

MINUTES OF REGULAR MEETING

May 2, 2023

MONTGOMERY PLANNING AND ZONING COMMISSION

CALL TO ORDER

Chairman Waddell declared a quorum was present and called the meeting to order at 6:01 p.m.

Present: Jeffrey Waddell, Bill Simpson, Merriam Walker, Daniel Gazda, Britnee Ghutzman

Absent: none

Also Present: Dave McCorquodale, Assistant City Admin. / Director of Planning & Development

VISITOR/CITIZENS FORUM

Two residents wished to speak on the rezoning request listed on the agenda. Their comments were held until the agenda item was considered by the Commission.

1. Approval of the meeting minutes for March 7, 2023 and April 4, 2023.

Jeff Waddell noted that the March 7, 2023 contained a typo—the word “side” should be used instead of “size” under Agenda Item #6 when referring to building setbacks on a lot. Staff noted the correction. Bill Simpson moved to approve the minutes as corrected. Dan Gazda seconded the motion, the motion carried unanimously. (5-0)

2. Review and discussion on a proposed residential structure near the intersection of College and Pond Streets.

Staff reviewed information provided by Mr. GERAL FAUSS, the property owner. The property is located in downtown behind Burger Fresh and is 35-feet wide by 25-feet deep. The owner provided historical images and a narrative that explain that the city’s old water tower used to be located on the site. His proposal that he would like feedback from the Commission on is for a residential dwelling designed to be similar in form to a water tower. The living quarters would be elevated at the height of a second-story like a water tower and there would be two parking spaces below. Mr. Fauss stated he would like to know if the property is buildable since the county appraisal district

had increased his taxes exponentially this year. Staff stated the city attorney could provide an answer on what steps would need to be taken since the lot size is so small relative to required setbacks. The Commission generally appreciates the idea of preserving the history of the water tower site and felt that the structure would be a unique addition to downtown if the setback issues can be worked out. The Commission also provided feedback on the computer mock-up image provided by the owner and preferred a form with less mass, or one that was more open. Mr. Fauss said he understood and wanted to get feedback from the city before hiring an engineer and architect to design the structure. No action needed or taken by the Commission, and they thanked Mr. and Mrs. Fauss for attending the meeting to discuss the item.

3. Consideration and possible action on a draft Preliminary Report for a rezoning request from R1-Single Family Residential to B-Commercial for 14640 Liberty Street, Montgomery, Texas as submitted by Evan Ballew.

Staff reviewed the draft report. Jeff Waddell asked if the applicant was in attendance. Mr. Ballew confirmed he was. Merriam Walker stated she had driven in the area after the last meeting. She asked if the property was rezoned to commercial and the owner sold the property, would it stay commercial. Staff affirmed that it would and any uses listed in the Table of Permitted uses for B-Commercial would be allowed by right. She asked if the property was big enough for something like a gas station. Staff said it was not, but a future owner could acquire adjacent property and request it be rezoned to commercial to create a larger site. Bill Simpson asked if the applicant knew the depth of the lot. Mr. Ballew said it was 1/3-acre and roughly 200-feet deep. Britnee Ghutzman said the traffic counts and visibility along FM 149 make commercial suitable along the corridor. Dan Gazda agreed. Ms. Ghutzman said her concern was the residential properties surrounding this property and making sure that adequate buffers were in place for light, sound, etc. to preserve the integrity of the residential properties.

Bill Simpson said he was concerned with uniformity of the properties with existing residential properties on FM 149. He continued that he felt it would be a long time before a significant number of these properties would be commercial. Jeff Waddell mentioned an effort several years ago to fix up old houses. He said he felt there was contradiction by the city in the Future Land Use Plan and encouraging people to fix up houses. Mr. McCorquodale said he didn't see a contradiction since the two initiatives had different purposes. He continued that the MEDC had funded a removal

of blight program for dilapidated structures several years ago and the HOME grant program built new homes for several residents in past years. Merriam Walker said if this property was developed like Arnette Easley's property down the street that was in scale with the surroundings that she could see that as a possibility. She mentioned the city of Tomball where a number of old homes were now used as businesses along busy streets. Merriam said if the city wanted improvement along the corridor, we'd have to be willing to give and take.

Jeff Waddell suggested a Special Use Permit as a possible alternative to rezoning to commercial. Mr. Ballew said the property had been on the market for 7 months because no one wants to purchase a home on a road as busy as FM 149 North. He said he wanted to improve the property by painting the exterior of the house, adding several parking spaces and a sign for his real estate office. Mr. Ballew said there are limited options for small professional office space in the city. Bill Simpson asked if the existing driveway was paved and whether the new parking spaces would be paved. Mr. Ballew affirmed they were paved. Jeff Waddell said the primary issue to him was the future types of commercial activity if the property was rezoned and reiterated that a Special Use Permit would allow the owner to use the property as he intends and allow the city to place some restrictions on the intensity of the commercial activity on the property. Mr. McCorquodale said he would discuss whether an SUP could be used with the city attorneys to confirm it is a possible tool to use in this case. Britnee Ghutzman said her background as an appraiser suggests that the highest and best use for the property is commercial. Merriam Walker said she was also leaning toward commercial property but was concerned about a future gas station or similar use. Mr. Ballew said he felt that people would likely not want to invest in these properties as homes because of the volume of traffic on FM 149. Merriam Walker asked if he had met the neighboring property owners. Mr. Ballew said he had considered it but had not reached out to any of them.

Merriam asked the owner if he planned to live in the residence. He said he does not. She asked the owner how long he had been in Montgomery. He said he grew up in Montgomery and had lived here since 1998. Jeff Waddell suggested moving to the Public Hearing item to continue discussion. No revisions or edits to the Preliminary Report were requested by the Commission.

Daniel Gazda moved to approve the Preliminary Report as presented. Merriam Walker seconded the motion, the motion carried unanimously. (5-0)

4. **Convene into Public Hearing #1 on the Preliminary Report for a rezoning request from R1-Single Family Residential to B-Commercial for 14640 Liberty Street, Montgomery, Texas as submitted by Evan Ballew.**

Jeff Waddell opened the hearing at 6:46 p.m.

Sara Countryman addressed the Commission and said she lives in the neighborhood behind the subject property. She questioned why the applicant purchased the property before rezoning it and did not discuss it with the city and took issue it. She said while a gas station would not fit on this property, someone could purchase adjacent properties to have a bigger site. She also said there were other options in the city for professional office space, including Shanon Salsbury's spaces about a mile from this property. Ms. Countryman also asked what a rezoning action might do for appraisal values of surrounding properties. She said she was opposed to the request and urged the Commission to consider the residential areas around this property. She added that deed and title information for many of the surrounding properties were unclear and that would hamper the redevelopment of the corridor.

Evan Ballew, the applicant, stated he did discuss the property and rezoning with city staff and that it was a calculated decision he had to make when purchasing the property. He said his office team needs more office space than what's available in town. Mr. Ballew said he understood the concern about any commercial use of the property but his intent is to use for professional office space. Mr. Ballew said he was following the process as he understood it and was not trying to hoodwink anyone.

Bill Simpson said he felt like some of the confusion may have been coming from the Future Land Use Plan. He asked where the Future Land Use Plan came from. Jeff Waddell asked if there was anyone else who wanted to speak during the Public Hearing.

Julia Denison stated she lived behind the subject property and had lived there for 8 years. She said they had a lot invested in their home and she has concerns about the other properties being rezoned and possibly bring a strip center and nuisances that would affect their property. She said her realtor told her the property on FM149 would never be commercial and she opposed the rezoning request.

Jeff Waddell thanked the citizens for their input and said that the Commission had heard both sides of the discussion. Mr. McCorquodale said he had one comment from a property owner who could not attend the meeting and that their family opposed the rezoning request. Ms. Annie Butler represented the estate of Edna Jackson across the street from the subject property.

The hearing closed at 7:01 p.m.

5. Convene into Public Hearing #2 on the Preliminary Report for a rezoning request from R1-Single Family Residential to B-Commercial for 14640 Liberty Street, Montgomery, Texas as submitted by Evan Ballew.

Jeff Waddell opened the hearing at 7:03 p.m. Britnee Ghutzman asked if the citizens had any suggestions for a buffer between the residential neighborhood behind the property and this property. No additional comments given by the public. The hearing closed at 7:04 p.m.

6. Consideration and possible action on a Final Report for a rezoning request from R1-Single Family Residential to B-Commercial for 14640 Liberty Street, Montgomery, Texas as submitted by Evan Ballew.

Staff reviewed the draft report included them in the packet and reminded the Commission the draft was a starting point and that they should edit the report to reflect their recommendation and considerations. Merriam Walker asked about bullet #2 that said the city's Future Land Use Plan identifies this corridor as future B-Commercial. Staff affirmed that was a correct statement. She asked the residents if they were aware of the Future Land Use Plan. She continued by asking when the plan became public knowledge. Mr. McCorquodale said he did not know the exact date but believed it was around 2015 or 2016. She asked if the plan identified the corridor as B-Commercial whether there was an option of allowing "light commercial" or "neighborhood commercial" or whether it was full commercial. Staff stated the only tool we had at present was full B-Commercial. Jeff Waddell said the Commission needed clarity on whether the Future Land Use Plan was official or not. Mr. McCorquodale said the plan was not officially adopted by the Council, but it is the only tool the city has that looks to future land use when considering rezoning requests. He also reminded the Commission that they do not have to follow the Future Land Use Plan when making a recommendation to City Council, it is a guide to consider as part of the request. Merriam Walker asked if a large percentage of the homes in the area have title issues, Ms. Countryman stated many

of the homes in this area did have unclear titles. After additional discussion on points related to traffic, future commercial development in the area, and some of the surrounding residences, Merriam Walker asked to confirm that the draft can be amended to suit the preference of the Commission. Staff affirmed it could. Britnee Ghutzman asked what the side and rear setbacks would be. Mr. McCorquodale said there would be a 25-foot setback and vegetative buffer where commercial abuts residential. Merriam Walker stated that many applicants have presented a vision for a proposed development and when it's built, she felt like it wasn't the same as the vision that was presented to P&Z. Bill Simpson asked if the city could place conditions on a Special Use Permit like transfer of ownership. Staff affirmed the city could. Merriam Walker asked if the city could place a timeframe on the SUP, and staff affirmed they could. Britnee Ghutzman said from an appraisal standpoint, surrounding properties are generally not affected by the rezoning of a neighboring property, but there are exceptions. Jeff Waddell said he saw potential in a Special Use Permit but wasn't comfortable with a commercial rezoning.

Britnee Ghutzman moved to approve the Final Report recommending rezoning of the property to B-Commercial. Merriam Walker seconded the motion. The vote was 3-2 with Jeff Waddell and Bill Simpson opposed.

Following the vote, the Commission had questions on the intent of the previous vote and wished to discuss amending the Final Report. Dan Gazda said he'd misunderstood the intent of the motion and that he favored an SUP over a rezoning to commercial. Following a brief discussion, staff asked the Commission to restate a motion and take another vote due to confusion on the previous motion.

Dan Gazda moved to approve the Final Report with the change that P&Z recommends to NOT approve the rezoning request in order to ensure adequate protection for the residential properties around the subject property. Bill Simpson seconded the motion. The vote was 3-2 with Britnee Ghutzman and Merriam Walker opposed.

7. Consideration and possible action on a Preliminary Report for proposed amendments to Section 98-88 (Table of Permitted Uses) of the City Code of Ordinances.

Staff introduced the information and reminded the Commission of the presentation of the Mobile Food Vendor Ordinance revisions by city administrator Gary Palmer at the April meeting. Mr.

Palmer reviewed those revisions and also proposed two related amendments to the Table of Permitted Uses that would require Food Truck Courts as well as individual food trucks within the Historic Preservation District to obtain a Special Use Permit to operate. Bill Simpson said he appreciated the changes Mr. Palmer recommended at the last meeting. Britnee Ghutzman said she spoke with several food truck operators and that some cities issue a business permit for food vendors, and some have limits on the number of permits issued in a year. Britnee said she also had questions about permitting traditional ice cream trucks that drive through neighborhoods. Mr. McCorquodale said conventional ice cream trucks were excluded from the proposed food vendor regulations. Merriam Walker asked if staff had looked into the charity aspect of the proposed changes. Mr. McCorquodale said he was not actively working on the vendor ordinance revisions.

Bill Simpson moved to approve the Preliminary Report as presented. Daniel Gazda seconded the motion, the motion carried unanimously. (5-0)

8. Convene into Public Hearing #1 on a Preliminary Report for proposed amendments to Section 98-88 of the City Code of Ordinances (Table of Permitted Uses).

Jeff Waddell opened the hearing at 8:00 p.m. Staff introduced Manny and Michael, the owners and proposed developers of a mobile food court on the north end of downtown. Manny said he appreciated the city's help in their process of development, but they are not going to pursue the project and will be selling the property. No comments were given by the public before or at the meeting. The hearing closed at 8:03 p.m.

9. Convene into Public Hearing #2 on a Preliminary Report for proposed amendments to Section 98-88 of the City Code of Ordinances (Table of Permitted Uses).

Jeff Waddell opened the hearing at 8:04 p.m. No comments on the Preliminary Report were given by the public before or at the meeting. The hearing closed at 8:05 p.m.

10. Consideration and possible action on a Final Report for proposed amendments to Section 98-88 (Table of Permitted Uses) of the City Code of Ordinances.

Staff reviewed the information provided in packet on the draft Final Report. Britnee Ghutzman asked if the proposed changes still required mobile food operators to still get permission from

property owners to be on site, staff confirmed they did. She also asked if there was a mobility requirement for mobile food vendors in the proposed ordinance, staff said there were not.

Bill Simpson moved to approve the Final Report as presented. Britnee Ghutzman seconded the motion, the motion carried unanimously. (5-0)

Commission Inquiry

Jeff Waddell mentioned the townhome zoning district idea from the last meeting and asked to keep it on the list of discussion points for rezoning revisions to discuss at the next joint workshop. Jeff also mentioned the area behind Memory Park for a playground area for children. Mr. McCorquodale said there is a portion of land on the east side of the park that is an HOA reserve and the city is working on an agreement to use the reserve as part of the open space of the park.

Adjournment

Britnee Ghutzman moved to adjourn the meeting at 7:55 p.m. Merriam Walker seconded the motion, the motion carried unanimously. (4-0)

Prepared by: _____ Date approved: _____
Dave McCorquodale

Chairman Jeffrey Waddell

Attest: _____
Nici Browe, City Secretary