

**December 17, 2013**

The City of Opelika Planning Commission held its regular monthly meeting December 17 2013 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, Ira Silberman, Mayor Fuller, Keith Pridgen, David Canon, Lucinda Cannon, Michael Hilyer

**MEMBERS ABSENT:** Arturo Menefee

**STAFF PRESENT:** Gerald Kelley, Planning Director  
Martin Ogren, Assistant Planning Director  
Rachel Dennis, Planning and Zoning Technician  
Scott Parker, City Engineer  
Josh Hawkins, Opelika Utilities Board  
Guy Gunter, City Attorney

**CALL TO ORDER:** Chairman Pridgen called the meeting to order at 3:00 p.m.

#### **I. Approval of October 22<sup>nd</sup> and November 19<sup>th</sup> Minutes**

Chairman Pridgen asked for any changes or corrections to the October 22, 2013 Planning Commission Minutes

Mayor Fuller made a motion to accept the October 22, 2013 minutes of Planning Commission as written.

Ms. Cannon seconded the motion.

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

Nays: None

Abstention: None

Chairman Pridgen asked for any changes or corrections to the November 19, 2013 Planning Commission Minutes

Mr. Silberman made a motion to accept the November 19, 2013 minutes of Planning Commission with corrections.

Council Member Canon seconded the motion.

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

Nays: None

Abstention: Mayor Fuller

#### **II. Update on Previous PC cases**

Mr. Kelley reported tonight at City Council meeting we have the public hearing of Cannon Gate and rezoning on Lake Condy Road.

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

##### **1. Harris Hollow Subdivision, 2 lots, 821 Lee Road 262, Jason Harris, Preliminary and Final approval**

Mr. Ogren reported the applicant is requesting preliminary and final plat approval for a 2 lot subdivision located in the planning jurisdiction. The purpose of the subdivision is to create Lot 1 (12.5 acres) to construct a home. The two lots will share a private driveway that accesses Lee Road 262. A 30 foot wide access and utility easement (200 feet long)

is shown on the plat. Each lot meets the minimum 15,000 sf lot size requirement and 100 foot lot width.

Staff recommends preliminary and final plat approval

Mr. Parker reported the Engineering Department recommends preliminary and final plat approval.

Mr. Hawkins reported this subdivision is in the Beulah Utilities service area.

Mr. Ogren reported this subdivision is outside of the Opelika Power Services territory.

Chairman Pridgen opened the public hearing.

No comments from the public.

Chairman Pridgen closed the public hearing.

Ms. Cannon made a motion to grant preliminary and final plat approval with staff recommendations.

Mayor Fuller seconded the motion.

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

Nays: None

Abstention: None

## **B. CONDITIONAL USE - Public Hearing**

### **2. Jobie Watson III, 1900 Market Street, M-1, GC-2, Addition to Twin Oak Environmental**

Mr. Ogren reported the applicant is requesting conditional use approval to construct a 1,800 square foot building for his business (Twin Oak Environmental) accessed from Lafayette Parkway and Market Street. This same business was given conditional approval at the July 2009 Planning Commission meeting. The business is growing and the additional building is needed for inventory storage. Twin Oaks Environmental sells (wholesale) erosion control products and provides hydro-seeding services to contractors. Business activities involve construction contractors entering the site, loading hydroseed products on trucks, and then exiting. About 90% of customers are contractors. At times the business will assist residential property owners with erosion problems. The business has two employees. The site plan shows an existing 3,900 sf building, location of the proposed 1,800 sf building, and parking area located on a 1.5 acre parcel. Three parking spaces are provided. Off-street parking is primarily for employees and should be adequate. The minimum landscape requirements are met with the existing hardwood trees on site. The landscape regulations allows 'tree credits' for each existing tree that will be preserved and protected as an option from planting new shrubs and trees. There are at least 20 existing hardwood trees and 11 Leyland cypresses on the lot. The minimum points required is 163; the property meets the minimum required points for landscaping. At the July 2009 PC meeting, a roll of Leyland cypress was required along the Lafayette Parkway front property line. Three of the Leyland cypress trees have died and need to be replaced or a similar plant replaced along the front property line.

The proposed 30' x 60' building is 100% metal. The applicant is aware of the exterior material requirements of the Gateway Corridor but is requesting that the exterior material of the existing building meet the exterior material requirements rather than the new inventory storage building. The existing 39' x 100' building serves as the primary customer facility and office for the business and is more visible and closer to the Lafayette Parkway Gateway Corridor than the proposed building. The exterior front wall of the existing building is 185 feet to the pavement edge of Lafayette Parkway; the proposed building is 295 feet from the Lafayette Parkway pavement. The exterior material for the front of the existing building consists of stucco brick 4 feet high and then hardy plank will be installed on the remaining front wall area (see elevation drawing in

packet). An 8' x 16' front porch will be constructed to present a more welcome front door entrance appearance and enhanced curb appeal (see elevation sketch in packet). There are at least 20 hard wood trees between the proposed storage building and the front property line along Lafayette Parkway. The existing trees serve as a visual buffer to a certain extent. Planning staff recommends that a row of emerald green arborvitae be planted (3 feet apart-minimum 3 gallon container) along the entire exterior wall (60 feet) of the proposed building that faces Lafayette Parkway. The arborvitae will provide a permanent visual buffer all year.

Section 7.3 A. 2. allows the Planning Commission to grant a setback variance within the Gateway Corridor if an alternative access way is provided or available so that access is not taken directly from the Gateway Corridor. In this case Market Street is the alternative access way although access will occur from Lafayette Parkway. The site plan shows the proposed building 30 feet from the front property line along Market Street. The minimum front yard setback requirement is 40 feet. The applicant is requesting a 10 foot variance from the 40 foot minimum requirement. The building on the adjacent property to the north is about 25 feet from its front property line along Market Street. The applicant's proposed building and the adjacent property owner's building will be about the same distance from Market Street and appear aligned. The proposed building could be relocated so the 40 foot minimum setback requirement is met. However, as the business grows the applicant plans to connect other buildings to the south wall of the proposed building until the last building is beyond the existing 3,900 sf building and near the driveway. *(Also, the topography of the lot prohibits the proposed building and future buildings to be attached to the existing building i.e., the existing building is about 10 feet lower than the building pad (ground level) of the proposed and future buildings.)*

## **Recommendation**

**Planning Staff recommends approval subject to the recommendations stated in this report.**

Chairman Pridgen discussed in detail to clarify the proposed changes to the exterior wall of the current building and the proposed exterior wall of the future building.

Mr. Parker reported the Engineering Department recommends approval of the permit and location of the new warehouse. It is also recommended to retain and utilize the access to US 431/Lafayette Parkway and retain the access to Market Street for situations use.

Mr. Hawkins reported Water service is accessible to this location by a water main in the R.O.W. of Market Street.

Mr. Kelley reported Opelika Power Services presently serves this use.

Chairman Pridgen opened the public hearing.

Mr. Jobie Watson reported why they need this new building for their growing business and agreed to renovate he exterior wall of the more visible existing building up to current gateway standards as opposed to the future building.

Mr. Kelley stated as you grow and make more expansions to this new proposed building in the future you will need to get approval from the Planning Commission and get additional building permits.

Chairman Pridgen also explained that the applicant is asking for a variance in the setback regulations and a variance in the exterior materials of the future building.

Chairman Pridgen closed the public hearing.

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

Mr. Hilyer seconded the motion.

Chairman Pridgen, the Commission, and Staff discussed the two variances in detail. Ms. Cannon was opposed to the exterior materials variance due to the Gateway regulations that are proposed and approved by the Gateway Subcommittee. The Gateway subcommittee has been meeting for more than 6 months updating the Zoning Ordinance related to the Gateways of our City. Chairman Pridgen reviewed the history of Mr. McConnell's building off of Morris/Lafayette Pkwy and the exterior materials required. Mr. Silberman expressed concerns for making acceptations from the changes that the Subcommittee has been working on for six months. Mr. Morgan stated that he saw a great difference in this business location along Lafayette Parkway and across the street from Opelika High School than other locations in other industrial zoning districts.

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

Nays: Cannon

Abstention: None

### **3. First Baptist Church Opelika, 301 South 8<sup>th</sup> Street, C-1, Addition to church**

Mr. Gunter clarified that the ethics law is written so that you do not have financial gain to so Commissioners that are members are not violating any ethical rules.

Mr. Ogren reported the applicant is requesting conditional use approval to construct a three story Children's facility addition to First Baptist Church on South 8th Street. The 47,000 square foot building is located at the corner of Avenue B and South 9th Street across from Courthouse Square. (An outdoor playground and parking lot (22 spaces) currently exists at the corner). The three story addition and other improvements include rooms or classrooms for all age groups from nursery to 6th Graders, two 'gathering' area rooms to accommodate 152 and 72 children, an indoor & outdoor playground, and a new off-street drop-off area on Avenue B. The landscape plan provided meets the Landscape Regulations. The plan shows that 129 shrubs and 6 trees (Southern Magnolia) will be planted along 9th Street and Avenue B. The exterior wall material will match the exterior material of the existing church building. The exterior material is brick painted white.

Recommendations: Planning Staff recommends conditional use approval as submitted.

Mr. Parker reported access from Avenue B and changes to the right-of-way are approved by the Engineering Department. The Opelika Fire Department was consulted regarding access to the dedicated fire lane along Avenue B. It was determined that the low profile pavers that are to create the dividing island will not hinder emergency access to the fire lane.

The Engineering Department recommends conditional use approval.

Mr. Hawkins reported water service is accessible to this location by a water main in the R.O.W. of South 8th Street.

Mr. Kelley reported Opelika Power Services presently serves this use.

Chairman Pridgen opened the public hearing.

Brad Flowers, architect, represented the church. He said basically the expansion is for classrooms.

Chairman Pridgen closed the public hearing.

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

Mr. Morgan seconded the motion.

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

Nays: None

Abstention: None

**C. REZONING – Public Hearing**

**4. Richard Patton, 706 1<sup>st</sup> Avenue, 2 lots-37,000 sf, from C-2 to C-1**

Mr. Kelley reported Mr. Patton is requesting C-1 zoning to permit the use of a Micro-Brewery at 706 1st Avenue. A rezoning is necessary because the C-1 district allows light manufacturing, C-2 (Office Retail) does not. Kerry McGinnis, Co-owner of Red Clay Brewing Co. will operate the facility. This location is within the Downtown Entertainment District.

Just as the City of Opelika, this year approved a definition for a Micro-Distillery and Brewpub; including modification of the Matrix Table of the Zoning Ordinance to determine the zoning districts such uses should be permitted and under what conditions; the same is necessary for a Micro-Brewery.

Therefore a definition is provided to amend Section 2.2 and designating the zoning districts in Section 7.3 to either allow for approval or conditional use approval by the Planning Commission of a Micro-Brewery use.

Mr. Parker reported the Engineering Department has no comments or objections.

Mr. Hawkins reported water service is accessible to this parcel by a water main in the R.O.W of First Avenue.

Mr. Kelley reported this parcel is in the Opelika Power Services territory.

Chairman Pridgen opened the public hearing.

Mr. Patton stated this would help us to move forward with this new business and tie us into the downtown district. This rezone will help us continue and become a part of the viable part of downtown.

Chairman Pridgen closed the public hearing.

Ms. Cannon made a motion to send a positive recommendation to City Council with staff recommendations to rezone the properties.

Mr. Silberman seconded the motion.

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

Nays: None

Abstention: None

**D. TEXT AMENDMENTS TO ZONING ORDINANCE – Public Hearing**

**5. Amend Section II, Definitions: Micro-brewery**

Mr. Kelley reported Amend Section 2.2 of the Zoning Ordinance to include the following definition for a Micro-Brewery:

Micro-Brewery—An establishment for the manufacture, blending, fermentation, processing and packaging of beer which is actively and continuously brewed for consumption on the premises where manufactured; with a floor area of 10,000 square feet or less which takes place wholly inside a building; and produces no more than 10,000 barrels of beer in one year. A tasting room is permitted within the micro-brewery. All activities must occur within the building and outdoor storage is prohibited. The micro-brewery must be properly licensed by any state or federal regulatory agency with jurisdiction over the facility; including the Alabama Beverage Control Board. The

manufacture, processing, and packaging of wine and other alcohol beverages, except beet, by the micro-brewery is prohibited,

Staff Recommendation: Approve the definition of Micro-Brewery

Mr. Parker, Mr. Hawkins, and OPS had no reports.

Chairman Pridgen opened the public hearing.

No comments from the public.

Chairman Pridgen closed the public hearing.

Mayor Fuller made a motion to send a positive recommendation to City Council with staff recommendations to approve the text amendments.

Mr. Hilyer seconded the motion.

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

Nays: None

Abstention: None

## **6. Amend Section 7.3 Specific District Regulation, Subsection C. Use Categories, Add Micro-brewery**

Mr. Kelley reported Amend Section 7.3 Specific District Regulations; Subsection C. Use Categories by adding Micro-Brewery as a permitted use in M-1 and a conditional use in C-1 and C-3.

Staff Recommendation: Approve addition of Micro-Brewery to Subsection C of Section 7.3

Mr. Parker, Mr. Hawkins, and OPS have no reports.

Chairman Pridgen opened the public hearing.

No comments from the public.

Chairman Pridgen closed the public hearing.

Mr. Silberman made a motion to send a positive recommendation to City Council with staff recommendations to approve the text amendments.

Mayor Fuller seconded the motion.

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

Nays: None

Abstention: None

## **E. OTHER BUSINESS**

### **7. Update from subcommittee on off premise LED commercial signs**

Mr. Kelley reported the subcommittee of the Planning Commission: Hilyer, Silberman, Cannon, and Pridgen met on Monday, December 2, 2013 to review and discuss the opinion of Guy Gunter, City Attorney, concerning off-premise commercial signs. (See Attachment) A unanimous decision of the subcommittee; based on Mr. Gunter's opinion, to not pursue at this time an amendment to the zoning ordinance to allow off premise commercial advertising.

Later that afternoon, Chairman Pridgen called Mr. Milner and told him of the decision of the subcommittee based on Mr. Gunter's opinion. Although Mr. Milner does not agree with the opinion, he thanked Mr. Pridgen for the time he spent before the Planning Commission to present his case.

[From: City Attorney Guy Gunter]

Jerry,

The City's Zoning Ordinance bans new off-site commercial signs. This ban includes new billboards. If the City is inclined to allow "mini-LED billboards", it may find itself confronted by the formidable billboard lobby. I would expect the billboard lobby to argue the zoning classification allowing the "mini-LED billboards" is purely arbitrary, capricious and unfounded. The new regulation could also be assailed on substantive due process and equal protection grounds.

As you know, lawsuits are brought against municipalities by billboard companies all the time. In many instances, city-wide billboard bans have withstood exclusionary zoning attacks. I am concerned that an ordinance allowing "small billboards" but excluding large billboards, may not survive constitutional challenges. I am inclined to believe that a total ban of off-site commercial signs would be more likely to survive a court challenge.

I trust this information will be of some benefit. If you have any questions, please don't hesitate to call me.

Guy Gunter

Mr. Parker, Mr. Hawkins, and OPS have no reports.

Chairman Pridgen stated we would clarify some information in the sign ordinance section of the Zoning Ordinance.

#### **8. Corrective plat for "Achievement Center/King Honda Automobiles Subdivision"**

Mr. Ogren reported the first page that you have with highlighted changes. The second page is the recorded plat. The only change is the dimension between the property line and the Achievement Center. The correction is 13 ft. 2 in not 3 ft. 2 in.

Mr. Parker, Mr. Hawkins, and OPS have no reports.

Mayor Fuller made a motion to grant preliminary and final plat approval with staff recommendations.

Mr. Silberman seconded the motion.

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

Nays: None

Abstention: None

With no further business on the agenda, Chairman Pridgen adjourned the meeting at 3:56 p.m.

---

Keith Pridgen, Chairman

---

Rachel Dennis, Secretary