

August 23, 2005

The City of Opelika Planning Commission held its regular monthly meeting on August 23, 2005 in the Planning Commission Chambers, located at the Public Works Facility, 700 Fox Trail. Certified letters were mailed to all adjacent property owners for related issues.

MEMBERS PRESENT: Chairman Sadler, Dr. William D. Lazenby, Arthur Wood, Dr. William B. Whatley, Mayor Fuller, Jesse Seroyer, Jr., Bart Van Nieuwenhuise, Keith Pridgen, Lewis Cherry

MEMBERS ABSENT: None

STAFF PRESENT: Marty Ogren, Planning Director;
Charlie Thomas, Engineering Director;
Alan Lee, Utilities Board;
Jerry Posey, Opelika Light & Power

CALL TO ORDER: Chairman Sadler called the meeting to order at 3:01 p.m. He stated that if there were no additions or corrections to the minutes for the Planning Commission Meeting for the month of July he would like to entertain a motion to accept the minutes as written.

Mr. Van Nieuwenhuise made a motion to accept the July 26, 2005 meeting minutes as written.

Mr. Seroyer seconded the motion.

Ayes: Wood, Seroyer, Lazenby, Whatley, Van Nieuwenhuise, Fuller, Pridgen, Cherry

Nays: None

Abstention: None

The motion to accept the July 26, 2005 Planning Commission meeting minutes passed.

A. PLATS-Preliminary & Final PUBLIC HEARING

1. Wyndam S/D, Phase I, 2 lots, Society Hill Road & Gateway Drive extension, Preliminary/Final

Mr. Ogren reported that the applicant is requesting preliminary and final plat approval for a 2-lot subdivision. This property is part of the 640-acre Wyndham Planned Unit Development that was rezoned by The City Council on June 7, 2005. The new Opelika/Auburn News Office will be built on Lot 1. Parcel A, 167 acres, is reserved for future development.

Planning staff recommends preliminary and final plat approval.

Mr. Thomas, Engineering, reported that sewer service is not currently available to Lot 1, which duplicates a Lot 1 in the previously approved S/D. We are confident in staff's ability to resolve this issue. He recommended approval.

Mr. Lee, Utilities Board, reported that water service is accessible to this subdivision by a water main in the R.O.W. of Society Hill Road.

Mr. Posey reported that these two lots will be provided electrical service by Opelika Light & Power. The remainder of this development will be split between Opelika Light & Power and Alabama Power.

Chairman Sadler opened the public hearing.
No comments were made from the audience.
Chairman Sadler closed the public hearing.

Chairman Sadler asked for questions or comments.
No comments were made.
Chairman Sadler asked for a motion.

Dr. Lazenby made a motion to grant preliminary and final plat approval with staff requirements.
Dr. Whatley seconded the motion.

Ayes: Wood, Seroyer, Lazenby, Whatley, Van Nieuwenhuise, Fuller, Cherry, Pridgen
Nays: None
Abstention: None
The motion to grant preliminary and final plat approval with staff requirements passed.

B. CONDITIONAL USE

2. Don Green, 2406 Andrews Road, R-1 Ancillary Dwelling Unit

Mr. Ogren reported that the applicant is requesting approval for an ancillary dwelling on his property at 2406 Andrews Road. An ancillary dwelling is also known as a “guest home” or “mother-in-law suite”. A narrative provided by the applicant is attached. At this time the 3-acre property is vacant.

The applicant’s plan is to obtain a building permit to build the ancillary dwelling; then, he and his wife will live in the dwelling for about two or three years until the construction of the primary home is complete; then, he will move into the primary home and use the ancillary dwelling for guests.

The applicant has reviewed the following requirements for Ancillary Dwellings:

1. No more than one ancillary dwelling unit shall be permitted on a single lot of record.
2. One of the dwellings shall be owner-occupied.
3. Ancillary dwelling units shall meet all development requirements.
4. Total square footage of the ancillary dwelling unit is limited to 40% of the principle dwelling unit.
5. It is preferred that all utilities be provided from the principle structure; however, if that is not feasible, the utilities shall at least be in the property owner’s name.
6. Ancillary dwelling units are prohibited from use as rental property.
7. Ancillary dwelling units shall be in keeping with the character of the surrounding area and not to exceed two stories in height. In the case where an ancillary dwelling unit is located above a garage, the garage will be considered the first floor of the two-story structure. The height of the ancillary dwelling shall not exceed the height of the primary structure as viewed from the road that the primary structure faces.
8. Ancillary dwelling units shall not be manufactured homes except in districts permitting individual manufactured homes.
9. Ancillary dwelling units shall not be recreational vehicles.

Planning staff recommends conditional use approval.

Mr. Thomas, Engineering Director, had no comment.

Mr. Lee, Utilities Board, reported that water service is accessible to this subdivision by a water main in the R.O.W. of Andrews Road.

City Horticulturist had no report.

Mr. Posey reported that this area is presently served by Tallapoosa River Electric Co-op.

Chairman Sadler asked for questions or comments.

Mr. Van Nieuwenhuise made a motion to grant conditional use approval with staff recommendations.

Mr. Pridgen seconded the motion.

Ayes: Wood, Seroyer, Lazenby, Whatley, Van Nieuwenhuise, Fuller, Cherry, Pridgen

Nays: None

Abstention: None

The motion to grant conditional use approval with staff recommendations passed.

3. Wayne Ray, 13 Samford Avenue, C3, GC-2, restaurant request to serve liquor.

Mr. Ogren reported that the applicant desires to add liquor sales to his restaurant business at 13 Samford Avenue. At the June 2004 meeting, the Planning Commission granted conditional use approval for the applicant to sell beer and wine in the restaurant with the condition that alcohol sales would not exceed 50% of the gross sales. Mike Moore in the Revenue Department said that each month since the restaurant opened alcohol sales has not exceeded 50% of gross sales. Another condition for approval is that the restaurant must close at 10:00 PM.

In the past, the 13 Samford Avenue property was a bar for about 25 years (Charlie's Fundrinery for 10 years & Wayne's for 15 years). Then, in 2002 the property opened as a pet store. In June 2004 the pet store closed and the property owner was granted conditional use approval for a restaurant/bar subject to conditions. Planning staff asked the Police Department about any complaints from adjacent property owners because of the restaurant/bar or any other problems associated with the restaurant/bar since opening in July 2004. The Police Department reported no incidents on file from citizens or neighbors complaining about restaurant activities. (Two incidents did occur at the restaurant/bar, but the incidence did not involve complaints against the restaurant/bar. The incidents were classified "theft miscellaneous". Basically, this means something was stolen from the property that belonged to the property owner or a customer).

He said, an important criteria reviewed for a conditional use request is determining whether or not the proposed use at the proposed location will result in a substantial and undue adverse effect on adjacent properties, the character of the neighborhood or parking, etc. At the June 2004 meeting, Planning Staff expressed concern about the effect a restaurant/bar may have on the adjacent residential neighborhood. Behind the restaurant/bar is a residential neighborhood. The homes face Dover Street, Jeter Avenue, Plum Avenue, etc. Also, about ¼ mile east of the restaurant/bar on Samford Avenue the Housing Authority began leasing apartment space to elderly households at a new 76 unit apartment complex.

In order to minimize any negative effects that the sale of liquor may cause on the adjacent properties, Planning Staff recommends the following conditions be placed on the proposed use if liquor sales are approved:

1. The owner shall submit monthly alcohol (beer, wine & liquor) and food sales report to the revenue department to ensure that alcohol sales do not exceed 50% of the gross receipts.
2. The establishment shall close by 10:00 p.m. local time.
3. On premise noise generated from inside or outside the establishment should not be noticeably audible beyond the property lines of the establishment.
4. The petitioner shall submit proof of compliance with the Opelika Zoning Ordinance Section 8.17 5. Conditional uses which states that "In the event a permit for conditional use is approved or approved subject to conditions, the applicant shall in writing within fifteen (15) days following such decision, acknowledge such approval and unconditionally accept and agree to any conditions imposed on the approval. The City Planner shall then take action to process the application on the zoning certificate for the development to which the conditional use permit applies. In the event such permit is not approved or is approved subject to conditions, that are not acceptable to the applicant, the applicant may, within the aforesaid time period, either appeal such decision to Circuit Court or abandon the application at the expiration of this fifteen (15) day period."

Mr. Thomas, Engineering, had no report.

Mr. Lee, Utilities Board, had no report.

Mr. Posey reported that Opelika Light & Power presently provides electrical service to this restaurant.

Chairman Sadler stated that Mr. Ray is here today requesting a change in the conditional use approval. He stated that the Planning Commission cannot grant a liquor license; so therefore, Mr. Ray will have to go before City Council and the ABC Board for that. He wanted to clarify that the Planning Commission would not be granting him a license, only changing the conditional use upon approval, and then the City Council and the ABC Board should issue him a liquor license then he will be in compliance as far as his conditional use approval is concerned.

Chairman Sadler asked for a motion.

Mr. Pridgen made a motion to deny the conditional use request to sell liquor.

Chairman Sadler asked for a second motion.

Mr. Seroyer asked if the operation time didn't change, he said that he realizes that the Planning Commission doesn't have the control to say one way or another that he can get license, because anytime you look at the conditional use in modifying the changes, whose to say that Mr. Ray won't come back and try to modify them again to something different.

Chairman Sadler said that at each interval, should any changes take place other than what is on this list of conditions, he would have to come back and ask for those conditions to be waived or varied. He stated that there is an outline of conditions for which he can operate for this business within the guidelines of our conditional use approval.

Dr. Whatley said the Commissioners cannot not grant him a license to do this, but stated that all this board is doing is passing it on to the City Council, he asked, is that correct?

Chairman Sadler stated that this board has the charge of maintaining conditional use approval, and this would be his first step in pursuit of process of getting a liquor license. He said that virtually, nothing will change between his hours of operation, or his food sale reporting, and from what he could see,

Mr. Ray is running a clean operation. He said that this request is up to the board to decide whether it will go to the City Council or not. He said Mr. Ray would have to maintain his same hours of operation, which there is a limit on his closing time, and he doesn't feel that adding liquor would not hurt that much considering the type of crowd he has.

Mr. Pridgen stated that he wants to clarify why he would recommend a denial. Basically a year ago, this proposal was put up and the board adamantly said for cleaning up the neighborhood the board would reject the discussion of alcohol. The commissioners wanted to clean the neighborhood up because it's a school district, and the restaurant/bar is right on a major thoroughfare in Opelika and then less than a year later, Mr. Ray comes back to ask for a change to go forward with liquor sales. He said that he's afraid we (city) may be setting a precedence that we'll let him have beer and then liquor, and then he'll want an extension of the time of operation. He said that before the board made it very clear that he when he opened his establishment that the commissioners gave him the original charter that this would not be allowed.

Chairman Sadler stated that things and times change.

Chairman Sadler again asked for a second motion.

Mayor asked if there could be more discussion.

Chairman Sadler said yes.

Mayor Fuller stated that he understands that Mr. Ray has been in business a year, with no problems, such as fights or disturbance, and it really doesn't matter what he sells as far as variety, that it's his opinion that liquor is liquor; whether it's beer or wine or whiskey, etc., alcohol is alcohol. He said there is really no difference. He just can't see how the board can tell him which variety to sell if the City Council approves for him to sell liquor, because there is no difference in him selling beer or liquor.

Chairman Sadler stated that as Opelika keeps progressing we are going to be having to face these situations more and more with lounges and cocktail bars, and these types of businesses. This goes along with the growth and the prosperity of which the city is enjoying, and whether the board decides on approving this one; just be aware that there will be more conditional use requests for night life activities.

Mr. Pridgen stated that he doesn't have a problem with that type of activity, but his concern is with the location of this business.

Mr. Van Nieuwenhuise called for question.

Mr. Wood shared his opinion to state that Mr. Ray has done what he said he would do and has had no problem, and agrees that alcohol is alcohol and he should be allowed to sell liquor if he chooses to.

Chairman Sadler asked for a second motion.

Mr. Seroyer seconded the motion.

Chairman Sadler asked for a vote for the denial.

Ayes: Seroyer, Pridgen

Nays: Lazenby, Wood, Van Nieuwenhuise, Cherry, Fuller, Whatley

The motion to deny the conditional use request to sell liquor was denied.

Chairman Sadler asked for another motion.

Mayor Fuller made a motion to grant the conditional use approval with staff recommendations.

Mr. Van Nieuwenhuise seconded the motion.

Ayes: Fuller, Van Nieuwenhuise, Wood, Cherry, Whatley, Lazenby

Nays: Seroyer, Pridgen

The motion to grant the conditional use approval request with staff recommendations for issuance of a liquor license passed.

4. Irwin Autry, 2001 Gateway Drive, C-2, GC-2, Aaron Rental store-proposed exterior material.

Mr. Ogren reported that the applicant is requesting approval for the proposed exterior materials to be installed on a new Aaron Rental store on Gateway Drive. The ordinance requires that 50% or more of the exterior walls seen from the Gateway Corridor must be natural material or an approved simulated exterior material such as stucco or vinyl siding. The rental/retail store as a land use is outright allowed in this C-2, GC-2 zoning district, but the exterior material requires Planning Commission approval. This store has no outdoor display of rental equipment that is common in some rental stores. The store stocks household goods such as computers, furniture, and appliances and sells or rents the products.

The Aaron Rental store is adjacent to a vacant lot on which the new "Woods You" furniture store will be built. The lot for the Woods You store is on the corner of Gateway Drive and Corporate Drive. Several property owners on Corporate Drive have expressed their concern about the exterior appearance of the Woods You building and asked about the City's regulations on exterior appearance (materials) of commercial buildings in the Gateway Corridors. Joe Ruscin, architect for the Woods You store, said the building will be a combination of split faced block and stucco on all sides. No metal on the exterior walls. The roof will be metal.

This Gateway Corridor area along Gateway Drive is a prime commercial corridor in Opelika. Most buildings between Frederick Road and Pepperell Parkway have the same exterior appearance on the side and front elevations. Planning staff recommends that the Aaron Rental store use the same exterior material 'Dryvit' (synthetic stucco) and/or glass) on the side exterior walls as is shown on the front exterior walls. No metal on the side walls. The same exterior material on the front and sides walls will be consistent with other commercial buildings along Gateway Drive.

Also, the applicant shall submit proof of compliance with the Opelika Zoning Ordinance Section 8.17 5. Conditional uses which states that "In the event a permit for conditional use is approved or approved subject to conditions, the applicant shall in writing within fifteen (15) days following such decision, acknowledge such approval and unconditionally accept and agree to any conditions imposed on the approval. The City Planner shall then take action to process the application on the zoning certificate for the development to which the conditional use permit applies. In the event such permit is not approved or is approved subject to conditions, that are not acceptable to the applicant, the applicant may, within the aforesaid time period, either appeal such decision to Circuit Court or abandon the application at the expiration of this fifteen (15) day period."

Mr. Thomas reported that sewer service is available to the north, and the parcel requires an ALDOT ROW permit for access to Gateway Drive (U.S. Highway 280). He recommended approval.

Mr. Lee, Utilities Board, had no report.

City Horticulturist recommended approval.

Mr. Posey stated that Opelika Light and Power will serve this building.

Chairman Sadler asked for a motion.

Dr. Whatley made a motion to grant conditional use approval with staff recommendations.

Mr. Van Nieuwenhuise seconded the motion.

Dr. Lazenby asked what "Wood You Furniture" has to do with this request.

Mr. Ogren stated he wanted the board to know that in every building of the corridor except the carpet place on Frederick Road – from Frederick to Pepperell Parkway has natural materials; either synthetic stucco or something around the buildings to be in keeping with the same as the rest of the buildings. He stated that he has received several calls of concern regarding the exterior material so he used "Wood You" as a reference to clarify since the city is moving in that direction ever since the city established the gateway corridor.

Mayor Fuller asked if Aaron's Rental is willing to cover the north and south sides of the building with stucco?

Chairman Sadler said yes, both sides all the way down the building, and the only metal exposed side will be in the rear which is not visible.

Chairman Sadler asked for a vote.

Ayes: Whatley, Van Nieuwenhuise, Cherry, Seroyer, Fuller, Wood, Pridgen, Lazenby

Nays: None

The motion to grant the conditional use approval with staff recommendations passed.

C. VACATION OF STREET/EASEMENT

5. Stephen Ward, Center Street from Alabama Avenue to Alton Court

Mr. Ogren reported that the applicant is requesting the City to vacate a 35-foot right-of-way. The ROW was platted in the 1960's and this portion of the street was not constructed. The applicant owns the property surrounding the 35-foot right-of-way. The property surrounding the ROW is a mobile home park owned by the applicant.

Planning staff believes the request to vacate the right-of-way is reasonable and appropriate. There are no plans to improve the ROW to City standards. Vacating the ROW should not result in any adverse effect to the surrounding properties.

Planning Staff recommends approval for vacating the ROW subject to easements shown on a survey and recorded if easements are required because of existing utilities in ROW.

Mr. Thomas reported that Engineering is not aware of any, but subject to utility easements, as applicable, the Engineering Department suggests a positive recommendation to City Council.

Mr. Lee reported that Opelika Utilities has no facilities located in the subject area.

Mr. Posey reported that Opelika Light & Power does not have any facilities within the right of way for this part of Center Street.

Chairman Sadler asked for a motion.

Mr. Van Nieuwenhuise made a motion send a positive recommendation to vacate Center Street.

Mr. Seroyer seconded the motion.

Ayes: Wood, Seroyer, Lazenby, Whatley, Van Nieuwenhuise, Fuller, Cherry, Pridgen

Nays: None

Abstention: None

The motion to send a positive recommendation to city council passed.

With no further business on the agenda, Chairman Sadler adjourned the meeting at 3:22 p.m.

_____ H.J. Sadler, Chairman

_____ Martin D. Ogren, Secretary