

**CITY OF LEAVENWORTH PLANNING COMMISSION**  
**COMMISSION CHAMBERS, CITY HALL**  
100 N 5<sup>th</sup> Street, Leavenworth, Kansas 66048  
**REGULAR SESSION**  
**Monday, September 11, 2023**  
6:00 PM

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**CALL TO ORDER:**

**Commissioners Present**

Don Homan  
James Diggs  
Brian Stephens  
Maryann Neeland

**Commissioners Absent**

Bill Waugh  
Sherry Hines Whitson  
Kathy Kem

**City Staff Present**

Julie Hurley  
Michelle Baragary  
Bethany Falvey

Chairman Homan called the meeting to order at 6:13 p.m. and noted a quorum was present.

**APPROVAL OF MINUTES:** July 10, 2023

Chairman Homan asked for questions, comments or a motion on the minutes presented for approval: July 10, 2023. Commissioner Stephens moved to approve the minutes as presented, seconded by Commissioner Diggs and approved by a vote of 4-0.

**OLD BUSINESS:**

None

**NEW BUSINESS:**

**1. WELCOME NEW COMMISSIONER MARYANN NEELAND**

**2. 2023-22 SUB – LIS SEVEN FINAL PLAT**

Consider a final plat for LIS SEVEN, Case No. 2023-22 SUB.

Chairman Homan called for the staff report.

City Planner Bethan Falvey stated the subject property is owned by Kelley Lis, plat prepared by Hahn Surveying. The applicant is requesting approval of a two lot final plat located at 701 Chestnut St., and 710 S. 7<sup>th</sup> St. The proposed plat consists of two existing platted lots in the Clark & Rees Subdivision (Part of Lots 1 and 2, Block 37). The plat is being requested to adjust the lot line between the two existing lots and expand LIS SEVEN Lot 2, addressed as 710 S. 7<sup>th</sup> Street.

Staff recommends approval of LIS SEVEN Final Plat.

**ACTION/OPTIONS:**

- Approve the Final Plat
- Deny the Final Plat
- Table the issue for additional information/consideration

Chairman Homan asked for questions from the commissioners about the staff report.

Commissioner Stephens asked if the buildings were in use.

Ms. Falvey responded that 710 S. 7<sup>th</sup> St. will be demolished, and a new home built.

With no further questions from the commissioners, Chairman Homan called for a motion to either approve the final plat, deny the final plat, or table the issue for additional information/consideration. Commissioner Diggs moved to approve the final plat as presented, seconded by Commissioner Stephens, and approved by a vote of 4-0.

**3. 2023-23 SUB – ST. CASIMIR CHURCH FINAL PLAT**

Consider a final plat for ST. CASIMIR CHURCH, Case No. 2023-23 SUB.

Chairman Homan called for the staff report.

City Planner Bethan Falvey stated the subject property, Sacred Heart – St. Casimir Parish is owned by Roman Catholic Archdiocese, plat prepared by Herring Surveying Company. The applicant is requesting approval of a four lot final plat for the St. Casimir Church subdivision at 719 Pennsylvania Ave. The subject property is currently an unplatted lot that is approximately 1.64 acres. The property is zoned R1-6, High Density Single Family Residential District, and includes mixed-uses. The plat will split the existing buildings onto their own parcel.

The plat has been reviewed by the Public Works Department. All issues have been addressed.

Staff recommends approval of St. Casimir Church Final Plat.

**ACTION/OPTIONS:**

- Approve the Final Plat
- Deny the Final Plat
- Table the issue for additional information/consideration

Chairman Homan asked for questions from the commissioners about the staff report.

Commissioner Stephens asked what the advantage or disadvantage is to the city with the plat.

Ms. Falvey stated this gives the property owner the ability to sell just one of the buildings versus the whole parcel. There are no disadvantages to the city with this plat.

Laurie Medford, Board member for The Deeper Window Association, stated The Deeper Window Association will be purchasing the building they are currently using at 729 Pennsylvania. The purchase will include the existing building and the four parking stalls in front of the building.

Chairman Homan asked if four parking stalls is all that is required for The Deeper Window.

Ms. Medford responded that St. Casimir Church will allow them to use the other parking spots during business hours.

Commissioner Stephens asked if The Deeper Window is required to have ADA parking.

Planning Director Julie Hurley stated there is an existing ADA parking stall so it meets building code. However, the business may need more ADA stalls for functional purposes.

Commissioner Neeland asked about their access to the parking lot.

Ms. Hurley stated staff has spoken with the surveyor who prepared the plat, and the surveyor was informed that a recorded cross access easement is required. The plat also states that a cross access agreement will be recorded on a separate instrument.

Commissioner Diggs asked if the easements are a consideration for approval of the plat.

Ms. Hurley responded in the negative stating there is a note on the plat that the cross access easement will be recorded at a later date.

Commissioner Diggs asked if the property owner of Lot 4 has the option to or not to provide that easement.

Reading directly from the plat Ms. Falvey stated, "Any easements needed for cross shared access parking or utilities will be created and recorded at the Leavenworth County Register of Deeds by separate instrument".

With no further questions from the commissioners, Chairman Homan called for a motion to either approve the final plat, deny the final plat, or table the issue for additional information/consideration. Commissioner Stephens moved to approve the final plat as presented, seconded by Commissioner Diggs, and approved by a vote of 4-0.

#### **4. 2023-24 SUB – WHISPERING HILLS WEST FINAL PLAT**

Consider a final plat for WHISPERING HILLS WEST, Case No. 2023-24 SUB.

Chairman Homan called for the staff report.

Planning Director Julie Hurley stated the subject property is owned by Laura Fowler, plat prepared by Herring Surveying Company. The applicant is requesting approval of a replat of Lots 20 through 35 of Whispering Hills Replat Phase 1, and a tract of land in the southwest quarter of Section 4, Township 9 South, Range 22. The property is 80.31 acres in size and is currently vacant. The property is currently zoned PUD, Planned Unit Development.

The applicant is requesting the plat for the purposes of combining multiple lots into two larger separate lots. The proposed plat includes lots 20 through 35 of Whispering Hill Replat Phase 1, a 69 acre tract of land that was not previously platted into individual lots, and a portion of undeveloped Hebblen Drive right-of-way. The 69 acre tract of land was included in the original Whispering Hills preliminary development plan, but was never platted as part of the subdivision. As part of the subject plat, the included portion of undeveloped Hebblen Drive right-of-way will be vacated. The Whispering Hills Replat Phase 1 was originally approved and recorded in 1987.

The subject plat was reviewed by the Development Review Committee on August 3, 2023. A number of items were discussed, including sewer connection and the need to construct a hammerhead turnaround point at the termination of the existing Hebblen Drive. All items have been addressed.

Staff recommends approval of Whispering Hills West Final Plat.

**ACTION/OPTIONS:**

- Approve the Final Plat
- Deny the Final Plat
- Table the issue for additional information/consideration

Chairman Homan asked for questions from the commissioners about the staff report.

Commissioner Stephens asked when a hammerhead is required, and how does that factor into the subject plat. He further stated to be transparent, he does live in this neighborhood.

Ms. Hurley responded that is a requirement for our Public Works Department, but the intent is so we do not end up with a dead-end street that leads into someone's private driveway. Since that right-of-way near 2406 Hebblen Drive was platted, we go on the assumption that will be built at some point. Once that is vacated and the development plan is abandoned, for all intents and purposes, then there needs to be some sort of turnaround. As long as the subject property was platted and there were lots there, someone could have purchased those lots, built the road, and had a development. The hammerhead was not required at that time because the rest of the subdivision was not developed. Now that Ms. Fowler has purchased the property, and is essentially vacating those lots and that right-of-way, this stops further development from happening, which in turn creates the need for a hammerhead. The hammerhead allows people to turnaround without using a private driveway.

Commissioner Stephens asked if the cost of the hammerhead is at the city's expense.

Ms. Hurley responded in the negative stating the hammerhead is at the property owner's expense, and our Public Works Department has discussed this with the property owner.

Commissioner Stephens asked if there is another access to the subject property other than Hebblen Drive.

Ms. Hurley responded that Vilas Street has a dead-end to the subject property. Since there was no right-of-way platted through there, there is no right-of-way being vacated so Public Works is not requiring a hammerhead turnaround at the end of Vilas Street.

Chairman Homan asked the property owner if she would like to speak.

Ms. Fowler, property owner/applicant, stated her neighbor on 17<sup>th</sup> Street purchased five acres in the city limits, built a house on the property in 2020, and was not required to install a hammerhead. Ms. Fowler further stated she would prefer not to spend her money on public land but she will if that is what is required of her.

Commissioner Stephens stated the end of Hebblen Drive is already difficult to turnaround at.

Ms. Fowler stated the neighborhood has been there for decades, and if turning around hasn't been a problem so far, she has trouble seeing that it would be a huge problem by adding one more house. Commissioner Stephens asked if there is a definition of a hammerhead.

Ms. Hurley stated the requirement for a hammerhead is not something for the Planning Commission to consider. The hammerhead is something being requested by the Public Works Department.

Commissioner Stephens asked if the Planning Commission only makes a recommendation to the City Commission for approval.

Ms. Hurley responded that the Planning Commission is the approving body for a final plat.

With no further questions from the commissioners, Chairman Homan called for a motion to either approve the final plat, deny the final plat, or table the issue for additional information/consideration. Commissioner Diggs moved to approve the final plat as presented, seconded by Commissioner Neeland, and approved by a vote of 4-0.

#### **5. 2023-25 SUP – 722 S. 5<sup>TH</sup> STREET**

Conduct a public hearing for Case No. 2023-25 SUP – 722 S. 5<sup>th</sup> Street. The applicant is requesting a Special Use Permit to allow a restaurant use in the OBD, Office Business District, zoning district. Restaurant uses are allowed in the OBD zoning district with the issuance of a Special Use Permit.

Chairman Homan called for the staff report.

Planning Director Julie Hurley stated the applicant, Sung Moxley, is requesting a Special Use Permit (SUP) to allow a restaurant use in a property zoned OBD, Office Business District, located at 722 S. 5<sup>th</sup> Street. Restaurant uses are allowed in the OBD zoning district with the approval of a Special Use Permit. The property is surrounded by a mix of uses, and is located approximately 3 blocks south of the Central Business District and one block north of Spruce Street.

The applicant previously applied for a variance to allow for a reduction in the number of required parking spaces for a restaurant use at the subject location. Parking for restaurant uses is required at a rate of 1 per 3 seats, and the applicant indicated there would be a total of 18 seats in the proposed restaurant resulting in a need for 6 on-site parking spaces. No on-site parking is available, however, ample parking is available on the street immediately surrounding the property, and the BZA approved the variance request on March 27, 2023.

#### **COMMISSION FINDINGS**

The Commission may recommend issuance of a special use permit whenever it finds that:

1. The proposed special use complies with all applicable provisions of this ordinance.

*Staff believes that this application complies with all provisions of City of Leavenworth Development Regulations.*

2. The proposed special use at the specified location will contribute to and promote the economic development, welfare or convenience of the public.

*The proposed special use to allow a restaurant will contribute to the economic vitality of Leavenworth by allowing for the operation of a revenue generating business in the space, and to the convenience of the public by providing another restaurant option to patronize.*

3. The special use will not cause substantial injury to the value of other property in the neighborhood in which it is located.

*Staff does not feel that the use will cause any substantial injury to the value of other property in the neighborhood.*

4. The location and size of the special use, the nature and intensity of the operation involved in or conducted in connection with it, and the location of the site with respect to streets giving access to it are such that the special use will not dominate the immediate neighborhood so as to prevent development and use of neighboring property in accordance with the applicable zoning district regulations.

*No new structures or building modifications are proposed as part of this special use permit. The Board of Zoning Appeals previously determined that the parking requirements can reasonably be accommodated by existing on-street parking spaces available in the immediate vicinity, without impacting the surrounding neighborhood.*

Notification was sent to property owners within 200' of the subject property, as required by Kansas Statute. Since notifications were mailed, staff has received no comments or inquiries regarding the proposed Special Use Permit.

**STAFF RECOMMENDATION:**

Staff recommends approval of the Special Use Permit request for a restaurant use in a property zoned Office Business District at 722 S. 5<sup>th</sup> Street based on the analysis and findings included herein.

**ACTION/OPTIONS:**

- Motion, based upon findings as stated and conditions as presented, to recommend approval to the City Commission with included conditions
- Motion, based upon findings as stated and conditions as presented, to recommend denial to the City Commission
- Table the issue for additional information/consideration

Chairman Homan asked for questions from the commissioners about the staff report.

Commissioner Diggs asked what type of business was there before.

Ms. Hurley stated the commissioners could ask the owner that question but she believes it was a market.

Commissioner Diggs stated he is on the Leavenworth Main Street Board. He further stated there are many empty buildings in the Central Business District, and if businesses do not occupy these buildings, there will be a huge economic impact. As restaurant uses are allowed outside the CBD, it will have a negative impact.

Chairman Homan asked what type of use is currently in the subject property.

Ms. Hurley responded the property is currently vacant, and not being utilized.

Commissioner Neeland asked if the requested SUP were approved, is it only approved for this particular restaurant or would the SUP allow for future restaurants.

Ms. Hurley responded that approval of the SUP would allow any restaurant. The SUP is not for a specific business but rather for the use overall. The SUP stays with the property, and not the owner or the tenant.

Commissioner Stephens asked the tenant if he has seen the property.

Oliver Bradwell, tenant, stated he has been renting the property for over a year, and has done some renovations to the property.

Commissioner Stephens asked staff what impact is there on the City with changing the subject property from a business building to a restaurant.

Ms. Hurley stated a SUP does not change the allowed use but rather adds another allowed use to it. The property is zoned OBD, Office Business District, and that will not change. At any point, the building can be used for any of the uses allowed in the OBD zoning district. The SUP just allows in addition to all of the OBD uses it can now be used as a restaurant as well.

Commissioner Diggs asked if there is more than one address for the subject property, and if so, can all of the addresses/suites be used as a restaurant.

Ms. Hurley responded the SUP request is for 722 S. 5<sup>th</sup> Street. The upstairs of 722 S. 5<sup>th</sup> Street is setup as residential units and that would not be included as part of the special use permit.

Commissioner Diggs further asked about 722 S. 5<sup>th</sup> Street Apt A and Apt B.

Looking at the street view, Ms. Hurley stated 720 S 5<sup>th</sup> Street is on the right, and 722 S 5<sup>th</sup> Street is the one on the left that the SUP is being requested for. There is also a 720 S 5<sup>th</sup> Street Apt A and 722 S 5<sup>th</sup> Street Apt A, which are both apartments upstairs. Again, the SUP is only for the first floor space at 722 S 5<sup>th</sup> Street.

Commissioner Diggs asked if the legal description for 722 S 5<sup>th</sup> Street is the same as 720 S 5<sup>th</sup> Street.

Ms. Hurley stated the legal description is for the property as a whole. There is not a separate legal description for each tenant space in the building.

Commissioner Diggs asked if the SUP would be for the second floor of 722 S 5<sup>th</sup> Street also.

Ms. Hurley responded that the Board can specify in their conditions that the SUP they are approving is just for the first floor tenant space of 722 S 5<sup>th</sup> Street.

Commissioner Neeland stated the subject restaurant is only a block north of Domino's and a Thai restaurant.

Chairman Homan asked if the applicant would need to get another SUP if he ever extended his restaurant to 720 S 5<sup>th</sup> Street.

Ms. Hurley responded in the affirmative because 720 S 5<sup>th</sup> Street is a different address.

Planning Assistant Michelle Baragary stated when the property owner Ms. Moxley submitted the SUP application, she was asked if she wanted to include 720 S 5<sup>th</sup> Street on the SUP application as well, and Ms. Moxley stated she did not want 720 S 5<sup>th</sup> Street included.

With no further questions about the staff report, Chairman Homan opened the public hearing. With no one wishing to speak, Chairman Homan closed the public hearing and called for a motion. Commissioner Stephens moved to recommend approval of the Special Use Permit to allow a restaurant use in an OBD zoning district located at 722 S 5<sup>th</sup> Street to the City Commission with the

condition that the SUP only applies to the first floor tenant space of 722 S 5<sup>th</sup> Street, seconded by Commissioner Neeland, and passed by a roll call 3-1; Commissioner Diggs voted nay.

Ms. Hurley stated this item will move forward to the City Commission as a recommendation of approval, and the City Commission will make the final ruling.

**OTHER BUSINESS:**

With no other business, Ms. Hurley stated there are no items on the agenda for October but we will have a November meeting.

Chairman Homan adjourned the meeting at 7:01 p.m.

Minutes taken by Planning Assistant Michelle Baragary.