

# MINUTES OF REGULAR MEETING

March 26, 2018

## MONTGOMERY PLANNING AND ZONING COMMISSION

### CALL TO ORDER

Chairman Nelson Cox declared a quorum was present, and called the meeting to order at 6:00 p.m.

Present: Nelson Cox, Arnette Easley, Jeffrey Waddell, William Simpson and Carol Langley

Absent:

Also Present: Jack Yates, City Administrator  
Susan Hensley, City Secretary  
Chris Roznovsky, City Engineer

### VISITOR/CITIZENS FORUM

Any citizen with business not scheduled on the agenda may speak to the Commission. Prior to speaking, each speaker must be recognized by the Chairman. Commission may not discuss or take any action on any item, but may place the issue on a future agenda. The number of speakers, along with the time allowed per speaker may be limited.

There were no citizen's comments made.

1. Consideration/take action regarding February 26, 2018 minutes and March 5, 2018 minutes.  
Carol Langley moved to accept the minutes of February 26, 2018 and March 5, 2018, as presented. Arnette Easley seconded the motion, the motion carried unanimously. (5-0)
2. Consideration/take action to schedule a public hearing regarding the initial zoning of newly annexed 3.22 acres (property located south of SH 105 across from Stewart Creek Road)

known as the Peter Hill property, to be zoned as District "B" Commercial, to be held on April 23, 2018 at City Hall at 6:00 p.m. in the Council Chambers.

Mr. Yates advised this was to call a public hearing regarding the zoning of the Peter Hill tract, which was annexed by City Council during their February 27, 2018 Meeting. Mr. Yates advised that the property was located directly south of Pizza Shack, immediately west of the KOA driveway on SH 105. Mr. Yates advised that part of the property was located in the City of Conroe's ETJ and the other part is in the City. Mr. Yates stated that the zoning would be for the portion of the property that is located inside the City.

Jeffrey Waddell moved to schedule the Public Hearing to be held on April 23, 2018 at 6 p.m. at City Hall. William Simpson seconded the motion, the motion carried unanimously.  
(5-0)

3. Consideration/take action and possible action regarding Samdana Investments, L.P. variance requests regarding the front building line, along SH 105, from 35 feet to 25 feet, and the rear building line from 15 feet to 10 feet along John A. Butler, all within the property bounded by John A. Butler Street to the north and SH 105 to the south and Prairie Street to the East located at 20998 Eva Street, Montgomery, Texas.

Mr. Yates advised that City Council has referred this variance back to the Planning and Zoning Commission following a discussion held during their March 13, 2018 Meeting. Mr. Yates advised that it was turned back to the Commission because City Council had more information that the Commission had at their meeting. Mr. Yates stated that at the Commission's February 26, 2018 meeting he did not accurately tell them about the driveway width situation on the subject property.

Mr. Yates said that since the City Council Meeting he has met with the applicant, Mr. Chen, and he measured the site and drove vehicles in and out of the of the existing driveway entrance off of SH 105. Mr. Yates stated that he felt that the variance was feasible and practical. Mr. Yates stated that Mr. Chen should not amend the existing driveway width.

Mr. Roznovsky advised that if Mr. Chen amended the width of his driveway, it would have to go through TxDOT approval.

Carol Langley stated that she has been going in and out of that driveway for years, and she has never had a problem, but evidently City Council saw where the drive was going to be reduced down instead of enlarged. Mr. Yates said that City Council seemed alright about the driveway, but they wanted to send the information back to the Commission because he thought that the driveway was between the two properties but it is not, it is located solely on Mr. Chen's property.

Carol Langley said that she can still enter the property from John A. Butler Street. Mr. Yates said that was correct, Mr. Chen is going to be adding an entrance at that location. Carol Langley asked if she could still get in and out on McCown Street. Mr. Yates said that was correct, Mr. Chen has an agreement with the adjacent property owner. William Simpson said that at 7 a.m. the traffic is backed up. Carol Langley said that traffic is backed up all over town at that time of the day.

Mr. Roznovsky advised that the concern that City Council had was regarding the driveway and having two-way access between the building and SH 105 to get through, so that has been revised. Mr. Roznovsky said that with the limitations and size of the site, it is not an ideal scenario. Chairman Cox asked if the drawings and information will be presented to City Council tomorrow night. Mr. Roznovsky said that they would be providing the information and photos at the meeting for clarification.

William Simpson said that the one concern that he has, which he has had for a while, is Mr. Chen has purchased the property knowing the hardships and the boundaries. William Simpson asked how long the agreement with the adjacent property owner would last. Mr. Roznovsky said that it would go in perpetuity. Carol Langley stated that Ruthie Grace did not have any problems with the other shops. William Simpson stated that the pool place did not have constant customers all day long. Mr. Yates said that during rush hour customers could go down John A. Butler to FM 149. Chairman Cox said that he felt the

drawings of the property answered a lot of the questions. Jeffrey Waddell said that this will be an improvement to the area, and said the buildings that are there now are not set back anywhere near what is required.

Carol Langley moved to approve the variance request on the front building line, along SH 105, from 35 feet to 25 feet, and the rear building line from 15 feet to 10 feet along John A. Butler, all within the property. Jeffrey Waddell seconded the motion.

Discussion: Chairman Cox recommended that the drawings be forwarded to City Council for clarification.

The motion carried unanimously. (5-0)

4. Consideration/take action regarding Madsen and Richards, LLC variance request regarding the rear building line from 15 feet to 5.8 feet and Vegetative Setback from 15 feet to 5.8 feet at 610 Liberty Street.

Mr. Yates stated that this variance involve a building permit improperly issued, funds expended by the builder based upon the improperly issued permit, an attempt by the City Administrator to correct actions to prevent suit against the City, while also attempting to follow the proper procedure. Mr. Yates advised that on December 4, 2017 Mr. Madsen received a building permit signed by Autumn Redman, Utility Development Clerk, who did not have authority to sign the permit. Mr. Yates stated that the building plan review had not occurred, nor had the City Engineer been notified. Mr. Yates stated that on January 8, 2018 Mr. Madsen called for water service and the Director of Public Works, Mike Muckleroy, was notified. Mr. Muckleroy advised that he did not know of the project being reviewed by the City Engineer.

Mr. Madsen was advised of the lack of approval for the project, and was advised that he could not proceed with construction. Mr. Yates said that he was out of the office on the

day that this occurred, but he was called, so he advised them to not let Mr. Madsen pour the concrete that day and he would work on it the next morning.

Mr. Yates said that he met with Mr. Madsen on January 9, 2018, and after meeting with Mr. Madsen, Mr. Roznovsky and Mr. Rick Hanna, Building Inspector, he wrote the January 9, 2018 memo to Mr. Madsen notifying him what he would be required to do and authorizing the concrete to be poured.

Mr. Yates said that his thought process was to not get the City sued by Mr. Madsen, while also wanting to hold to the City ordinances, which he believed he had done except for the rear building setback. Mr. Yates said that because of the location of the building, the rear of the building is adjacent to the pond that was put in by the Heritage Apartments, and because of the height of the building in the rear, and all there is, is air. Mr. Yates said that regarding the required vegetation barrier between commercial property and residential property, he admitted that he had given it no thought because of the distance of 1,000 feet between the apartments and Mr. Madsen's building.

Mr. Yates said that Mr. Madsen has complied with every stipulation in the January 9, 2018 memo and with all other requests made of him.

Mr. Yates said that the reason for the variance is because the City Engineer, in reviewing the site plan, pointed out the lack of the 15-foot rear yard setback and no vegetation barrier. Mr. Yates said that last Thursday he spoke to Mr. Madsen who has agreed to plant bushes or whatever could grow in the five foot eight inch area in the rear of the building. Mr. Yates said that Mr. Madsen is requesting, and he feels he deserves, a variance for the rear yard from 15 feet to 5.8 feet.

Jeffrey Waddell said that the vegetation setback was a concern, with the red clay, he did not feel that a true hedge could be grown in that hard packed clay. Jeffrey Waddell said that possibly if the soil was built up with some top soil, but that is another subject.

Mr. Madsen advised that there are trees at that location and they have not removed any vegetation. Mr. Madsen stated that they are doing the process backwards because they thought that they were told they were ready to proceed and said that if they had known about the due diligence when they were developing this building, they would have been able to address these things, but they did not have an opportunity to address them. Mr. Madsen said that he was thinking about leaving the trees there, and said that they had a professional landscaper bid this project. Mr. Madsen said that they want to bring it back down some and put in a nice French drain, because this is a sweep off type drainage plan that they have designed. Mr. Madsen said that they will not be touching the retention pond whatsoever, because the property naturally slopes to the creek and it will continue to slope. Mr. Madsen said that instead of putting in sod, they want to put in crush rock, that way they will not have erosion problems, with a vented drain on the other end. Mr. Madsen said that they will also have a weed barrier so there won't be weeds growing. Mr. Madsen advised that on the sides of the building, to keep with the property, they are going to install a full sprinkler system with sod and they thought about adding some more plants on the property.

Mr. Madsen said that he had met with Mr. Yates to discuss the project prior to purchasing the property, then they turned in the plans before Thanksgiving. Mr. Madsen said that they were ready to start building, and then they came across this situation. Mr. Madsen said that Mr. Roznovsky has been great with to deal with. Mr. Madsen said that they hired Bleyl Engineering to do their civil engineering. Mr. Yates said that they also did the Escrow Agreement. Mr. Madsen said that they have not removed any trees, so they have good trees on the back of the property that have been there for years. Mr. Madsen advised that they have shown how they will drain the property and they have worked out the utilities with Mr. Muckleroy regarding the taps and the water meter. Mr. Madsen said that they have everything ready to go and have done everything that Mr. Yates has asked them to do. Mr. Madsen stated that they are not allowing any automotive or corrosive chemicals by the tenants that might contaminate the natural ditch. Mr. Madsen advised that the Fire Marshal has given his complete blessing. Mr. Madsen advised that he felt the property will

be pleasing to the community and will provide a more affordable location for smaller businesses on SH 105 to come out and generate business in the City.

Mr. Madsen said that they had everything ready for the plumbing rough in, which was when they found out something was amiss. Mr. Madsen said that he wanted to say that the City of Montgomery has been great; Mr. Yates jumped right on this and Ms. Hensley helped him get through things and got the Escrow Agreement taken care of.

Mr. Madsen said that this has set him back \$20,000, and they are not asking for anything; they have learned and they want to move on and get the building going and fully functional. Mr. Madsen said that everything has been applied for and is ready to go. Mr. Madsen said the only thing that he is requesting, is that they get an expedition from the City Engineer so they can expedite the process.

Mr. Roznovsky said that the plat has been submitted and they are waiting on the variance; they have addressed all the comments and questions, and their engineer will get that fixed. Jeffrey Waddell said that he agreed that the distance of the pond really helps the matter, and asked if the fence was on the property line. Mr. Madsen said that was actually the other property owner's line; his is about a foot off of their property line.

Chairman Cox asked Mr. Madsen to attend the City Council Meeting tomorrow night. Mr. Madsen advised that he would be attending the meeting.

Arnette Easley moved to accept the variance request from Madsen and Richards, LLC regarding the rear building line from 15 feet to 5.8 feet and Vegetative Setback from 15 feet to 5.8 feet at 610 Liberty Street. Jeffrey Waddell seconded the motion, the motion carried unanimously. (5-0)

5. Consideration/take action regarding Electronic Message Display sign ordinance.

Mr. Yates stated that this item was to make sure that the Commission was prepared to recommend that ordinance to City Council for adoption. Mr. Yates said that the only

change that was made to the ordinance was regarding Section 66-53D (4) and changing footcandles to Lux, and the 700 Lux is the recommendation. Mr. Yates said that the reason that he used 700 Lux was because he felt that the Pizza Shack sign, which was the closest reading, at 690 Lux, was not so bright as to cause a distraction to a driver. Mr. Yates said that they could go up to 1,000 Lux and still not be a hindrance to the driver, and said that 700 Lux was on the conservative side.

Mr. Yates said that he wrote one letter to Affordable LEDs, which is an electronic sign company in Willis, but he had not received any response from them.

Mr. Yates said that the ordinance adds some definitions for “dissolve, fade, frame, frame effects, scroll and transition” to the existing sign ordinance. Mr. Yates said that 66-53 is a new section to the ordinance, that states that electronic sign message display boards may be permitted in the commercial and industrial zoning districts, subject to requirements. Mr. Yates advised that the City Attorney has reviewed the Ordinance. Chairman Cox asked if the City Attorney had any comments. Mr. Yates advised that he did not have any comments.

Mr. Yates said that he felt that the ordinance was something that could be easily administered, and staff will be able to measure the Lux of the sign with the indicator from one foot away. Mr. Yates said that the definitions will also describe the signs appropriately. William Simpson asked, after the signs have been installed, are they able to adjust the signs. Mr. Yates said yes, the signs can be adjusted. Mr. Yates said that he will attach the ordinance to the permit before the person ever gets the permit. Mr. Yates said that Brookshire Bros. was able to adjust their sign when he advised them that it was too bright.

Chairman Cox asked about the piece of equipment, indicator that you test the lights with, is it something that the City owns or will they have to lease one. Mr. Yates said that they can borrow one from Mr. Solomon or they can purchase one for \$200. Jeffrey Waddell said that Mr. Yates had mentioned that Mr. Muckleroy tested one sign, and asked if they



would continue to have Public Works test the signs. Mr. Yates said that either they would or the Code Enforcement Officer, Tim Bauer, could do that.

After discussion, William Simpson moved to approve to pass the Electronic Message Display Sign Ordinance to City Council. Arnette Easley seconded the motion, the motion carried unanimously. (5-0)

William Simpson had a question regarding Agenda Item #4, and asked when the building permit was issued how they were not required to ask for a variance for that building being 5.8 feet off before it was built. Mr. Yates said that it was because he approved the permit because of the distance between the apartments and the property. William Simpson said that the property line is not the apartments. William Simpson said that they have ordinances in the City, and people know that they have requirements, so the first thing they do is come in and ask for a variance, if they need it. William Simpson asked why they were having to go through all this if the approval was going to be automatically given to them. Mr. Yates said that the building permit was issued improperly. Jeffrey Waddell said that their main concern in this particular case is that this could have been a lot worse, and they do not want to see it happen again with the permits, because it is hard to understand how that could happen. Mr. Yates said that this person knew better, and she had never approved a building permit before and certainly has not since. Mr. Yates said that he asked the employee what she was thinking, and she said that she guessed she was not thinking. Jeffrey Waddell said that with all the permits that the City has, they all have to be approved before a plumbing permit is issued, which is the big concern as to why this happened. Carol Langley asked whether the plans never actually went to the City Engineer until after the permit had been issued. Mr. Yates said that was correct. Jeffrey Waddell said that even Rick Hanna had not looked at the plans. Mr. Yates said that he did not know how Rick Hanna had approved the plumbing, unless he was going off of the building permit being issued, but how could he inspect it without the plans. Mr. Yates said that was one of the first things that he had done, was to send the plans to Rick Hanna for review. Mr. Yates said that when he spoke to Rick Hanna on Tuesday, and he had approved the plans at 1:00 p.m. that afternoon. Carol Langley said that they probably had a set of plans on the site.

Carol Langley said that in the past Rick Hanna would look at the plans that the client had on site, but they were always stamped with the approval and she felt like one thing just led to another, with the first step being wrong and it just continued on.

6. Adjournment

Carol Langley moved to adjourn the meeting at 7:10 p.m. Jeffrey Waddell seconded the motion, the motion carried unanimously. (5-0)

Submitted by:  Date approved: 04/23/18  
Susan Hensley, City Secretary

  
Chairman Nelson Cox

