onsite stacking that prevents people from parking in the designated parking spaces, make sure we don't have stacking back into the private drive aisle, and clearly so we don't have cars having to slow down to avoid stopped vehicles on the public street system. The double drive-through will allow cars to move through more quickly, and at the request of staff, capital investment was made to make public improvements for that right turn lane. In the event it would ever occur, the traffic would be out of the two through lanes from northbound traffic. I won't say it will totally alleviate the prime hour traffic issues, but we think this will vastly improve the situation. Conversely, just because we have a second drive-through, we don't think it will create an excessive amount of traffic in the area; it is primarily to handle the current customer base better and more efficiently. We'd be happy to answer any questions. We acknowledge all the requirements set forth in the stipulations.

Chair Rohlf: Questions for the applicant? This case also requires a Public Hearing.

PUBLIC HEARING

As no one was present to speak, a motion to close the Public Hearing was made by Jackson; seconded by Roberson. Motion approved with a unanimous vote of 8-0. For: Pateidl, Roberson, Jackson, Neff-Brain, Williams, Elkins, Strauss and Ramsey.

Chair Rohlf: That takes us up to discussion.

Comm. Neff-Brain: I do have one question. It appears in the notes that in 2004, a dual lane was approved. Why wasn't it built then? Was there not a need?

Mr. Petersen: I don't know why. I know that approval has expired, which is why we are here today. I think it might have had something to do with the requirement for the additional lane on Roe. Now, everyone believes it will be a good addition to the facility.

Comm. Jackson: I made clear in some of our Work Sessions that I am somewhat opposed to adding extra drive-throughs. In my mind, one is enough with the contribution to air pollution from these. I think we are

trying to reduce those around schools and other areas, and we need to continue to reduce the number of idling cars in our community, and I will not be supporting this.

Chair Rohlf: If there are no other comments, we're ready for a motion.

A motion to recommend approval of CASE 126-11 – CAMELOT COURT – MCDONALD'S – Request for approval of a Special Use Permit, Preliminary Plan and Final Plan, located at the northeast corner of 119th Street and Roe Avenue – with all 25 staff stipulations – was made by Strauss; seconded by Williams. Motion approved with a vote of 6-2. For: Pateidl, Roberson, Williams, Elkins, Strauss and Ramsey. Opposed: Jackson and Neff-Brain.

CASE 34-12 – CHRIST COMMUNITY EVANGELICAL FREE CHURCH – PHASE III – Request for approval of a Preliminary Plan, located north of 143rd Street and west of Kenneth Road – **PUBLIC HEARING.**

Staff Presentation:

Senior Planner Joe Rexwinkle made the following presentation:

Mr. Rexwinkle: Madame Chair and members of the Planning Commission, this is Case 34-12 – Request for approval of a Preliminary Plan for Christ Community Evangelical Free Church, Phase III. The applicant is requesting approval to construct a 10,790 square foot building addition that is two levels in height, as well as an outdoor playground and additional parking. The proposed development is divided into two phases with the first phase including the proposed building addition and the playground, and the second phase including the parking area. The existing buildings are surrounded by a parking lot to the east with a drive and smaller parking lot surrounding it on the north, west and south sides. The building addition is proposed to be located immediately west of the existing church on the site of an existing playground, which is used by the church-operated preschool. Due to this, the plan proposes relocating the playground west across the drive approximately 33 feet from the adjacent residential property line. The proposed parking lot would be located south of the existing parking lot and is proposed to be constructed when additional parking may be needed in the future. The building addition is proposed to be constructed primarily with buff-colored masonry units to match the primary material of the existing building, which was approved in 2002, prior to the adoption of the current Leawood Development Ordinance. The current ordinance prohibits the use of concrete masonry units as a building material. Due to this, staff is recommending that at the time of Final Plan, the applicant submit a different material that complies with the ordinance. Staff has also expressed some concern with the location of the proposed playground, given that it is being moved closer to a residential property line and also given the fact that it will be elevated above the adjacent residential property from 1 ½ feet to 8 feet. Staff has requested that the applicant relocate the playground; however, the applicant prefers to retain its location. In lieu of relocating, the applicant is proposing to line the top of the retaining wall with a row of evergreen trees to block the view of the neighboring residential properties from the playground and of the playground from the neighboring residential properties. Staff has not received any communication from any neighbors in opposition to this plan, and consequently, staff is not opposed to the location of the playground, given that its location is in compliance with the ordinance and the applicant is proposing a landscaping screen. Staff recommends approval of the Preliminary Plan, subject to the stipulations provided in the report.

Comm. Neff-Brain: It looks like children will have to cross the parking lot to get to the playground.

Mr. Rexwinkle: That is true. Crosswalks are proposed, and staff is not really concerned with the drive aisle because it is an area of low traffic.

Comm. Neff-Brain: So the playground will be totally fenced in, even from the driveway?

Mr. Rexwinkle: Yes, and also, no matter where they put the playground, they will have to cross a drive at some point because there is no room anywhere.

Comm. Neff-Brain: Unless you put the parking lot on the other side and put the playground right next to the building. That would pull it away from the houses, too. I wonder if that would be an option.

Mr. Rexwinkle: That is worth discussing.

Comm. Neff-Brain: That bothers me with cars coming in and out of parking spaces.

Chair Rohlf: Other questions of staff? Then we'll hear from the applicant.

Applicant Presentation:

Rich Kniss, 3613 W. 155th Street, Overland Park, KS, appeared before the Planning Commission and made the following comments:

Mr. Kniss: I am the architect for the project. We appreciate staff's time and effort on the project, having worked with them at the Interact Meetings and such. We are very pleased to be in front of you to present this very modest addition to the existing church facility. We are in support of the staff's recommendation for approval and the stipulations, but we would like clarification on one item and would like to respectfully disagree with another item. I would like to respond to Ms. Neff-Brain's comment while we're talking about the first item related to the playground. The times the playground is used do not have vehicular traffic. The parents drop the children off, and that is the only traffic. When the children go to the playground, they are escorted by the teachers across the marked path to the playground in a fully fenced location. In looking at relocating the drive and putting the playground closer to the building, we felt it didn't make sense to get the vehicles closer to the residential. We are well within the setbacks.

The item we would like clarified is Item 5 that talks about proposed equipment and providing evidence thereof to make sure the playground is safe. We fully support that. There is a piece of playground equipment they would like to relocate to the new area. It passes state inspections year after year; we simply have been searching for paperwork to find the support. We believe the intent was for any new playground equipment. The existing playground equipment is safe, and any new playground equipment would also meet those requirements.

The item we would like to talk about further is Item 6, which has to do with the material on the building. When we first started looking at this project, we were trying to figure out what the architecture would look like. The current building has two sections: the original building with synthetic stucco and metal roof and then the latest addition of a masonry block addition. We tried to figure if the new addition should match the adjacent addition or something different entirely. We came to the conclusion that it should be very much the same language as the adjacent building, which you can see in the photographs on the board. As we reviewed the ordinance in terms of materials, we noticed masonry was no longer permitted. We agree with the reason for the ordinance in keeping high quality materials. If this were a brand new building on a different site, we would totally support the fact that it should be brick or other material. We looked at options to try to figure what kind of material would blend and match, and there really aren't any that make sense. We believe that a consistent appearance is the best. In fact, we have actually matched the fenestration of the windows and where they're placed and the parapet heights to try to make these buildings blend together, to be seen as one rather than yet a third distinct architectural language. We believe that is the best approach and are respectfully requesting permission to deviate from the ordinance in this one instance related to the material. I have no further comments and would be happy to answer any questions we may have.

Comm. Neff-Brain: Is the masonry unit concrete block?

Mr. Klein: Technically, it is. We've actually had this kind of issue come up before with the Leawood Market Centers located south of 135th Street. They wanted to use Cherokee block, which was a little larger block masonry unit, and we didn't allow it there, either.

Comm. Neff-Brain: *inaudible question*

Mr. Klein: Part of it goes to the size and look of the block. A lot of the concrete block isn't color-through as well, but this one might be more so.

Mr. Coleman: It's a prohibited material under the LDO.

Comm. Roberson: Is it the size of the cinderblock?

Mr. Klein: It is larger than a clay-fired brick, but I don't know the exact dimensions.

Mr. Kniss: It is a scored unit that is 8 inches by 16 inches, but it appears as 8 x 8.

Comm. Elkins: Do we even have the authority to grant the requested deviation?

Mr. Coleman: No.

Comm. Pateidl: Can you tell us what that process might be, should they elect to pursue a deviation?

Mr. Coleman: There isn't a provision for the deviation for a prohibited building material. There are other options for building materials, such as brick and masonry stucco.

Comm. Roberson: So the Governing Body cannot provide a deviation?

Mr. Coleman: No.

Comm. Williams: I think that is an unfortunate situation in this case because if you go with stucco or brick, it will make this look out of place. I think they've done a fairly good job matching and carrying on the character. I think it is unfortunate that the material has been removed. I think it would be detrimental to the project not to carry the appearance.

Comm. Roberson: Especially since only three or four houses can see the building, and you can't see it from the road.

Comm. Williams: But it is not an issue we can resolve here tonight.

Comm. Strauss: I was wondering if the applicant could talk about the circulation patter of the parking lot. I'm looking at C3.1. I would like to know how you envision looking at this parking lot.

Mr. Kniss: This is a parking lot that would be planned for the future and not at this time. This would be during the peak periods. They would use this parking lot after going through the remainder of the parking lot. They would turn past the main entrance, come toward the east, take the first entrance in and park. They would ultimately exit on the east entry.

Comm. Strauss: So they come in of Kenneth Road, and the only ingress into the parking lot is the westernmost driveway. I'm not sure what the in arrow is on the easternmost driveway since you can't turn left there.

Mr. Kniss: That appears to be an error.

Comm. Strauss: Also, with all the cars coming in on that west driveway where the driveway narrows down to two-way traffic, and you talked about how this would be used during peak times, I'm wondering if this will cause traffic to back up with those cars waiting to turn left. That is the narrowest point in the driveway.

Mr. Kniss: We looked at that and didn't see it being a challenge.

Comm. Strauss: Is this a plan the fire department has commented on?

Mr. Rexwinkle: Yes, they have reviewed it, and they have no comments.

Chair Rohlf: Anything else for the applicant? This case does require a Public Hearing.

PUBLIC HEARING

As no one was present to speak, a motion to close the Public Hearing was made by Jackson; seconded by Roberson. Motion approved with a unanimous vote of 8-0. For: Pateidl, Roberson, Jackson, Neff-Brain, Williams, Elkins, Strauss and Ramsey.

Chair Rohlf: That takes us up to our discussion, leading to a motion.

Comm. Williams: I have a question relative to the material. We don't have the ability to approve that material, and I understand that, so the process to allow this material would be to change the LDO; is that correct?

Mr. Coleman: That would be the process. There are some good reasons for not allowing concrete block.

Comm. Williams: I understand there are good reasons, but as we see here tonight, there could be good exceptions to allow the concrete block. I would be looking for an exception for circumstances like this that would allow a property owner to match existing construction versus producing something that is dramatically different than what is already there.

Mr. Coleman: We can take that up in a Work Session if you would like.

Comm. Williams: It gets to my primary question. Say we approve this application tonight with the stipulations, does that preclude the applicant and Governing Body from holding off on approval of this until the LDO is changed to allow them to match the existing material, versus continuing this case?

Mr. Coleman: You could continue it. They would have to come back through and get the plan approved if it wasn't approved before you acted on it. If that was the intent, it would need to be continued.

Comm. Williams: If we approve this with Stipulation No. 6, does it preclude them to have the opportunity to match that material with a change in the LDO in the future?

Mr. Coleman: It would need to come back once the LDO was changed.

Comm. Roberson: When do you all plan on starting construction?

Mr. Kniss: We intend to start construction in July of this year.

Comm. Neff-Brain: Since we don't have the ability to approve exactly what you want, do you feel that the construction like your first building is feasible?

Mr. Kniss: There are a lot of feasible options, but that would not be the first choice. We looked at the brick as an option. The scale and proportion are entirely different. We have looked at limestone panels that are scored to reflect the same sort of image, but the materiality between the two will be distinctly different. You could not quite duplicate that look with stucco, either.

Mr. Coleman: They do make clay masonry units that are 8 x 8.

Mr. Kniss: We've not found that in our research.

Comm. Neff-Brain: Is that something you would find more acceptable?

Mr. Coleman: Or it could be a clay tile that would look similar. You can have brick match the concrete color.

Comm. Williams: Would they do that for this small a quantity?

Mr. Coleman: Yes, they would; I've done it.

Comm. Jackson: What would you prefer: a continuance to try to get the LDO changed or a continuance and you find a different material?

Mr. Kniss: Let me confer with my client.

Chair Rohlf: I have one more question before you do that. Is this the last phase of this church? Is there anything else that would be coming up?

Mr. Kniss: As we understand, the Preliminary Plan is valid for a five-year period, and we have nothing else planned down the road in that period. The way the plan is developed, we look out five years, and nothing else is planned. I can't speculate beyond that.

Chair Rohlf: Is there room on the property to add any other buildings?

Mr. Kniss: There is.

Comm. Pateid: Clearly, there is some consensus among the commissioners that, for new construction, concrete masonry units are something we would oppose; yet, there are also cases where you're adding to an existing structure that was built prior to the passage of this provision of the LDO, where it just makes good old-fashioned sense. I understand where we are with respect to the stipulations as they are written, and this will be a question directed to staff. No. 6 says, "At the time of Final Plan application, the applicant shall provide building elevations which propose building material that is permitted by the Leawood Development Ordinance in lieu of the proposed buff concrete masonry unit." I would add to that, ". . . unless the Leawood Development Ordinance is amended to allow the proposed material prior to the filing for a Building Permit." Should that revision be made to Stipulation No. 6, would that alter our position on reapplication in the event that the Planning Commission decided to take up this issue of building materials for existing structures in a workshop and propose a revision to the LDO to the Governing Body?

Mr. Coleman: You can add that stipulation.

Comm. Pateidl: Would that allow them to proceed without making reapplications and re-filings?

Mr. Coleman: If it was continued, it would be; right now, it is scheduled to be heard by the Governing Body in the next meeting.

Comm. Pateidl: If we approve it with that amendment to the stipulation and subsequently pass a revision or amendment to the LDO, what would the applicant have to do?

Mr. Coleman: That would satisfy that, but it would still have to be continued.

Comm. Neff-Brain: Why would it have to be continued if it passed with that provision?

Mr. Coleman: You would have to change the LDO prior to action by the Governing Body.

Comm. Neff-Brain: Even if the Governing Body passed it with that provision?

Mr. Coleman: I guess they could. The reason I'm saying this is they usually frown on doing that.

Chair Rohlf: They wouldn't want to do that.

Mr. Coleman: I suppose it is technically possible, but that's not something they have championed doing.

Comm. Pateidl: Asking my fellow commissioners, is there anybody who would be opposed to pursuing a change in the LDO as it relates to existing structures such as we're faced with in this?

Comm. Jackson: I would have to think about it a bit more with Commissioner Rohlf's comment that there is the chance that more buildings will go up here, and then do you allow them all?

Comm. Pateidl: We are talking about additions to existing facilities and not new buildings.

Comm. Ramsey: That's why I think it would be wise to do it in a workshop because I would be concerned about the vehicle we would use to do this. I would only be comfortable with some sort of appeal process with specific requirements needing to be met to qualify for the appeal.

Comm. Neff-Brain: Certainly, if it's a new building, even on the grounds of this church, they couldn't use this kind of block. I also agree, on an existing building, a small addition like this would be more offensive with allowing a third material.

Chair Rohlf: Has the applicant had a chance to confer with his client?

Mr. Kniss: Yes, the applicant would like to pursue getting the LDO modified. We understand we may need to continue it or revise language, we feel strongly about it and would like to pursue getting the material on. We would be in support of the discussion about connected or attached building additions with that.

Comm. Neff-Brain: I would like to have an opportunity to look at the block, too.

Ms. Shearer: I would just like to state for the record that staff has not had a chance to confer with the City Administrator or any member of the Governing Body to see if there is support of this. Even if we pursue the amendment, we don't know if we have the support of the Council. I think we should also investigate that as well.

Comm. Roberson: I agree; I think you should not count on the LDO being changed. Even if we decide to think about changing it, we may not meet for quite some time, which is another issue.

Mr. Coleman: I think that if I were the applicant, my concern would be the time frame. The agenda for the Council and their workshops extends past August right now. I'm not sure when the earliest workshop would take place; it could be in September even if they choose to have one.

Chair Rohlf: Does that change your mind at all?

Mr. Coleman: We haven't had a chance to discuss this with the administrator or any of the City Council members, so I'm not sure how they would want to handle it. I just know that their workshop agenda for every month is filled up through August.

Chair Rohlf: If we were to approve this and it were to go to Council, don't you think they would raise some of the same concerns we have about matching the material? I think that, for as small as this addition is, it seems like it falls under a different type of structure.

Mr. Coleman: I don't know how they would perceive it. I do know we have a lot of old structures that do have masonry concrete block, including many older shopping centers. There is certainly the possibility that those shopping centers would not be upgraded but simply added on to with additional split-face concrete block.

Chair Rohlf: Do you know why it was changed in the LDO?

Mr. Coleman: I don't know the entire history, but I can give you my read on a lot of concrete block. One is that it needs to be sealed on a regular basis. It is highly porous. It gets a lot of algae growth. It's inferior to clay brick. There are a lot of reasons that the ordinance was developed that way. There are concrete split-face block structures that were built in the '60's, '70's, '80's, and even the '90's in Leawood. They don't weather or age well. They have to be highly maintained.

Comm. Ramsey: We don't disagree with that. The issue is this doesn't pass the common sense test, at least for me. But, I agree with you. I agree with counsel that I don't know that the City Council would necessarily go along with it. I could see this process of reviewing this going out over a significant amount of time. We have to be so careful that we don't start the slippery slope.

Comm. Williams: One way to judge Council's reaction is to move it up and not continue it, using the modified stipulation as Mr. Pateidl proposed. If they are not interested in modifying the LDO, it at least allows the applicant to move forward and not delay until late this year.

Comm. Ramsey: I would agree.

Comm. Neff-Brain: That's a good idea.

Chair Rohlf: That's the best approach, I think.

Mr. Kniss: In the meantime, we will continue to search out other options. We're not done exploring, but we haven't found anything yet. The client is interested in the LDO process and how that might be affected for projects such as this.

Comm. Roberson: Change is very slow.

Comm. Neff-Brain: And that is because it's not just this one property; it is all properties in Leawood that could be affected.

Ms. Shearer: For all we know, we may get feedback tomorrow telling us to draft the amendment, and it won't require a Work Session. We truly don't know where we stand with this as of right now.

Comm. Williams: Again, I think by approving this, it gives them the option to move the project forward, and there is an option to pursue an amendment to the LDO or not.

Chair Rohlf: Does that work for you, then?

Mr. Kniss: Yes, it does.

Chair Rohlf: Mr. Pateidl, could you make the motion with your wording?

A motion to recommend approval of CASE 34-12 – CHRIST COMMUNITY EVANGELICAL FREE CHURCH – PHASE III – Request for approval of a Preliminary Plan, located north of 143rd Street and west of Kenneth Road, subject to the stipulations provided in the report by staff with the modification to Stipulation No. 6 to read as follows: “At the time of Final Plan application, the applicant shall provide building elevations which propose building material that is permitted by the Leawood Development Ordinance in lieu of the proposed buff-colored masonry unit unless the Leawood Development Ordinance is amended to allow the concrete masonry unit as proposed, prior to the filing for building permits – was made by Pateidl; seconded by Neff-Brain.

Comm. Strauss: I was under the impression that the applicant was also looking for a modification to Stipulation No. 5 to say something like, “At the time of Final Plan application, the applicant shall submit details regarding the proposed new playground” and that he was requesting the details only provided for new equipment. Is that still the case?

Comm. Neff-Brain: I don't want it to look like we are approving anything that didn't come to regulation from a liability standpoint.

Comm. Strauss: Maybe we need explanation from the applicant because I understood him to say that he was able to provide some certification that the existing equipment was meeting some sort of code but not these codes identified here. Maybe I misunderstood that.

Comm. Neff-Brain: But these codes here are what are in existence now when we would be making the permit.

Comm. Ramsey: What he asked was if this code applies to existing equipment that can't be substantiated to that code. So does it apply to the movement of existing equipment?

Mr. Coleman: They are still supposed to have all their equipment comply, whether it is new or old.

Comm. Neff-Brain: What kind of equipment are we talking about?

Mr. Coleman: It is like the ADA; if your building has an old toilet that doesn't comply with current ADA standards, you need to bring it into compliance.

Comm. Williams: Once you move it and relocate it, you have to comply with current regulations.

Mr. Coleman: Yes.

Chair Rohlf: So I believe No. 5 should stay as written. We have the motion and second with a modification to No. 6.

Motion approved with a unanimous vote of 7-1. For: Pateidl, Roberson, Jackson, Neff-Brain, Williams, Strauss and Ramsey. Opposed: Elkins.

MEETING ADJOURNED.