

Tuscaloosa Neighborhoods Together
notes on
TUSCALOOSA PLANNING AND ZONING COMMISSION

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OCTOBER 17, 2006

Present:

Commissioners: Bobby Howard, Joe Romanek, Vince Dooley, Robert Reynolds, Gary Phillips, Aaron Christian, Jimmy Warren and Steve Rumsey

City Staff: Joe Robinson (TDOT), Jimbo Woodson (Legal), John McConnell, Harold Skelton and Bill Snowden (all from Planning & Zoning)

ZONING

Z-19-06: White Oaks Investment, LTD. petitions to rezone approximately 6 acres located along the Oliver Lock & Dam Fishing Deck Access Road and west of the Tuscaloosa Country Club Golf Course from R-1 to ML. (Council District 1; map: <http://www.tuscaloosaneighborhoods.org/Documents/Maps/District1.pdf>)

This rezoning was before the Commission back in July and my notes indicate that the rezoning was approved. At that time they were requesting that 11 acres be rezoned, however, a survey of the property done after the last ruling showed that the golf course was encroaching on the subject property by 2 holes and there was no desire to rezone the golf course. They also realized that part of the property was included in the City's planned Riverwalk Trail. The City has not bought the easement for the trail yet though.

Jimmy Duncan, the civil engineer employed by the property owner (McAbee) indicated that the entire area was sensitive drainage-wise and they are going to have to be very careful with whatever they do there. He said they have met with the neighbors.

Commissioner Bobby Howard, who is also a City Councilman, stated that this is in his district and that he recognizes that the owner has brought this petition voluntarily to bring the zoning into compliance and that he has done everything he can to make the situation palatable.

Resident Bill Dobbs, Country Club Lane, showed a blown-up photo of a view of the subject property. He pointed out that there is a gap in the berm because of the railway. The residents have a clear view into the subject area. He wants the tree line preserved. He expressed appreciation for the engineer's and the owner's efforts toward the neighbors. He asks that the zoning contain a restriction saying that no warehouse or other building can be built there. He pointed out that there is no lighting currently on the site, but expects that there will be in the future and he asks that the lights be directional. He had copies of his proposed restrictions which he passed out to the Commission.

Commissioner Reynolds informed Mr. Dobbs that the Commission lacks authority to refuse to allow erection of structures on property.

Planning Director, Bill Snowden, corrected him, stating that they have limited such uses before where the use would be incompatible with the surrounding zoning and as an example he cited the case (which was Z-7-06 in May 2006) where they amended the petition so that the Planning and Zoning Commission will have to approve the appearance of the structure built on the property and that it be limited to a 2-family dwelling.

Commissioner Rumsey asked if building houses would be acceptable.

Commissioner Phillips asked Mr. McAbee if all this was even an issue.

Commissioner Howard asked John McConnell to describe the existing zoning in the area.

Resident Dobbs stated that a lot of damage has already been done. Then another resident whose name I didn't catch asked that the Commission do any improvement it can.

Engineer Duncan agreed to the trees and directional lights but not to the use restriction.

Commissioner Warren asked if the berm would be left where it is.

Commissioner Reynolds asked about a height restriction on potential buildings.

Engineer Duncan stated that the zoning already includes a 45' restriction but that there are no plans to build on the property.

After some discussion on the exact language, the Commission voted to approve the rezoning with the conditions requested except for the one against erecting structures.

Z-20-06: Robert W. Monfore petitions to rezone property located at 925 - 25th Avenue East (Lots 11, 13 & 15 in Block A of Alberta Heights subdivision) from BGO to BN. (C o u n c i l D i s t r i c t 5 ; m a p : <http://www.tuscaloosaneighborhoods.org/Documents/Maps/District5.pdf>)

This property is surrounded by single family homes (even though it is BGO zoning), Your Way Furniture and two day care centers. Mr. Monfore said that he represents the owner of the property and the owner of the furniture store. The furniture store wants to expand to add storage to the rear. There is an alleyway there that he is going to ask to be vacated at a later time. The alley is of no use because it is already blocked off.

Commissioner Warren asks Monfore to confirm that there will be no semi loading or unloading in the area. Monfore confirms this stating that they use a different entrance for that. The owners are willing to erect a fence and do landscaping.

The rezoning is approved with the conditions that the rear of the building be bricked, that directional lighting be used and that a landscaped buffer be installed if there is to be parking in the rear of the building.

PLANNED UNIT DEVELOPMENT SUBDIVISION PLATS

P-11-03 (1): CRESCENT GARDENS AMENDMENT, consisting of 50 lots located on the west side of Crescent Ridge Road East, between Crescent Lane and 7th Street East. The purpose of this amendment is to allow the required sidewalk to be located on the south side of the street in lieu of the north side as approved on the preliminary plat. (Council District 5; map - follow link above)

This is before the Commission because it is a PUD that has already been approved and built, but after it was built it was realized that the sidewalks were put on the wrong side of the street. They want the PUD amended as adopted to show the sidewalks on the side of the street where they built them. This is not a big problem.

But, the petitioner also asks for the PUD to be amended to deal with an encroachment situation where a building (home) has apparently been built over the drainage easement. There is a drainage pipe running underneath the house. The configuration of the proposed solution effectively does away with the open space that had been designed into the PUD as adopted.

Commissioner Phillips said that he has a problem doing away with open space access that was part of the plan as originally approved.

Commissioner Warren agreed.

The engineer on the project, Mike McGuire pointed out that there is green space on Crescent Ridge Road. The general response was that that green space is outside the development. Mike McGuire countered that there are sidewalks, I guess trying to categorize them as open space.

The engineer and the commissioners gathered around a map and discussed alternatives. I couldn't hear their discussions.

At this point the City's attorney, Jimbo Woodson, interrupted to point out that the only item on the actual petition is the location of the sidewalks. The encroachment issue is not on the petition and therefore may not be acted upon. He then said that the City is working on a strong ordinance that will address the issue of encroachments and that it should be ready soon.

Commissioner Reynolds confirmed that the Commission's vote will be limited to the issue of the sidewalk; that they will be adopting the PUD as originally adopted with the one exception of the location of the sidewalks

Approved.

PRELIMINARY SUBDIVISION PLATS

S-59-06: HALLMARK HOMES AT GARDEN PARKWAY, consisting of two (2) lots located at the southwest corner of the intersection of McFarlane Boulevard East and Garden Parkway. (Part out of City and part in Council District 7; map: <http://www.tuscaloosaneighborhoods.org/Documents/Maps/District7.pdf>)

This is out by the Superskate. Many people were in the audience in regard to this petition. The plan is to build apartment buildings that will be rented to lower income people. Most of the property is in the county, but a portion facing McFarland Blvd. is in the city. The garden home community of Windsong South neighbors the property. Access to the subject property is via McFarland Blvd and Garden Parkway.

Attorney Ike Espy rose to speak for the petitioner. He stated that the petition meets all the substantive requirements for subdivision plats. He acknowledged the crowd of people, but stated that the use of a property may not form the basis of the Commission's decision. He cited an engineer who has said that traffic from the project will not be an issue and stated that Garden Parkway is sufficient in design for the density proposed. He

handed out a description of what is planned and stated that they are significant structures. He acknowledged that there may be an issue about notice of this petition, but stated that even if there has not been complete legal notice there has been actual notice.

At this point there was a discussion of who had and had not received notice and it was determined that neighboring property owner, Phillip Nix, wasn't notified and that therefore the petition had to be continued. A vote was taken and the item was continued, but public comment was allowed in case anyone present was not able to attend next month when it is back on the agenda.

Neighboring business owner, Jack Collins, stated that he was opposed to the project because of traffic problems it will cause.

Melanie Bear rose and stated that she was speaking as a representative of the Hall Family, which owns the subject property. She said there has been a lot of confusion over the issue. She said they have met with the neighbors' board. She asserted that the project will be an asset to this area. (The audience laughed out loud.) She said this is not a H.U.D. or government project, that they are targeting people with income from \$22,000 to \$36,000. She said that they will be checking potential residents' felony histories, etc. She then pointed out that no felony check is necessary to move into Windsong!

Dr. Perry Churchill, a university professor, rose and said the Windsong Board did not have the right to meet with the Halls and generally complained about the Board.

Commissioner Reynolds said that the Commission does want to hear from the neighborhood association, but that they need to get together with the developer beforehand.

One of the developers, whose name I didn't catch, said that he has been contacted by the neighbors, he has come down to meet with them and is willing to do so in the future. (The developers are apparently out of Louisville, KY.)

S-60-06: RESURVEY OF LOTS 7, 8 AND 9 GREENVIEW, consisting of two (2) lots located on the southwest side of Culver Road and immediately south of Oakdale Elementary School. (Council District 1; map - see link above.)

This is a housekeeping subdivision. There are old lot lines that need to be removed because structures have been built over the lot lines.

Approved.

S-61-06: THE GLEN AT HILLCREST, This is the proposed conversion of the existing Hillcrest Apartments which consist of 72 dwelling units to condominiums. This property is located along the north side of Crabtree Road and immediately west and south of Duck Creek. (Out of City)

This subdivision is to convert existing 10-year-old apartments to condos. The difficulty arises out of the fact that when these apartments were built, the County had no density standards. Now, there are standards for condo density per acre, which these will apparently violate.

The developer, Joe Mullins, asserts that there is plenty of open space and ample parking.

City Attorney Jimbo Woodson was hesitant about this subdivision because he hasn't had a chance to see if there is any law on the issue at all. It is an unusual situation

Commissioner Phillips said that he doesn't want the Commission to act on anything Legal has not reviewed.

Commissioner Reynolds stated that he is against apartments-to-condos conversions in general, but that Legal has instructed them that they have no choice but to grant the subdivisions if appropriate. (It was stated by someone earlier in this discussion that there can be no discrimination based on the type of ownership and I suppose this is the basis for Legal's advice. Don't quote me on this.)

There was then a somewhat disorganized discussion of annexation. The developer indicated that he couldn't get an easement from a neighboring subdivision in order to connect this apartment complex to the City. Commissioner Gary Phillips suggested that since there is so much pending discussion with City Staff, they should continue the petition. City Planner, Bill Snowden, indicated he would discuss with neighboring land owners the possibility of an easement being granted so this development may be annexed into the City.

At this point another person named Richard Malloy (?), who must be with the developer rose and asked about the density requirement. The current density requirement is 12 units/acre. They are lacking 4/5 of an acre, which they can acquire to meet the density requirement, but he says there is plenty of open space surrounding the development; the ownership is just different. (Comment: It seems to me that the density requirement should only be determined based on the petitioner's ownership because neither the petitioner nor the Commission can control what the neighboring property owners will do with their property - especially since it is in the County. What is sufficient open space today may not exist tomorrow.)

Commissioner Warren stated that the Legal department needs to determine if the Commission has the right to approve this petition. At this point the petitioner requested a continuance, which was granted.

AMENDMENT TO THE ZONING ORDINANCE

The Planning Commission was scheduled to consider an amendment to **ARTICLE X** of the Zoning Ordinance pertaining to **On-site signs and Billboards**. Bill Snowden informed the Commission that city attorney Tom Bobbit had asked that this be continued. He also said that the amendment was the direct result of the video bill boards and that the City has spend a lot of time working on the amendment with a consultant.

AMENDMENT TO THE SUBDIVISION REGULATIONS

The Planning Commission considered an amendment to the text of the Subdivision Regulations, as follows:

Amend Section 6.7(3) to read as follows:

- (3) **Acceptance and Bonding of Improvement.** Upon the satisfactory completion of the final surface or wearing layer and/or shoulder dressing and other public utilities and

structures including, but not limited to, subdivision street, drainage structure, sanitary sewers, and curb and gutter the City Engineer will recommend acceptance for maintenance of the municipal public improvements by the City. Provided, however; such acceptance must be accompanied by the delivery to the City from the Developer of a Maintenance Bond on a form provided by the City with good and sufficient surety approved by the City Attorney in an amount equal to ten (10) percent of the construction costs of said public infrastructures. The surety for the Maintenance Bond shall meet the requirements as stated above in paragraph (2) (b) and shall be for a period of one (1) year from the date of acceptance of improvements by resolution of the City Council or the date the developer has corrected all deficiencies of such improvements as determined by the City Engineer, whichever is longer.

Lift Stations present a special consideration in that there are mechanical inspections and routine maintenance that must be conducted during the period after the subdivision plat is approved by the City Engineer for construction and before the final wearing layer is placed on all streets within the subdivision. Since interim maintenance is critical to insuring lift stations accepted by the City are in good working order upon acceptance, the City will modify the above requirement such that any lift station constructed by private entities that is to be connected to the City's sanitary sewer collection system will be accepted by the City for ownership and maintenance immediately upon meeting the following separate requirements:

- A. the lift station meets all City standards and construction requirements;
- B. The City lift station maintenance staff has inspected the lift station, provided a punch list of lift station deficiencies to the developer and the developer has satisfactorily completed all tasks required by the punch list.
- C. A recommendation from the City lift station maintenance staff sent to the City Engineer.

All City requirements for the design and operation of such lift station shall be complied with in full prior to acceptance by the City including compliance with NFPA Rule 820 and full functioning supervisory control and data acquisition (SCADA) networked into the City's central SCADA system at the Hilliard Fletcher Wastewater Treatment Plant. The City Engineer will recommend (to the City Council) acceptance of the lift station by the City as these criteria are met. A one-year warranty on the lift station will be provided by the Developer at that time

Developer must request acceptance of maintenance by the City for the development within one month after application of the final surface or wearing layer and/or shoulder, otherwise, no future plats submitted by the developer shall be considered by the Planning Commission until acceptance of maintenance is requested. For subdivisions not within the corporate limits of the City, the only public infrastructure improvements that can be accepted by the City are water and sewer facilities that are to be a part of the City's system. No roads, drainage structures or other improvements may be accepted by the City outside its corporate limits.

This is more or less a house-keeping amendment that TDOT Director, Joe Robinson, asked for and it gives TDOT the ability to maintain sewer lift stations earlier so they aren't turned over to the city in poor condition. APPROVED.

OTHER MATTERS

The Planning Commission consider an amendment to condition number 7 of Ordinance No. 6518 (Midtown Village) concerning access to the site during construction. (C o u n c i l D i s t r i c t 2 ; m a p : <http://www.tuscaloosaneighborhoods.org/Documents/Maps/District2.pdf>)

It seems that the construction vehicles were only allowed to exit the Midtown site by 7th Avenue onto with 15th Street, but there is no traffic signal there. They are asking that the ordinance be amended to allow the construction vehicles to exit the site via 6th Avenue where there is a traffic signal. Bill Snowden stated that this had been “run by” the Forest Lake Neighborhood Association and was approved. He later clarified that statement. He spoke to George Harris of the neighborhood steering or executive committee and was told they had no objection.

Commissioner Phillips spoke up immediately saying that he couldn't believe that the neighborhood association approved this and that they had made a big mistake because they weren't taking care of the residents.

Commissioner/Councilman Howard agreed with the developers, however, saying that requiring the construction vehicles to exit onto 15th Street at an intersection without a signal was dangerous. He described an experience he had where he saw the trucks trying to get out onto 15th Street and the motorists on 15th Street never allowed them to merge. He personally stopped the traffic to allow the trucks to get out. He asked what would happen to this request for amendment if the Commission voted “no” and was told by city attorney, Jimbo Woodson, that it would be presented to the City Council.

Commissioner Warren acknowledged that it was a hazard now since they can't come out onto 15th Street because there is no light on the road they are required to use.

Forrest Lake resident Sharon Paramour stood and stated that the issue has not been before the entire neighborhood association. Her position was that the ordinance should not be changed because the developers knew what they were dealing with when they made the initial agreement.

Commissioner Reynolds asked Joe Robinson, TDOT Director, what his recommendation was. Robinson recommended that the trucks be allowed to use 6th Avenue East, which does have a traffic signal. Commissioner Reynolds then moved that the change be approved because of safety and security considerations.

The change was approved by the majority of the Commission. Commissioners Phillips and Dooley voted “no.”

The Planning Commission considered amendments to conditions 2 (a), (b), & © of Ordinance No. 6868 (Traditions II) concerning the required fencing, berms, landscaping, and the issuance of a building permit. (Council District 5; for map see link above.)

This is the big condominium complex being built near the end of 15th Street (Veterans' Memorial Parkway). As background, the developers agreed to many requests of the neighborhoods in exchange for their support of the project - or their withholding of opposition I should say. This was a long, drawn-out process and the project was before

the Commission several times before it was approved. The developers' attorney, Mike Smith, explained that now that construction has begun, they realize that some of the conditions do not fit well within the construction sequence. The main topic was the construction of a berm around the project. The berm was supposed to be 3.5' tall; the developer is asking that it be changed to 5' tall. There was supposed to be an 8' sound attenuation fence on top of the berm. They are asking that the fence height be lowered to 6'. The developer is asking that it not be required to do the sound attenuation fence along the north side of the property which is bordered by a RR track. Instead they want to use a 6' tall wooden fence with brick pillars on that side. They were supposed to plant 6'-8' tall Leyland Cypress trees beside the berm and the developer is asking to be allowed to plant them on top of the berm. The berm will be 10' wide at the top. There is also a small area of wetland that the Corp of Engineers has jurisdiction over where no berm will be allowed to be built at all.

Attorney Mike Smith stated that the developer is B&D from Oxford, Mississippi. They are the same developers who are doing the condos across from the new Central High School. He said that when the process of planning this project started they were looking to accommodate the neighbors and they didn't pay sufficient attention to the engineers. Now there is a conflict between the schedule agreed to by the neighborhood and the construction sequence they need to follow. Apparently, they agreed that they would build the berm as a prerequisite to getting their building permit, when, in fact, they need to use the dirt from excavation for the berm and they can't begin the excavation until they get their permit.

(As an aside, please recall that the owners of the property on which the condos are being built also owned a large parcel of undeveloped property at the back of the Claymont subdivision which they agreed to give to the neighborhood with a Conservation Easement so that it would remain wild land forever. Attorney Smith mentioned that he was having trouble finding an entity to take title to that property. The City didn't want it, but he is contacting some other groups.)

Claymont resident Mark Legette spoke as a representative of the Neighborhood Association. He said he had been asked to come to Planning Director Bill Snowden's office and he was only told that the developers were asking for a delay in the time when the berm had to be built. He didn't know about the requested changes to the fencing, trees, etc. Bill Snowden interjected that he had only found out about the additional requests at 4:00 that afternoon. Mr. Legette added that they want the berm constructed now because people are selling their houses as a result of the construction. Later, attorney Mike Smith contested this claim, stating that one of the two houses is for sale because the wife got a job somewhere else and they moved and the other is for sale because the resident died and the heirs do not plan to live in the house.

Commissioner Reynolds expressed his reticence at making these additional concessions without specific notification to the neighbors, especially after so much work was done reaching the original agreement. Planning and Zoning staff member, Harold Skelton pointed out that legal notice is sufficient.

Commissioner Rumsey asked Mike Smith how long the delay in building the berm needs to be to get the construction sequence back on track. He answered, "90 days." He later said they could get it done in 45 days if they were allowed to pour the slabs.

Claymont resident E.K. Wood rose and showed the Commission a photograph of siltation he has experienced as a result of being downhill from the project. He wants to know what's being done to prevent this and protect the wetland.

Engineer Al Cabaniss responded that the photograph shows an ADEM violation on which reports have been filed. He recommends that neighbors contact ADEM about siltation.

Commissioner Warren said that since they had gone through such painstaking exercises to reach the initial agreement he has a problem changing it without notice to the neighbors.

Attorney Mike Smith asked the Commission to separate the requests. He said they are proceeding as quickly as possible and he also pointed out that the ordinance seems inconsistent because it says that the berm is to be built during construction before a permit is granted. You can't start construction without a permit, so it's an oxymoron. He said the developers are willing to meet with the neighbors on the berm, trees and fencing, but it is urgent to proceed with the building permits. They are not trying to back away from their commitments to the neighborhood. He also stated that the berms were not requested to block construction noise, but, rather, to block the noise the neighborhood expects out of the presumably college students who will occupy the complex.

Resident Herb Arnold then rose and stated that the purpose of the berm was to block construction noise and view. His position is that the Commission should make the developer toe the mark; it's their fault for not thinking this thing out.

Commissioner Rumsey said that while he agrees with Mr. Arnold, the reality is that a delay in construction as we move into the rainy season will be worse for everyone.

Apparently a foundation permit is different from a full fledged building permit, and that can be issued so that they can get started and build the berm. Commissioner Reynolds pointed that out.

Planning Director Snowden confirmed that a vote would only be on issuing the foundation permit and a recommendation to the City Council that it issue the building permit. The fencing and trees, etc. will be the subject of another Commission meeting.

Commissioner Warren instructed the developers that it was totally incumbent on them to meet with and satisfy the adjoining landowners.

The Commission approved issuing the foundation permit and a recommendation that the Council approve the building permit for three buildings.