

**APPROVED**

**MINUTES OF THE PLANNING & ZONING COMMISSION  
MEETING OF OCTOBER 13, 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 P.M. 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 were City Attorney Chris Latimer, City Planner Ben Griffith and Recording Secretary Sara McHann.

**AN ORDER APPROVING THE WRITTEN AGENDA**

The Commission considered the matter of approval of the written agenda dated October 13, 2009. City Planner Ben Griffith told the Commissioners that there was an error on item #FP 09-05. The ward number was listed as Ward 3 although the property is actually located in Ward 4. After discussion, Commissioner Murdock made a motion to approve the agenda. Commissioner Loveless seconded the motion and the Commission voted unanimously to approve the written agenda as amended.

**AN ORDER APPROVING THE MINUTES OF THE SEPTEMBER 8, 2009 MEETING**

The Commission considered the matter of approval of the minutes of the September 8, 2009 meeting. After discussion, and upon the motion of Commissioner Walker, seconded by Commissioner Murdock, the Commission voted unanimously to approve said minutes as presented.

**CITIZEN COMMENTS**

Chairman Herring asked if any member of the public cared to address the Commission, reminding them that there were two 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-3A (SINGLE-FAMILY, MEDIUM-DENSITY) LOCATED SOUTHEAST OF THE INTERSECTION OF YELLOW JACKET AND ECKFORD DRIVES IN WARD 3**

Next there came before the Commission item #RZ 09-06: a public hearing requested by B&P Developers of MS, LLC, for a zoning change from R-1 (Single-Family) to R-3A (Single-Family, Medium-Density), located southeast of the intersection of Yellow Jacket and Eckford 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. Commissioners Hicks, Murdock, Walker, Loveless, Herring, Emison and Moore all said they had been contacted by e-mail and/or telephone concerning the zoning request.

Attorney Johnny Moore presented the request and was accompanied to the podium by the applicant, Mr. Frank Brewer. Attorney Moore reviewed the two previous re-zoning requests and reviewed the city planner's staff report asking that it be made a part of the public record. He referenced the real estate market analysis provided by the applicant and included with the staff report, showing that there was a great demand for the types of homes proposed. He concluded by stating that the area was changing, that the Planning & Zoning Commission had previously approved R-3A for the site and that another property owned by the applicant on Academy Road had been rezoned to R-3A.

Chairman Herring asked about the densities allowed by the current and proposed zonings and about home design referenced in the warranty deed. Commissioner Emison stated that although informative, the covenants should not be considered as even part of the grounds for rezoning, but rather density and land uses allowed by the zoning.

Stan Maynard, president of the Pleasant Acres Subdivision, provided petitions to the Commissioner opposed to the rezoning. He stated several reasons why the residents were opposed to the rezoning and praised the school district for the letter supporting their opposition to the rezoning.

Robert Boyd, a resident of Pleasant Acres, provided point by point analysis of the faults and inaccuracies of the staff report prepared by the city planner. He cited traffic problems and questioned why properties referenced in the staff report were not shown on the locator map, stating that the city planner was "reaching" to define the geographic area. Mr. Boyd referenced comments made by the Commissioners at the August meeting, concluding that the rezoning did not satisfy a public need and was not in the best interest of the City of Starkville.

Clinton Graves, a resident of Pleasant Acres, asked questions about the applicant's development intentions, the actual ownership of "B&P Developers," and why the city planner insisted on placing the warranty deed in the application. He was distressed at the frequency of the rezoning requests and referred to the city planner's staff report as a sales pitch on behalf of the developer. He concluded by stating that the school district had not responded to the earlier rezonings because they were not properly notified and the posted sign was too small, adding that he didn't want to have to come back to another meeting in a few weeks.

Kristen Dechert, a resident of Pleasant Acres, read a prepared statement citing reasons for her opposition to the rezoning. She stated that she and her neighbors were harassed and frustrated at having to return to yet another rezoning meeting. Ms. Dechert stated that she was not opposed to development of the property, so long as it was developed as R-1, adding that cities like Starkville were not conducive to large, urban type development, especially medium-density residential development. She concluded by stating her concerns about noise from the high school and increased traffic, asking the Commissioners to take this under consideration.

Ed Dechert, a resident of Pleasant Acres, stated that the issue to him was that the Commission is being asked to take the developer at his word and not much else, adding that a site plan should be

required as part of a rezoning approval. He felt that Mr. Brewer could make enough profit building homes as R-1 instead of R-3A, adding that the warranty deed could be changed and the property developed in another way.

City Attorney Chris Latimer addressed the issue of Mr. Brewer's "harassment" of the Pleasant Acres residents. While the Planning & Zoning Commission's By-Laws require waiting a year if denied by the Commission, there is no waiting period in either the By-Laws or the amendment section of the zoning ordinance regarding the Board of Aldermen. He cited two Mississippi Supreme Court Cases, *Yates v. City of Jackson* and *Westminster Presbyterian Church v. City of Jackson*, where the residents are protected by *res judicata*. He explained that since the request had been decided upon by the Board of Aldermen in April of this year, the Board could only consider the changes which have occurred between April and October of 2009 regarding the rezoning request, adding that the case law did not address the Planning & Zoning Commission decision. He also stated that the warranty deeds are considered evidence showing property ownership and that the Commission could give it whatever weight or consideration as it saw fit.

Chairman Herring asked about the ownership of "B&P Developers" raised by Clinton Graves. Attorney Moore answered that Eric Parker had sold his portion to Les Lindley before he ran for office. Commissioner Emison added that ownership was not a factor in their decision. Attorney Moore stated that the rezoning approval of the Academy Road property was a change since April and should be included as a finding of fact.

Chairman Herring then closed the public hearing.

Commissioner Emison stated that it was his understanding that the Commission is required to deal with the rezoning request as a "fresh request." He also stated that the warranty deed is not part of the decision, that proposed design is not relevant, and that the key considerations were the intensity and use of the land. Commissioner Emison stated that in April, the Planning & Zoning Commission recommended approval of a R-3A which the Board of Aldermen then denied, thus disposing of the reason for change, so now the Commission must find sufficient change since April to consider the rezoning request. Attorney Latimer answered that he was correct.

Commissioner Emison addressed one of the statements in the "Report From Citizens Opposed To Rezoning" provided by Stan Maynard, president of Pleasant Acres Subdivision, requesting that he and Commissioner Loveless be barred from discussion and voting of the rezoning because of comments made by both Commissioners at the August public hearing regarding compact development. Commissioner Emison asked the City Attorney if the request had any merit and Attorney Latimer answered that it would be appropriate for both Commissioners to discuss and vote on the item.

Commissioner Emison stated that he did not see any change in the area since April, although their decision and recommendation in April had been correct. He continued that the Board of Aldermen disposed the matter and the Commission must now decide if there was enough change to justify the rezoning. Chairman Herring stated that she helped draft the Comprehensive Plan, that the proposed rezoning was not compatible with the Comprehensive Plan and that in her personal opinion, the changes cited by the city planner were too far away from the property to apply to the rezoning.

Chairman Herring then asked if any of the other Commissioners had anything to add or that she would entertain a motion. Commissioner Emison recommended denial of the rezoning request based on no changes in the area within the time period since April of 2009. Commissioner Loveless seconded. Commissioner Hicks asked if the Planning & Zoning Commission should act on the information provided by the City Attorney, to which several Commissioners answered “yes” in unison. After further discussion, Chairman Herring asked for a roll call vote. Commissioners Hicks, Emison, Walker, Murdock and Loveless answered in the affirmative, while Commissioner Moore voted nay. The motion carried 5 to 1.

**A PUBLIC HEARING REQUESTED BY MS FOMICKA WARD, FOR A ZONING CHANGE FROM R-5 (MULTI-FAMILY, HIGH DENSITY) TO R-6 (MOBILE HOMES/MHP/MHS) LOCATED AT 300-A SAND ROAD IN WARD 3**

Next there came before the Commission item #RZ 09-07: a request by Ms. Fomicka Ward, for a zoning change from R-5 (Multi-Family, High-Density) to R-6 (Mobile Homes/MHP/MHS), located at 300-A Sand Road 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. Ward presented the request. Ms. Ward told Commissioners she purchased a mobile home and hired a mobile home contractor to move the home onto a 4 acre site owned by her family at 300-A Sand Road. When she began to request utility services she learned the property was not zoned for mobile homes. She met with the city planner and was told that the property was zoned R-5 (Multi-Family, High-Density) when it was annexed into the City in 1998. It is believed that the R-5 zoning designation for this property is a scrivener's error based on the number of mobile homes on the west side of Sand Road. There were no public comments provided at the hearing. After discussion, and upon the motion of Commissioner Moore, which was duly seconded by Commissioner Hicks, the Commission voted unanimously to recommend approval of the request to the Mayor and Board of Aldermen, based on a scrivener's error.

**A REQUEST BY MR. JEREMY TABOR, FOR A FINAL CONDO PLAT APPROVAL OF “BELLE GROVE CONDOMINIUMS-PHASE 1” IN AN R-5 (MULTI-FAMILY, HIGH-DENSITY) ZONING DISTRICT, LOCATED EAST OF THE INTERSECTION OF YELLOW JACKET DRIVE AND SOUTH MONTGOMERY STREET IN WARD 4.**

Next there came before the Commission item #FP 09-05: A request by Mr. Jeremy Tabor, for a final condo plat approval of “Belle Grove Condominiums-Phase 1” in an R-5 (Multi-Family, High Density) zoning district, located east of the intersection of Yellow Jacket Drive and South Montgomery Street in Ward 4. Mr. Tabor and Mr. Mike Brent of Brent Engineering Service presented the request. The preliminary plat was approved in March of 2008. Since that time, other infrastructure improvements have been made and building construction has begun on two of the lots. Commissioner Walker asked about the preliminary plat. Chairman Herring stated that the preliminary plat had already been reviewed by the Planning & Zoning Commission and recommended for approval to the Mayor and Board of Aldermen. The final plat is presented for approval by the Mayor and Board of Aldermen in order for it to be recorded at the county courthouse. Commissioner Murdock also expressed a reluctance to vote on the final plat without having seen the preliminary plat. Both Murdock and Walker were appointed to the Commission

after the preliminary plat was presented to the Planning & Zoning Commission. After discussion, Commissioner Hicks made a motion to recommend approval of the request to the Mayor and Board of Aldermen with the 14 standard conditions proposed by City staff. Commissioner Moore seconded the motion and the vote was unanimous in favor of the request, with Commissioner Walker abstaining.

### **PLANNERS REPORT**

City Planner Ben Griffith reported that there would be a rezoning, a conditional use and possibly two plats for review at the November meeting. Mr. Griffith reminded the Commissioners that the December meeting had been rescheduled for Wednesday, December 2<sup>nd</sup> so he could attend a floodplain management training course. He added that electronic packets were being posted on the City's website no later than the Friday preceding the public meeting and that the legal ads and notification letters had been revised to inform the general public. Lastly, he reminded the Commissioners to be mindful of all *ex parte* communications and to call the Planning Office with any questions about the packet materials.

### **ADJOURNMENT**

Commissioner Hicks made a motion, seconded by Commissioner Walker, to adjourn the meeting at 7:50 PM. The next regularly scheduled meeting will be Tuesday, November 10, 2009 at 5:30 PM in the City Hall Courtroom.

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Dora Herring, Chairman

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Ben Griffith, AICP, City Planner