

APPROVED

**MINUTES OF THE PLANNING & ZONING COMMISSION
MEETING OF AUGUST 11, 2009
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. Present were Commissioners Dora Herring, James Hicks, Jerry Emison, Jason Walker, Jeremy Murdock, Ira Loveless and John Moore. The meeting was called to order by Commission Chairman, Dora Herring. Attending the Commissioners was Ben Griffith, City Planner, Dolton McAlpin, Interim City Attorney and Bill Green filling in for Recording Secretary, Sara McHann, who was absent. Newly appointed Commissioner Jeremy Murdock from Ward 5 was introduced to the audience.

AN ORDER APPROVING THE WRITTEN AGENDA

The Commission considered the matter of approval of the written agenda dated August 11, 2009. After discussion and upon the motion of Commissioner Emison, seconded by Commissioner Walker, the Commission voted unanimously to approve the written agenda as proposed.

AN ORDER APPROVING THE MINUTES OF THE JULY 14, 2009 MEETING

The Commission considered the matter of approval of the minutes of the July 14, 2009 meeting. Commissioners Emison and Murdock stated that they were both absent on July 14th and would abstain from voting on the minutes. After discussion and upon the motion of Commissioner Hicks, seconded by Commissioner Moore, the Commission voted unanimously, with the exception of Commissioners Emison and Murdock, to approve said minutes with correction of a typo on page 1.

CITIZEN COMMENTS

Chairman Herring asked if anyone wanted to address the Commission, reminding them that there were three public hearings on the agenda and comments regarding those items would be called for at the appropriate time. No one came forward to speak.

**A PUBLIC HEARING REQUESTED BY B&P DEVELOPERS OF MS, LLC, FOR A
ZONING CHANGE FROM R-1 (SINGLE-FAMILY) TO R-3 (MULTI-FAMILY) LOCATED
SOUTHEAST OF THE INTERSECTION OF ECKFORD AND
YELLOW JACKET DRIVES IN WARD 3**

Next there came before the Commission item #RZ 09-03: a public hearing request by B&P Developers of MS, LLC, for a zoning change from R-1 (Single-Family) to R-3 (Multi-Family), located southeast of the intersection of Eckford and Yellow Jacket Drives in Ward 3. The City Planner read a brief introduction and asked if any of the Commissioners had received any communications from anyone

regarding the request. Chairman Herring stated that she had received some communications and advised them to speak at the meeting. Commissioner Murdock received an e-mail which he forwarded to the City Planner, copies of which were distributed to the Commissioners. Commissioner Emison stated that he had received two e-mails from residents near the site and Commissioner Walker also received an e-mail from a resident near the rezoning. Attorney Johnny Moore presented the request and was accompanied to the podium by the applicant, Mr. Frank Brewer. Attorney Moore reviewed the staff report, emphasizing several sections including area rezonings, economic benefits and presented sales data for the local real estate market showing 60% of the home sales in the price range which the applicant proposes to build. He explained that the reason for building on smaller lots was due to the high cost of land in the area and that it was difficult to recoup costs on developments with larger sized lots. Attorney Moore stated that his client had no problems with the staff recommendation for R-3A zoning instead of the R-3 requested since the deed restrictions encumbering the land were more in line with the R-3A zoning. He also asked that the staff report be accepted as part of the public record and if he could speak later in the hearing for rebuttal.

Dr. Clinton Graves of Pleasant Acres approached the Commission stated that he had no objections to the current R-1 zoning and 19 dwelling units but compared 8 dwelling units an acre to row houses and a New Orleans slum area overrun by crime. He stated that he had a different idea of what a Planning and Zoning Committee actually does and questioned the legality of hearing another request when the Board of Aldermen had denied an earlier request since it had not been a year. Dr. Graves gave a brief history of the development of Pleasant Acres and stated that the property could be used as a teaching arboretum for the high school. He stated that the planner's comments on changes were ridiculous and that although some improvements had occurred in the area such as Maison de Ville and apartments on South Montgomery Street, Mr. Brewer should develop the property as R-1 as it was intended. He added that he was sorry that he misunderstood the purpose of the committee.

Mr. Robert Boyd of Pleasant Acres approached the Commission and pointed out that several, if not all sections of the staff report were flawed, inaccurate and lacked evidence to substantiate any changes in the area for a rezoning. He stated that it was laughable to assume that the construction of high density development would increase the value of adjacent properties. Mr. Boyd stated that traffic congestion would cause pollution at the high school and decrease the property values in Pleasant Acres. He went on to conclude that the staff report was an unsubstantial finding of fact and that it did not meet even the minimum standards of planning or social science to substantiate the rezoning request.

Ms. Priscilla Boyd of Pleasant Acres approached the Commission and submitted 72 petitions protesting the rezoning request and read a prepared statement. She stated that Ben Griffith used no objective standard in recommending the zoning change and that no one admonished Frank Brewer for his threats and ranting at the last Planning and Zoning meeting in April and was surprised that the Commission proceeded directly to a vote without discussion. Ms. Boyd stated that she was disappointed in Frank Brewer, Ben Griffith, the Planning & Zoning Commission and in the whole process. She stated that orderly and controlled growth was needed to make the city a better place to live.

Ms. Kristen Dechert of Pleasant Acres approached the Commission and stated that she had recently moved into the home directly bordering on the property. She stated that she searched for a permanent home not a starter home and will be there a long time.

Ms. Colleen Eskridge of Pleasant Acres approached the Commission and stated that her home borders the property by a few feet and that she is not opposed to R-1 development because the property was deliberately zoned that way to protect the property values of Pleasant Acres. She asked how the new development would affect her property values and also questioned the Planning and Zoning Commission's purpose to preserve her neighborhood and protect her property values and quality of life.

Mr. Grafton Anding approached the Commission and stated that he was from Vicksburg and that he had purchased a home in 1998 for his son to attend MSU and rented it out afterwards until last year when he began to remodel it and move in. He stated that the neighborhood and residents were both stable and that people from other neighborhoods come to walk in his neighborhood. Mr. Anding was concerned about traffic, that Yellow Jacket Drive was dangerous and that there was only one exit from the property onto Yellow Jacket Drive. He added that he and his neighbors have a right to enjoy their neighborhood for a long time to come.

Ms. Grace Strahal of Pleasant Acres approached the Commission and asked about the traffic load the new development would have and that it was poor planning in terms of what the city can do, adding that if each of the 40 homes has 2 cars it would add 80 cars to the roads. She stated that rental properties have more people than should be living there and that they would be cutting through her subdivision. Ms. Strahal added that 8 homes per acre was not appropriate and that the city cannot justify an increase in traffic. She concluded by stating that she had once been told that your rights stop where someone else's begin and that her rights would be severely impacted by high density development of the property.

Mr. Lowell Wade of Pleasant Acres approached the Commission and stated that his mother had lived there since 1962. He asked who would want to build or live in 39 or 40 houses or apartments underneath a football stadium with all the hollering fans, band music, bright lights and paper cups? Mr. Wade also asked that if this development is allowed, what would happen in the future when the property to the south of his mother's house is developed? He concluded by adding that he couldn't understand a house or apartment underneath a football stadium.

Mr. Ed Dechert of Pleasant Acres approached the Commission and asked about the sustainability of the property with 39 houses, adding that the longevity would certainly be less than that of the Pleasant Acres subdivision. He stated that there were plenty examples around Starkville of developments thrown up which would not last for a long period of time and questioned the ability of the neighborhood to develop and sustain itself for a long period of time.

Mr. Alexander Stelioes-Wills of Pleasant Acres approached the Commission and asked what was the criteria on which the decision to rezone was made by the Commission. Chairman Herring answered that there had to be an error in the zoning map such as a scrivener's error, a change in the neighborhood, or that there had to be a public need. The City Planner interjected that there were two statutory reasons to rezone property and that public need was not one of them. Chairman Herring added that it was sometimes difficult to determine the area of the neighborhood and that the decision was made at the discretion of the Planning & Zoning Commission and Board of Aldermen for the change. Mr. Stelioes-Wills asked what counts as evidence to judge the change in the neighborhood. The Interim City Attorney answered that there was no case law in Mississippi that clearly defines change—how close or how far was a matter of opinion. He added that there was no definitive answer and that it was the best that could be done for making a decision.

Attorney Moore again approached the Commission to address the concerns of the area residents. He stated that traffic from the property does not exit through Pleasant Acres and that his client would not build row houses or apartments. He stated that new construction would not decrease property values, but to the contrary, usually increases values, adding that a decrease would have already occurred when the apartments were built on the east side of South Montgomery Street. Attorney Moore stated that a 50 year old subdivision is inevitably going to have changes in the area, calling out Maison de Ville, Annabella and Academy Place. He corrected claims by the residents that the proposed rezoning was “high” density when it would actually be “medium” density. Attorney Moore stated that traffic was a problem everywhere south of Highway 12 because it was a popular area. He stated that his client would follow stormwater and other code requirements for development of this or any other property.

Commissioner Loveless asked why the applicant asked for R-3 and if covenants could be broken. He stated that if the answer was yes, then the covenants were worthless. He added that he had no objection to R-3A which was approved by the Planning & Zoning Commission, but turned down by the Board of Aldermen.

Commissioner Emison stated that he too was comfortable with the R-3A, but wondered why the applicant asked for R-3 this time when the covenants solidify with R-3A. The City Planner answered that it was his fault for not thoroughly reviewing the Planning & Zoning Commission Bylaws and that it was only in the last few weeks when he compared the Bylaws to the zoning amendment ordinance that he realized that the one-year wait period applied to a denial by the Planning & Zoning Commission, not the Board of Aldermen.

Dr. Graves again approached the Commission and stated that laws were in place for a purpose and that the one year between requests prevented harassing a neighborhood. He asked that if this was the case, why have a law if the Planning & Zoning Commission can bring it up again? Dr. Graves stated that he (Mr. Brewer) could harass the neighborhood every two months. The Interim City Attorney explained the difference between the Bylaws and the zoning amendment ordinance and Dr. Graves apologized and said that he misunderstood.

Jennifer Portera of Pleasant Acres approached the Commission and identified herself as an appraiser and stated that new construction adds value, and that neighborhoods generally have four phases: growth, stability, decline and rejuvenation. She asked if it had changed for the better on Yellow Jacket Drive? Ms. Portera added that the property could be developed into a lovely neighborhood as R-1 and not so much as R-2 or R-3.

Chairman Herring closed the public hearing. She stated that as chair, she didn't make motions or vote except in the case of a tie; however, she was the senior commissioner and wanted to provide comments detailed in the minutes for the public record. The chairman read from a prepared statement that she didn't think the Commission could shift from R-3 to R-3A and that since she felt that the composition of the Commission was different than that of April, they could not carry forward since it was not legal in her mind. Chairman Herring stated that the advertisement was for another zoning and they were being asked to vote on something different, which was not done in the past because of then-legal counsel's advice. She stated that she had been on the Comprehensive Plan Committee and knew what was talked about—that the Board adopted the policies but not the details of the plan. The Chairman stated that several of the policies cited in the staff report were not appropriate for the rezoning, such as: intensity must be appropriately related to adjacent properties; must not adversely affect adjacent properties; stable

residential areas should be protected and preserved; incompatible higher densities should provide a buffer; medium density is denser than Pleasant Acres subdivision. Chairman Herring stated that there had been no change in use or zoning within sight of the land and the changes should be adjacent to the property, not two or three blocks away. The Chairman continued that deed restrictions detailing design and uses should not be considered because they cannot be enforced and parties to the covenants can change them at any time. She wanted the minutes to include that there had been no change in the adjacent area, that the request was not consistent with the Comprehensive Plan, that the recommended R-3A was not properly advertised or noticed and therefore cannot be heard or even considered.

Commissioner Emison stated that the matter before the Commission was R-3 and that some of the other issues were a discussion for another day. He stated that it is possible to have high quality, compact development, as evidenced around the country, that the location and quality of the development can increase property values. He stated that the intensity of a development like that of Los Angeles was not appropriate. Commissioner Emison stated that changes are not confined to the immediate, adjacent area, and that demographic changes warrant review and consideration. There may be changes to warrant a rezoning, but not to R-3 because the broader uses allowed were not compatible with R-1; rather, a graduated zoning from the institutional high school to the single-family of Pleasant Acres was more appropriate, such as what the R-3A provides. He continued that the covenants are irrelevant to the Commission's deliberations because they are unenforceable and that they should act on public instruments, again supporting the R-3A.

After further discussion, Commissioner Emison made a motion to recommend denial of the request for R-3 zoning to the Mayor and Board of Aldermen. Commissioner Loveless, seconded the motion and the Commission voted 5-1 to deny the request for R-3 with Commissioner Moore casting the dissenting vote.

**A PUBLIC HEARING REQUESTED BY MR. LUTHER HUNTER FOR A ZONING
CHANGE FROM R-1 (SINGLE-FAMILY) TO R-6 (MOBILE HOMES/MHP/MHS),
LOCATED AT 655 BUTLER ROAD IN WARD 6**

Next there came before the Commission item #RZ 09-04: a public hearing request by Mr. Luther Hunter for a zoning change from R-1 (Single-Family) to R-6 (Mobile Homes/MHP/MHS), located at 655 Butler Road in Ward 6. The City Planner read a brief introduction and asked if any of the Commissioners had received any communications from anyone regarding the request; none had. Mr. Hunter presented the request to the Commission. He stated that he purchased the property in 1990 and built his home there. The property was annexed into the City in 1998. He described how he wanted help his daughter and grandson by providing a place for them to live. There was a discussion regarding the connection of utilities to a mobile home and the survey provided with the report regarding the exact location of the property in question. The staff report had based the amendment of the zoning map on more closely matching the existing conditions of the area. Commissioner Emison stated that he was concerned with creating spot zoning. A discussion ensued regarding the reason necessitating the zoning change and whether or not an error in the zoning map had occurred. Chairman Herring stated that there was language in the zoning ordinance which provided the ability to amend the zoning map if an error had occurred when the properties were not zoned appropriately at the time of annexation. The Commissioners discussed basing the request on an error in the zoning map in accordance with the state statutes and zoning ordinance. After further discussion, Commissioner Moore made a motion to

recommend approval of the request to the Mayor and Board of Aldermen based on an error in the zoning map. Commissioner Loveless, seconded the motion and the Commission voted unanimously to recommend approval.

A PUBLIC HEARING REQUESTED BY MS. NAKESHA WEAVER TO ALLOW A CLASS B GROUP CHILD CARE CENTER IN A C-1 (NEIGHBORHOOD COMMERCIAL) ZONING DISTRICT, LOCATED AT 905 LOUISVILLE STREET IN WARD 3

Next there came before the Commission item #CU 09-02: a public hearing request by Ms. Nakesha Weaver to allow a Class B Group Child Care Center in a C-1 (Neighborhood Commercial) zoning district, located at 905 Louisville Street in Ward 3. The City Planner read a brief introduction and asked if any of the Commissioners had received any communications from anyone regarding the request; none had. Ms. Weaver presented the request to the Commission. Ms. Weaver briefly explained the licensing process by the Department of Health for child care facilities. The Commissioners asked questions about the proposed staff conditions and whether or not they conflicted with the state's requirements. The discussion focused on the need to limit the number of employees in staff condition three and the type of fence in condition seven. The Commissioners felt that the applicant should not be limited to the number of employees allowed and that the fence type should be left to the discretion of the applicant and the approval of state inspectors. Suggested revisions to the text of condition nine were also discussed. The City Planner explained what site improvements would be examined during the staff review of the proposed conceptual site plan. After further discussion, Commissioner Walker made a motion to recommend approval of the request, including the deletion of staff conditions three and seven and revisions to the text of condition nine. Commissioner Murdock seconded the motion and the Commission voted unanimously to recommend approval.

A REQUEST BY VANCE DEVELOPMENT, LLC, FOR A PRELIMINARY PLAT APPROVAL OF "COUNTRY SIDE" IN AN R-E (RESIDENTIAL ESTATE) ZONING DISTRICT LOCATED ON THE NORTH SIDE OF COUNTRYSIDE ROAD AT BELVEDERE, WEST OF S. MONTGOMERY STREET IN WARD 3

Next there came before the Commission item #PP 09-03: a request by Vance Development, LLC, for a preliminary plat approval of "Country Side" in an R-E (Residential Estate) zoning district, located on the north side of Countryside Road at Belvedere, west of S. Montgomery Street in Ward 3. The City Planner read a brief introduction of the request. Mr. Stuart Vance and Engineer/Surveyor Thomas Allen presented the request to the Commission. Mr. Vance explained how he proposed to subdivide and develop the property with five large lots. A lengthy discussion ensued regarding the drainage tract on the plat and its long-term maintenance. The third staff condition was discussed at length and language was provided by the Interim City Attorney to address the long-term maintenance of the drainage facilities via deed restrictions and covenants. Commissioner Murdock stated that he felt that a sidewalk should also be installed along the length of the existing roadway where the newly platted lots are located. The City Planner answered that the City Engineer's interpretation of the sidewalk ordinance was that the sidewalk was to be installed along the new roadway only. After further discussion, Commissioner Emison made a motion to recommend approval of the request to the Mayor and Board of Aldermen with the five conditions proposed by City staff, including the amendment of the text of staff condition three.

Commissioner Hicks seconded the motion and the Commission voted unanimously to recommend approval.

PLANNERS REPORT

City Planner Ben Griffith reported that there would be a rezoning based on a scrivener's error and a plat on the agenda for the following month. He also asked what the Commissioners thought of the inclusion of photographs in the staff reports, reminding them that they should also visit sites on their own to look with their own eyes, but to be sure not to speak to anyone such as the owner or an adjacent neighbor. The City Planner reminded the Commissioners to be mindful of any and all *ex parte* communications, especially for all public hearing items.

ADJOURNMENT

Commissioner Emison made a motion, seconded by Commissioner Hicks, to adjourn the meeting at 8:55 P.M. The next regularly scheduled meeting will be September 8, 2009 at 5:30 P.M. in the City Hall Courtroom.

Dora Herring, Chairman

Ben Griffith, AICP, City Planner