

September 27, 2011

The City of Opelika Planning Commission held its regular monthly meeting September 27, 2011 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: Lewis Cherry, James Morgan, Mayor Gary Fuller, Ira Silberman, David Canon, Lucinda Cannon, Michael Hilyer

MEMBERS ABSENT: Keith Pridgen, Arturo Menefee

STAFF PRESENT: Gerald Kelley, Planning Director
Martin Ogren, Assistant Planning Director
Rachel Dennis, Planning and Zoning Technician
Brian Kriel, Opelika Light & Power
Josh Hawkins, Opelika Utilities Board

CALL TO ORDER: Vice-Chairman Cherry called the meeting to order at 3:00 p.m.

I. Approval of August 23, 2011 Minutes

Vice-Chairman Cherry asked for any changes or corrections to the August 23, 2011 Planning Commission Minutes.

Ms. Cannon made a motion to accept the August 23, 2011 minutes of Planning Commission as written.

Mayor Fuller seconded the motion.

Ayes: Morgan, Fuller, Silberman, Council Member Canon, Cannon, Hilyer

Nays: None

Abstention: None

A. PLATS (preliminary and preliminary & final) – Public Hearing

1. **Butts Subdivision , 2 lots, Timothy Butts, Lee Road 272, preliminary and final plat approval**

Mr. Ogren reported the applicant is requesting preliminary and final approval for a 2 lot subdivision located about two miles west of the City limits near Highway 29. The purpose of the subdivision is to build a house on Parcel B. Each lot meets the minimum 100 foot lot width and one acre lot size requirement for a subdivision in the Planning Jurisdiction.

Planning Department recommends preliminary and final plat approval

Mr. Dorsey reported sanitary sewer service is not available to either lot in this subdivision, which is located outside the Opelika corporate limits on Lee Road 272. Parcel A is undeveloped, while Parcel B contains an abandoned house. Overhead power lines from Alabama Power Company extend from Lee Road 272 to the centers of both lots.

The Engineering Department recommends preliminary and final plat approval.

Mr. Hawkins reported this subdivision is located in the Beulah Utilities District.

Mr. Kriel reported this subdivision is outside the Opelika Light and Power service territory.

Vice-Chairman Cherry opened the public hearing.

No comments given from the audience.

Vice-Chairman Cherry closed the public hearing.

Ms. Cannon motioned to grant preliminary and final plat approval with staff recommendation.

Mr. Hilyer seconded the motion.

Ayes: Morgan, Fuller, Silberman, Council Member Canon, Cannon, Hilyer

Nays: None

Abstention: None

2. Barrett's Point Subdivision, 7 lots, Lee Road 374, Steven Corbett, preliminary and final plat approval

Mr. Ogren reported the applicant is requesting preliminary and final approval for a seven (7) lot subdivision located in the Planning Jurisdiction. The purpose of the subdivision is to sell lots. Lot 3 is a flag lot with a 30 foot wide pole section extending 360 feet to Lee Road 374. Planning staff recommends the pole section be increased to 60 feet to allow future subdivisions of Lot 3. The minimum lot width in the Planning Jurisdiction is 100 feet. The plat shows four lots 130 feet wide along Lee Road 374. (One option to obtain a 60 foot pole section is to reduce each 130 foot wide lot 7.5 feet and add the 7.5 feet to the pole section.) The lots meet the minimum 100 foot lot width and one acre lot size requirement for a subdivision in an R-1 zone.

Planning Department recommends preliminary and final plat approval subject to the pole section of Lot 3 increased to 60 feet.

Mr. Dorsey reported sanitary sewer service is not available to any of the seven undeveloped lots in this subdivision, which is located outside the Opelika corporate limits on Lee Road 374. An existing gravel drive within an access easement extends through Lot 7. Because the gravel drive intersects Lee Road 374 almost directly in front of Lot 6, a note has been added to the plat to indicate access to Lot 6 must be taken only from the gravel drive on Lot 7. A creek extends through Lots 3, 6, and 7.

The Engineering Department recommends preliminary and final plat approval, subject to the following:

1. Indicate the front-yard building setback line on all lots.

Mr. Hawkins reported this subdivision is located in the Beulah Utilities District.

Mr. Kriel reported this subdivision is outside the Opelika Light and Power service territory.

Vice-Chairman Cherry opened the public hearing.

Blake Rice of Barrett-Simpson Engineering stated the plat with the 30 feet pole portion meets all current city and county regulations.

Vice-Chairman Cherry asked if the rear adjoining property owner was contacted. Mr. Ogren stated yes by certified letter.

Joe Cofield 4965 Lee Road 270, asked if the gravel road will be maintained. Vice-Chairman Cherry stated the developer should be responsible for the road. The county or the city would not be responsible for the gravel road.

Sue Justice, 500 Lee Road 374, what kind of homes will be developed there? Vice-Chairman Cherry stated Lee County would issue the building permits and they would have the site plan and/or a floor plan.

Mr. Silberman asked for clarification, will this case go to Lee County Planning Commission from here?

Mr. Kelley stated when we get a request within the Planning Jurisdiction of Lee County it is simultaneously submitted to the Lee County Engineer. They review it

administratively at the same time we do forward the plat to the Board of County Commissioners after the Opelika Planning Commission approves the plat.

Vice-Chairman Cherry closed the public hearing.

Council Member Cannon motioned to grant preliminary and final plat approval with staff recommendation.

Mr. Silberman seconded the motion.

Mr. Dorsey stated I understand the intent of the 30 foot and 60 foot flag lot. Whoever buys this lot should know that the lot cannot be subdivided again if 30 feet is approved.

The Commission, Staff and Mr. Rice discussed the Planning Department recommendation of increasing the pole section of Lot 3 by 30 feet.

Mr. Dorsey recommended if the pole section remains 30 feet then add a note on the plat saying no further subdividing of Lot 3. That will ensure the person that buys this lot in the future is aware of the limitation.

Mr. Silberman stated the note should say Lot 3 may not be subdivided based on the current regulations.

Mr. Rice stated I can check the state surveying codes to see if that is allowable on the plat and we would be glad to note that.

Council Member Cannon motioned to grant preliminary and final plat approval subject to the note on Lot 3 subject to current regulations.

Mr. Silberman seconded the motion.

Mayor Fuller asked where the 5 mile Planning Jurisdiction ends.

Mr. Rice pointed to Lot 7.

Ayes: Morgan, Fuller, Silberman, Council Member Canon, Cannon, Hilyer

Nays: None

Abstention: None

3. Floral Acres Subdivision, 1st Addition, 4 lots, Westwood Street & Fifth Avenue, City of Opelika, preliminary and final plat approval

Mr. Kelley reported the applicant is requesting preliminary and final approval to create four parcels (two parcels on 5th Ave. and two parcels on Westwood). An existing residential structure is located adjacent to Floral Park on Lot 26. A buyer has made an offer to purchase. The City of Opelika will market the remaining three (3) vacant lots (23A, 24A, and 25) for single family residences.

Planning Department recommends preliminary and final plat approval.

Mr. Dorsey reported sanitary sewer service is available to all three lots in this subdivision via in-place gravity mains within the Westwood Street and Floral Street rights-of-way. Lot 25 is undeveloped, while Lot 26 contains an existing residential structure and storage building. Lot 27 contains a paved parking lot that serves the Floral Park softball complex. Westwood Street is located within a 30-foot public right-of-way. As part of this plat approval, an additional 15-foot right-of-way strip in front of Lots 25 and 26 will be deeded. Lots 23-A and 24-A are not part of this subdivision; they are existing deeded lots, and are shown for information purposes to clarify their existing boundaries.

The Engineering Department recommends preliminary and final plat approval as submitted.

Mr. Hawkins reported water service is accessible to this request by a water main in the right-of-way of Floral Street.

Mr. Kriel reported this subdivision is inside the Opelika Light and Power service territory.

Vice-Chairman Cherry opened the public hearing.

Leah Robinson an adjoining property owner phoned in to express opposition to the subdivision and the sale of the lots.

Sharon Westwood an adjoining property owner expressed concern for what the City is going to do with the property.

Mayor Fuller stated the City owns that house and we have received an offer for the house.

Mayor Fuller stated you could contact Robert Shuman the City Clerk about City property for sale.

Vice-Chairman Cherry closed the public hearing.

Mayor Fuller motioned to grant preliminary and final plat approval with staff recommendation.

Mr. Morgan seconded the motion.

Ayes: Morgan, Fuller, Silberman, Council Member Canon, Cannon

Nays: None

Abstention: Hilyer

B. CONDITIONAL USE APPROVAL

4. Marisel San Miguel, 3600 Pepperell Pkwy, C-3, GC-2, Veterinarian clinic

Mr. Ogren reported the applicant is requesting conditional use approval to open a veterinarian clinic in a C-3, GC-2 zoning district. The clinic offers medical and boarding services. This property was first developed in the 1980's. Since then several restaurants and auto sales lots have occupied the property. The existing building and the rear yard outdoor area adequately serves the needs of the clinic. Section 8.15 of the Zoning Ordinance has specific regulations concerning veterinarian clinics as follows:

A. All areas for treatment, diagnosis and over-night boarding of animals shall be completely enclosed and heated and air conditioned in order to eliminate noise, odor, and insect problems.

B. Fenced outdoor exercise areas shall be permitted provided no animal shall be boarded in such areas or be boarded in areas with direct access to such areas or exercised between the hours of 9:00 p.m. and 7:00 a.m. Such fencing shall be a minimum of six (6) feet in height and shall be opaque or screened with landscape materials approved by the Zoning Administrator.

C. Small domestic animals only shall be permitted on the premises and all horses, cows, sheep, goats, pigs, wild animals, food animals and other large animals shall be excluded except in the manufacturing zones.

D. No veterinary clinic building or exercise area shall be established closer than 100 feet to any boundary of property in a residential zone.

On September 13th the Zoning Board of Adjustments (ZBA) held a public hearing for a variance request concerning item D. The site plan shows that the proposed animal outdoor area and the clinic building are 45 feet from a residential zoning district (R-5), but 100 feet is the required distance. The ZBA granted a 55 foot variance from the required 100 foot requirement. Certified letters were sent to all adjacent property owners giving notification of the variance request. No one attended the BZA meeting

concerning this variance request. The applicant is able to meet the other requirements of Section 8.15.

The site plan shows a 4,750 square foot building on a 1.4 acre lot. The clinic will have 30 to 40 indoor cages. The cages for medical cases are separate from the cages for boarding services. About ten animals are expected to stay overnight inside the clinic building. A 1,200 square foot fenced outdoor exercise area for animals is shown in the rear yard. The outdoor area is divided into four pens; one animal will occupy each pen. As required a six foot high opaque fence ("6' screened fence") will be installed around the outdoor exercise area. Also an existing five foot high fence located on each side of the building serves as a visual buffer. The applicant said the clinic will comply with section B above concerning hours prohibited (9 pm to 7 am) for animals to be outside. Other landscape requirements are met for the property including additional shrubs planted along Pepperell Parkway after a driveway is removed. The parking lot shown on the site plan meets minimum parking requirements for a veterinarian clinic.

Planning Department recommends conditional use approval as submitted.

Mr. Dorsey reported sanitary sewer service is available to this 1.40-acre developed commercial parcel via an in-place gravity main within the Pepperell Parkway right-of-way. Twelve on-site, paved parking spaces are proposed, of which one is designated for use by the disabled. Two in-place curb cuts are shown. In order to comply with our current access management regulations, the easternmost curb cut will be removed replaced with landscaping materials. A garbage dumpster will be located at the rear of the site and near the northeastern corner of the property.

The Engineering Department recommends conditional use approval as submitted.

Mr. Hawkins reported water service is accessible to this request by a water main in the right-of-way of Pepperell Parkway.

Mr. Kriel reported this location is presently served by Opelika Light and Power.

Mr. Hilyer motioned to grant conditional use approval with staff recommendation. Council Member Cannon seconded the motion.

Ayes: Morgan, Fuller, Silberman, Council Member Canon, Cannon, Hilyer

Nays: None

Abstention: None

- C. SUBDIVISION REGULATIONS TEXT AMENDMENTS - Public Hearing**
5. Amend Section 3.7 Improvements; Subsection D. Sanitary Sewers, Paragraph (1) by adding the following language after the 1st Sentence. "All sewer line connections are required to be done at the property line. The cleanout and actual connection to the sewer lateral shall be installed at the property line."

Mr. Kelley reported neither the Subdivision Ordinance nor the Public Works Manual addresses the location for sewer line connections to be provided in street right of way at the property line. Staff believes that this regulation should be so stated in the Subdivision Ordinance under the Sanitary Sewer Section. The cleanout and actual connection to the sewer lateral must take place in the right of way at the property line and not on private property.

Planning Department recommends the amendment read as follows:

RESOLUTION NO. 01-11

A RESOLUTION TO AMEND THE SUBDIVISION REGULATIONS OF THE CITY OF OPELIKA

BE IT RESOLVED by the Planning Commission of the City of Opelika as follows:

Section 1. That Section 3.7 Improvements; Subsection D. Sanitary Sewers; Paragraph 1 of the Subdivision Regulations of the City of Opelika is hereby amended to read as follows:

All sewer line connections are required to be constructed at the property line or easement boundary. The cleanout and actual connection to the sewer lateral shall be installed at the property line or easement boundary.

Section 2. That this resolution shall take effect upon adoption and publication as required by law.

Section 3. This resolution shall be published in the Opelika-Auburn News, a newspaper published in and of general circulation of the City of Opelika, Lee County, Alabama.

ADOPTED AND APPROVED this the 27th day of September, 2011.

VICE-CHAIRMAN OF THE PLANNING COMMISSION
OF THE CITY OF OPELIKA, ALABAMA

ATTEST:

Planning Commission Secretary

Mr. Dorsey, Mr. Hawkins, and Mr. Kriel had no report.

Vice-Chairman Cherry opened the public hearing.
No comments given from the audience.
Vice-Chairman Cherry closed the public hearing.

Mr. Hilyer motioned to amend the Subdivision Regulations as written.
Mr. Silberman seconded the motion.

Commission and Staff discussed the reasoning for the amendment.

Ayes: Morgan, Fuller, Silberman, Council Member Canon, Cannon, Hilyer
Nays: None
Abstention: None

D. OTHER BUSINESS

6. Discuss the motion for Bowery Quarters PUD

Mr. Silberman requested this memo be included in the information for City Council regarding Bowery Quarter as a narrative of his motion.

This is a memo from Mr. Silberman. This narrative of his motion is included for Planning Commission to discuss as item D-6 on the agenda. Upon the Planning Commission discussion this will be forwarded to City Council for the public hearing of Bowery Quarters on October 18, 2011.

TO: Keith Pridgen, Jerry Kelly

It has been suggested that the forwarding of a Denial vote to the City Council by the majority of the Planning Commission should be accompanied by reasons for such a decision. A motion was made by me to deny PUD zoning for this property. It was seconded by Lewis Cherry and a majority of the Commissioners present voted in favor of the motion (I believe unanimously). Jerry Kelly stated the City Council would request the reasons for this motion and the Commission Chairman asked me to list my concerns.

At the August 23, 2011 Planning Commission meeting it was agreed to forward to the City Council the Planning Commissioner's agreement to annex the 239 acres requested by RHMB, LLC located between Oak Bowery Rd and Hillflo Ave. The Commission was advised that the fourteen (14) acres accessed from Oak Bowery Road were already in the city limits.

The City Attorney advised the Commission that the total acres (239+14 acres) was presented to the Planning Commission as a single request to be zoned as a PUD and should be addressed that way.

The original concept was first presented to the Commission as a Senior Citizen/Assisted Living community aimed toward the retiring "baby boomers." Since then the developer has stated he does not wish to restrict the property to just seniors.

The developer's illustrations showed multi-storied condos, duplex patio homes, multi-story assisted living facilities, substantially smaller lots with smaller single family homes, and a small shopping area in the interior. THE CONCEPT APPEARED TO BE A VERY GOOD ADDITION TO OUR CITY THEN – AND IT DOES NOW - BUT NOT IN THIS LOCATION.

CONCERNS - COMPATIBILITY

- Function, Scale and Intensity as defined in Zoning Ordinance
- Lot sizes
- Building heights
- Multifamily dwellings

The developer, to his credit, has made numerous changes to the site and expended time, money and effort to try and redesign and relocate various buildings on the site to satisfy numerous compatibility concerns to the surrounding area. However, this very effort in itself is an indication of the number of problems in trying to achieve compatibility with the surrounding area. THERE REMAINS, IN MY OPINION, A LARGE VOID IN COMPATIBILITY TO EXISTING ADJOINING PROPERTIES AND SURROUNDING AREAS ON THE EAST, WEST AND SOUTHERN SIDES OF THIS SITE. EVEN SO, ON THE NORTH SIDE OF THIS PROPERTY (CURRENTLY COUNTY PROPERTY), IF DEVELOPED, WITHOUT A SEWER SYSTEM, THE COUNTY WOULD REQUIRE SUBSTANTIALLY LARGER LOTS FOR SINGLE FAMILY HOME SITES.

REASONING:

For more than thirty (30) years the properties surrounding this site have been developed and generally considered to be an up-scale residential area in our community. The lots are considerably larger - as are the homes - and they are all single family residences. I'm told even this developer was previously involved in developing and promoting the site to the east as an up-scale community – that has yet to be completed (Cedar Creek).

Compatibility has been defined in a number of ways both in the City of Opelika Land Development Regulations, Zoning Ordinances and recently in research by Jerry Kelly. These regulations are the written guidelines given to the Planning Commission for determining zoning compatibility.

The determination of "Compatibility" is at best an opinion and certainly does not mean "same as." However, it can be defined and measured in two general terms – visual and physical similarities. The words used in both the Regulations and Mr. Kelly's research defining visual and physical compatibility strongly suggest this project does not meet the criteria.

Regulations - Section 8.18.1: Wording in this section includes:

- "...protecting existing land uses and land value."
- "...ensure compatibility is achieved with adjacent land uses that differ in function, scale and intensity....." [NOTE; Scale and Intensity are defined in footnote 14 at the bottom of the regulation page and further define what is meant by compatibility]. Intensity refers to comparing the impact by evaluating characteristics of dwelling units per acre and amount of site coverage. Scale and bulk refer to proportions to existing dwellings (size and height) and dwellings that are reasonably consistent and compatible with style and character in the vicinity.
- "...will best maintain or enhance the appearance, character, natural beauty and historic interest of an area."

Mr. Kelly's research – The wording in both of the definitions that Mr. Kelly presented in his research for Compatibility and Land Use Compatibility include similar wording.

- "Some elements effecting compatibility includes height, scale, mass, and bulk of structure...."
- "Rather, compatibility refers to the sensitivity of development proposals in maintaining the character of existing development."

Ira J. Silberman
8/25/11

Vice-Chairman Cherry opened the public hearing.
No comments given from the audience.
Vice-Chairman Cherry closed the public hearing.

Mr. Silberman motioned to amend the motion to include the memo for City Council review.

Mr. Morgan seconded the motion.

Ayes: Morgan, Fuller, Silberman, Council Member Canon, Cannon, Hilyer

Nays: None

Abstention: None

With no further business on the agenda, Vice-Chairman Cherry adjourned the meeting at 3:51 p.m.

_____ Lewis Cherry, Vice-Chairman

_____ Rachel Dennis, Secretary