

UNAPPROVED

MINUTES OF THE PLANNING & ZONING COMMISSION MEETING OF JANUARY 14, 2014 THE CITY OF STARKVILLE, MISSISSIPPI

The Planning & Zoning Commission of the City of Starkville, Mississippi, held its regularly scheduled meeting in the City Hall Courtroom at 101 E. Lampkin Street, Starkville, Mississippi, commencing at 5:30 PM. The meeting was called to order by Commission Chair Jerry Emison. Present were Commissioners Michael Brooks, Jerry Emison, Dora Herring, James Hicks, Ira Loveless, John Moore, and Jeremy Murdock. Attending the Commissioners were City Attorney Chris Latimer, City Planner Buddy Sanders, CAO Taylor Adams, and Recording Secretary Bill Green.

A CONSIDERATION OF THE WRITTEN AGENDA

The Commission considered the matter of approval of the written agenda dated January 14, 2014. Upon the motion of Commissioner Hicks, which was seconded by Commissioner Moore, the Commission voted unanimously to approve the written agenda as presented.

CITIZEN COMMENTS

Chair Emison asked if any member of the public cared to address the Commission, reminding them of the Public Hearing on the Agenda and that comments regarding proposed items would be called for at the appropriate time. No citizen comments were received.

NEW BUSINESS

RZ 13-14: Request by Garden Properties, LLC, to rezone 4.97 acres, parcel 102H-00-060.00, from R-1 Single Family to R-3A Single Family Medium Density; Ward 4.

Chair Emison asked the City Planner to introduce item RZ 13-14, a Public Hearing noticed by the City of Starkville to rezone 4.97 acres, parcel 102H-00-060.00, from R-1 Single Family to R-3A Single Family Medium Density; Ward 4.

City Planner Buddy Sanders stated that the Applicant is requesting to rezone 4.97 acres from R-1 Single Family to R-3A Single Family Medium Density to allow for garden homes to be constructed. Under the City of Starkville's Code of Ordinances Permitted and Conditional Use Chart in Appendix A, Article VIII, Section M, a single-family detached dwelling is listed as a permitted use in an R-3A zoning district. The minimum lot area allowed in an R-3A zone is 5,000

square feet, which would allow for construction of garden homes. The subject area is currently an open field; to the north and east, properties are zoned R-1 Single Family and are single family/residential in use. Properties to the south and west are zoned R-1 Single Family but are civic in use, with Starkville High School's athletic facilities allowed as a Conditional Use, and to the north of Yellow Jacket Drive are C-2 zoning districts, a storage unit business in a B-1 Buffer District, and multi-family housing in an R-3 Multi-Family Zone.

In order for a zoning change in Mississippi to occur, one of two criteria has to apply: Manifest Error in the Zoning Map or Change in Condition. No mapping errors exist in the proposed zone, and Mr. Sanders presented a historical series of zoning maps to illustrate zoning changes in the vicinity of the subject property.

The subject property, along with adjacent properties to the east, south, and west, is classified as R-1 in the 1982-91, 2000, 2012, and 2013 zoning maps. The zoning changes to the north and along Yellow Jacket Drive are illustrated on the following maps:

1982-91 Zoning Map: R-3
2000 Zoning Map: R-3
2012 Zoning Map: R-3, B-1 & C-2
2013 Zoning Map: R-3, B-1 & C-2

Electrical, water, and sewer lines are available in the area. Access for the property is off Yellow Jacket Drive, which is classified as a collector street. Staff is unaware of any environmental issues at the site. There would be an increase in property tax revenue due to the increase in property value over the current use due to the creation of multiple single family homes. Temporary jobs would be created from construction of a proposed development. Any development proposal for the subject property would be required to conform to the City's land development regulations and would require review by the City's Development Review Committee prior to the commencement of any construction activities. The proposed Rezoning would allow additional housing options for Starkville and would be an infill development, which is supported by the Starkville Comprehensive Plan. The Applicant has submitted a market analysis illustrating the need for a new garden home community in Starkville.

Community Development has received e-mails and calls concerning the proposed Rezoning to R-3A, with most of the communications being against the proposed Rezoning. The Pleasant Acres neighborhood is concerned that an adjacent garden home development would negatively affect their area, which is a traditional neighborhood in an R-1 zoning district. Community Development has received four e-mails against the proposed zoning change. Staff has received one e-mail in favor of the zoning change to R-3A. Mr. Clinton Graves of 812 Pine Circle and Ms. Betty Templeton of 800 Lindley Avenue called Community Development and stated that they were against the Rezoning request by Garden Properties, LLC.

Staff recommends, based on the above findings, approval of the requested zoning change from R-1 Single Family to R-3A Single Family Medium Density of 4.97 acres with the following conditions:

- 1) A Type B buffer yard (20 feet wide, 80 planting units per 100 feet) will be required, with the exception of the entrance area from Yellow Jacket Drive to the south property line of 102H-00-043.00.
- 2) All restrictive covenants in Deed Book 2008, page 6800, will be required.

Chair Emison asked for clarification on whether the restrictive covenants in the Staff's conditions of approval would be made an enforceable responsibility of the City. Mr. Latimer stated that he would further research and verify in the interim (between the meetings of the Planning & Zoning Commission and the Board of Aldermen), whether the privity of covenants solely belonged to the landowners and successors of the landowners who made the agreement.

Mr. Latimer requested a precise record showing the parcels that changed from R-3 to C-2 and R-1 to B-1 so that the Commission could make an informed decision regarding evidence of change in the neighborhood. Mr. Sanders provided maps that illustrated that the only evidence of change happened in two properties that changed from R-3 to C-2 in 2007 and from R-1 to B-1 somewhere between 2000 and 2007 (due to a filing issue, Staff is unable to provide the exact date at this time).

Commissioner Herring noted that since the 20-foot setback could count as the required 20-foot buffer, there would essentially be no buffer because the back yard would be the 20-foot buffer and that the only real requirement is the planting of trees in the back yard.

Commissioner Loveless noted that in an e-mail from one of the neighbors in Pleasant Acres, an existing sewer drainage problem was mentioned, and he asked if the proposed development would tie in to the problematic one in Pleasant Acres. Mr. Sanders redirected the response to be answered by proper Staff.

Mr. Murdock inquired about the number of maximum units per acre for an R-3A and was given the response by Mr. Sanders of eight units per acre. A discussion ensued about the number of units for the subject property, and it was determined that the report's information of 39 units is in error. Further discussion determined (with Dr. Herring's input reminding the Commission that after taking out the buffer, the roads, the retention, and common area, and making a calculation based on what is left), the subject property could be divided into not more than 24 units. Commissioner Herring noted that Table 32 of the comprehensive plan, where the amount of units per acre in an R-3 is referenced, should have read "per usable land for lots" per acre. Mr. Murdock suggested that at some point the wording be cleaned up. Mr. Emison stated that the Commission should base its decision on what is currently on the books.

After no further questions by Commissioners, Chair Emison opened the Public Hearing.

The first citizen to speak was John Moore, a local attorney representing Garden Properties, LLC, owners of record and developers of the property. Mr. Moore stated that zoning map changes are not the only reflection of change in the area, and urged the Commission to notice the actual changes in the area, as well, when determining a verdict on rezoning, and mentioned that the closer one gets to Hwy 12, the more logical the trend is toward higher density, indicated by overall activity in the area. He suggested that when reviewing changes in the vicinity, a broader area beyond what actually touches Pleasant Acres should be considered. Regarding traffic, he stated that there has been an 800-car reduction in traffic due to another cut-through road, Yellow Jacket Extended, so 23 additional homeowners would not affect current flow adversely. Also, a covenant was omitted from the City Planner's report, which stated that no rentals would be allowed, and he asked to add it to the conditions of the report. Mr. Moore noted that only four lots of Pleasant Acres would back up to the proposed development and would have nominal impact on the neighborhood. Out of the 94 residents, 45 have less square footage than the 1500-square-foot minimum requirement of the subject property. The average assessed value of homes in Pleasant Acres is 117 thousand, compared to 190 thousand for the subject property. Regarding the Pleasant Acres residents' petition against the development, Mr. Moore noted the following inaccuracies:

- 1) The petition states that the proposed development is for multi-family units; the homes to be developed are single family; and
- 2) The rezoning change affects Pleasant Acres; the rezoning request is not to rezone Pleasant Acres. He asked the Board to incorporate the report and consider the rezoning request.

Commissioner Herring noted that the sample comparable garden homes listed in the report included homes with garages and buried lines and that most all were 100 percent brick. In 3-A homes, there are no such requirements and, thus, are not comparable.

The second citizen to speak was Robert Boyd, who delivered petitions from Pleasant Acres residents stating their opposition to the proposed zoning change, citing the following reasons for their dissent:

- 1) Increase in traffic;
- 2) Decrease in property value;
- 3) Lack of evidence for demand for R-3A; and
- 4) Lack of Sidewalks, which should be required.

Mr. Boyd stated that the Pleasant Acres residents request denial of the proposed zoning change, because the rezoning requirements haven't been met.

The third citizen to speak was Thomas Bourgeois, who voiced his opposition to the proposed zoning change.

The fourth citizen to voice a complaint was Kristin Dechert, who gave the following as her rebuttal to Mr. John Moore:

- 1) If a broad scope regarding change in surrounding area is being considered as a basis for a decision to rezone, then the same broader scope must also be extended in considering that more than the four bordering properties would be affected by the proposed rezoning;
- 2) Today's values can't be compared to 1950s prices;
- 3) The garden homes listed as comparables are zoned R-1; and
- 4) Public Need can't be cited as a reason for developing the property as R-3A, because a nearby property zoned as such has not yet been developed. She also stated that she is not against medium-density housing, but when a medium density zone is placed in the middle of a very large area of low density, stipulations need to be placed on such development, such as enforcing restrictive covenants already in place, as well as the buffering restrictions, so that the potential for uncertainties can be reduced. She requested a denial of the proposed rezoning to maintain the stability of the area.

The fifth citizen was Clinton Graves, who maintained that he was contesting only the change in zoning, not the development of the property. The following are his reasons for opposition:

- 1) Increased density would affect the school, as well as the subdivision;
- 2) Howard Drive would potentially be used as a through drive, which would affect the value of the property in this highly desirable neighborhood.

He also mentioned that the school board voted to oppose the change in density in the neighborhood, because of the hazardous situation created by the increase in traffic.

The sixth citizen was Marty Haug, who voiced his opposition to the development, stating that the neighborhood is not Highway 12 and that the adjacent area shouldn't be zoned as such.

The seventh citizen was Craig Piper, who requested that the Board consider the residents living in Pleasant Acres, and that the area was zoned R-1 for a reason.

The eighth citizen to speak was Abby Poe, who opposed based on her concern for future residents of the garden homes in the R-3A zone, because they would be without a sufficient yard; therefore, their needs wouldn't be met.

The ninth citizen to voice opposition was John Gaskin, whose concern was for the added burden of sewer and traffic upon the already distressed infrastructure created by the higher-density zone. He suggested that smart development is needed.

Chair Emison asked for others to respond, and since there were none, he called for the Applicant to have an opportunity to respond. Mr. Moore responded on two points:

- 1) The undeveloped property hasn't been developed by choice, not by lack of demand; and
- 2) The property values of Pleasant Acres will not decrease because of a higher-value property adjoining the neighborhood. Value hasn't been decreased by Sherwood Commons and the hundreds of apartments on South Montgomery.

At the conclusion of Mr. Moore's response, Chair Emison closed the Public Hearing and opened deliberation from the Commission. He introduced the deliberation by stating that a certain set of findings needed to be met in order to go forward with a rezoning:

- 1) Error in Mapping (of which no error has been found); or
- 2) Change in Conditions and Public Need.

City Attorney Latimer clarified that the burden of proof by the Applicant is a clear and convincing evidentiary standard, which is more than a preponderance of evidence (50 percent plus one), but less than beyond all reasonable doubt. Mr. Latimer clarified four points in the consideration of rezoning:

- 1) The Applicant has advised that a broad view of the word neighborhood needs to be taken into consideration, and the neighborhood has advised a narrow view. Legally, both views are acceptable and are at the Commission's discretion to avail;
- 2) How far back to look for change in neighborhood is also within the Commission's discretion, lawfully;
- 3) The law is clear that both past rezonings (buffer district and the Mexican restaurant) can be evidence of Change in Conditions, as well as contextual changes (changes that are visibly evident); and
- 4) The City has complied with state statute and ordinance by giving requisite notice.

In regard to making a decision based on Change in Conditions, Chair Emison queried whether once a property's rezoning request had been denied by a previous board, if further changes in condition have to occur for approval. Mr. Latimer answered in the affirmative, but that since this is a different proposal from a different applicant, an argument could be made that this rule doesn't apply.

Mr. Loveless queried whether LLCs are considered a transparent entity or pass-through entity, i.e., the people of the LLC are actually the owners as opposed to the legal entity of an LLC, and City Attorney Latimer answered that the law is protective of LLCs, and to prove that an entity is a sham or pass-through entity would be difficult.

Commissioner Herring stated that the duty of the Commission is to protect and preserve neighborhoods. The express purpose of the Comprehensive Plan is to protect older neighborhoods in particular. Acknowledging positive comments from Mr. Moore, she voiced concern with doubling the density in that area. She stated that the success of a garden home neighborhood is the aesthetic of garages and 100 percent brick homes with buried utilities; the absence of these qualities associated with the R-3A properties proposed would create a cluttered look. The density and the abovementioned affects the land use.

Chair Emison raised concern about the potential for spot zoning and the possibility of a ripple effect emanating from this one spot and that from a planning standpoint, creating an unnecessarily

heterogeneous situation is undesirable. He expressed his difficulty in reaching the threshold of finding change in the neighborhood.

Commissioner Herring commented that in the past, because of safety reasons, the Board has been reluctant to rezone in situations where access is limited, such as in this case, with only one means of ingress/egress.

Commissioner Murdock remarked that no matter what standard of area is to be considered, in this specific case the area is small and not enough change exists to justify rezoning based on Change in Conditions.

Chair Emison called for more discussion, and as there was none, Commissioner Murdock moved to deny the rezoning request based on lack of Change in Conditions, with Commissioner Herring seconding the motion. The motion to recommend denial of changing the zone from R-1 to R-3A passed 5-1, with Commissioner Moore voting no. After the vote, Chair Emison called for a five-minute recess.

PP 13-07: Request by Cottages at Starkville Station, LLC, for approval of a 22 lot Preliminary Plat for the “Cottages at Starkville Station” in an R-5 Zone; Ward 4.

After the recess, Chair Emison called the meeting to reconvene, and City Planner Buddy Sanders presented the next item of New Business, a request by Cottages at Starkville Station, LLC, for approval of a 22 lot Preliminary Plat for the “Cottages at Starkville Station” in an R-5 Zone; Ward 4. All the requirements for property in an R-5 zone have been met. The tax parcels and city map show the area as right-of-way, but it was vacated by the City by deed in 1998. All the property is owned by the Applicant. Mr. Sanders noted that before the issue has reached the final Plat stage, because of an existing gas line, the Applicant would need a waiver for the 20-foot buffer yard required on the north side by the landscape ordinance for the abutment of two or more areas of different density uses.

Chair Emison asked about the location of the road access, and he noted that four years ago, when the issue came up about rezoning what is now the RV Park, he had voiced concerns about the traffic on Lincoln Green Road, which still holds true in this situation, as well. Backup will occur because of capacity. Mr. Sanders stated that Engineering had reviewed the traffic and voiced no concern about the traffic flow. Mr. Loveless concurred that traffic is already backed, and to negotiate the turn from Lincoln Green Road onto Blackjack is challenging.

After discussing possible traffic options, Chair Emison stated that public interest would be sacrificed because of the traffic.

Commissioner Herring observed that in an R-5 zone, the lots are required to be 50 feet wide if the development is for single-family dwellings of less than 8 units, whereas the plat states the lots are 38 feet wide.

Mr. Latimer informed the Commission of the following options from the Commission's Ordinance on Preliminary Plat Approval:

- 1) The Commission can recommend approval; or
- 2) The Board can recommend approval only if certain conditions are met. If approval is recommended with certain conditions, it is incumbent on the Commission to state the conditions and to state the reasons for them, and can require the Applicant to bring back the plat incorporating those conditions to be reviewed again at a preliminary stage; or
- 3) The Board can recommend disapproval and state reasons why the action was recommended for disapproval and, if possible, make recommendations for how the plat can be approved.

If the Board makes a recommendation for disapproval, the Applicant has two options:

- 1) The Applicant can return the plat to the Commission, having amended the plat with the Commission's recommendations; or
- 2) The Applicant can go straight to the Board of Aldermen, despite having received a recommendation for disapproval.

After discussion about the definition of the phrase "8 unit, single-family dwelling," Chair Emison recommended that the Applicant meet with Staff to work out any ambiguity of meaning of the phrase. Since the plat presently contemplates a layout that conflicts with the City's minimum lot requirements, and any approval of the plat by the Commission would be in violation of the City's regulations, the Applicant withdrew the plat request in favor of returning to the Commission at a later time.

Commissioner Hicks requested that the vicinity map street names be in a bigger font. Chair Emison asked for consideration of the installation of a right-turn-only island construct at the corner of RV Way and Lincoln Green Road. Commissioner Hicks reminded the Commission that consideration needs to be taken for the RVs that require extra room for navigating the turn. Chair Emison suggested a traffic light be installed. After the discussion, the Applicant officially withdrew the plat approval.

CONSIDERATION FOR APPROVAL OF THE MINUTES OF THE MEETING OF DECEMBER 10, 2013

Chair Emison called for consideration for approval of the December 10, 2013, minutes. Mr. Latimer suggested the following change to the minutes: On the last paragraph of the first page, second line, to change the word *requested* to "noticed."

Commissioner Herring moved to approve the minutes as amended, seconded by Commissioner Loveless, and the resulting vote for accepting the minutes as revised was unanimous. Chair Emison

asked to be on record as having recused himself from participating in any revisions of the minutes that might concern the Mill at MSU.

PLANNER'S REPORT

City Planner Buddy Sanders reported that regarding proceeding with the zoning change for the Research Park, he and Mr. Adams will be meeting with Joey Deason, COO of Golden Triangle Development Link. Representatives who operate businesses inside the park will be contacted to apprise them of recent developments. A letter will go out to MSU, OCEDA, TVA, and C Spire, giving them time to contact us beforehand; and after 30 days, appropriate steps will be taken to proceed with the rezoning.

Commissioner Herring asked whether all the properties were being considered for rezoning, and Mr. Sanders responded that all the properties except for the condominiums, 300 Traditions, were being considered for rezoning to Planned Office.

ADJOURNMENT

Commissioner Emison called for a motion to adjourn. Commissioner Murdock made the motion, seconded by Commissioner Hicks, and the Commission voted unanimously to adjourn the meeting at 8:11 PM. The next regularly scheduled meeting will be Tuesday, February 11, 2014, at 5:30 PM in the City Hall Courtroom.

Jerry Emison, Chair

Buddy Sanders, City Planner