

## MINUTES OF REGULAR MEETING

September 5, 2023

### MONTGOMERY PLANNING AND ZONING COMMISSION

#### CALL TO ORDER

Chairman Waddell declared a quorum was present and called the meeting to order at 6:03 p.m.

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

Absent: None

Also Present: Dave McCorquodale, Director of Planning & Development

#### VISITOR/CITIZENS FORUM

None.

1. Approval of the Regular Meeting Minutes of August 1, 2023.

Bill Simpson moved to approve the minutes as presented. Merriam Walker seconded the motion, which carried unanimously. (5-0)

2. Consideration and possible action regarding a raised outdoor deck built without Commission approval at 504 Caroline Street in the Historic Preservation District.

Staff introduced the information in the packet and recalled the previous approval of the home renovation and noted the project contractors, Jake Butler and Josh Burns of Big Country Companies, LLC were in attendance to answer questions from the Commission. Messrs. Butler and Burns explained that they were the contractor responsible for the exterior improvements to the site that were part of the property renovations. Mr. Butler said they originally thought the deck was part of the building permit and that they had submitted the permit application packet to the City for review.

Merriam Walker asked if they contractors knew if the deck was not part of the original P&Z approval, and the contractors explained that they were not aware of a previous submittal to P&Z and that they were hired to do the construction work but weren't involved in the earlier stages of the project. Mrs. Walker asked additional questions about what information they were provided

when they were hired to do the project and Mr. Butler clarified that their company does design/build work and they were the designers of the deck and fence but were not told by the property owner that they needed a permit or P&Z approval. Mr. Butler added that the deck and fence designs were developed as the project progressed and were not part of the house renovation design work. Mrs. Walker noted that this was not the first time this property within the historic district has had issues with obtaining P&Z approval before making exterior improvements.

Bill Simpson asked for clarification on whether the property owner told the contractors that no permits were needed for the project. Mr. Simpson said the property owner should have been more involved in ensuring that the project had permits. Mr. Butler said that the onus is on them as the contractors to ensure that permits were pulled.

Merriam Walker noted examples of why city approvals are critical to ensure overall project compliance with various regulations. Jeff Waddell asked if they'd talked to the city building inspector, and the applicants noted that they had when he was on site for another inspection. Bill Simpson noted there could be safety concerns related to the height of the fence along Pond Street and visibility around the fence. Mr. Butler mentioned an additional picket fence that was planned on the other side of the driveway along Pond Street. Bill Simpson let the owners know not to start that fence prior to getting P&Z approval.

Bill Simpson asked if the contractors intended to leave the back side of the fence unfinished. Mr. Butler stated the street-facing fence would have pickets on both sides of the fence. Bill Simpson said while it's not on a street, the other portion of the fence backs up to someone else's property and doesn't look appealing.

Staff asked the Commission if they were ready to address the deck agenda item then they could continue the discussion about the fence on the next agenda item. Britnee Ghutzman asked what remedies for violations there are for this type of situation. Staff said there would be a double permit fee for work started without a permit. Merriam Walker asked about a round cement hole near the deck on the property and what the contractors planned for it. Mr. Butler said it was an old well and they would be cutting down the concrete ring and leveling it with the surrounding grade. Merriam Walker asked what material would be used to fill the well. Mr. Butler said the well is already mostly filled and once the concrete ring was removed they would use select fill (a mix of clay and sand used for house foundations) to fill the rest of the well and covered with topsoil.

Merriam Walker said to reiterate the issue is that the contractors are here after the fact and didn't get approval before doing the work.

Several Commissioners noted the importance of P&Z review and approval. The contractors noted they shared the goal of preserving history and many aspects of the project preserved historical materials that would be reused on the site. Mr. Burns said they simply jumped the gun on getting started and that they were committed to making things right, correcting anything that was needed, and moving forward with the project. The contractors said they understood that all exterior improvements planned for the property required P&Z approval.

Britnee Ghutzman asked if the contractors found Tomball's permitting process easier to understand in an effort to understand if we could improve our processes. Mr. Butler stated that Tomball was more difficult to work with and that there were issues with items not listed in their checklists.

After further discussion about the project and future plans, Merriam Walker asked if the contractors were clear that no additional work should be done before a full plan of proposed improvements is approved by the Commission.

Bill Simpson noted that the Commission and applicants should agree on the stain color at the same time as the fence item. Merriam Walker asked to confirm that the applicants are going to come back to P&Z with a full plan of all proposed exterior improvements.

Britnee Ghutzman moved to grant retroactive approval for the deck as presented. Dan Gazda seconded the motion, which carried unanimously. (5-0)

3. **Consideration and possible action on a wood privacy fence built without Commission approval at 504 Caroline Street in the Historic Preservation District.**

The Commission continued discussion with the same applicants regarding the same property. Bill Simpson said this was the same issue that was specifically about doing the work without getting P&Z approval before. The fence did not require a building permit, but still requires P&Z review and approval because it's visible from the public right of way.

Bill Simpson said the fence generally within the guidelines, but he may have asked for something different along the front if it were not already built.

Dan Gazda asked about the gap between the bottom of the fence and the existing grade. Mr. Butler said they would fill that area to raise the yard level to the bottom of the fence. Merriam Walker asked if there would be any parking there. The contractors said the ditch outside the fence was not part of the property and they were not doing any work in that area. Jeff Waddell asked to confirm the wood type used, and the contractors said it was Western Red Cedar. Mr. McCorquodale said

city staff had been communicating with the applicant's subcontractor who built the deck, but the fence was built by a different subcontractor who wasn't told by the applicants about the approval required in the Historic District. Bill Simpson said adding the check box on the building permit application is his suggestion to help communicate the steps needed.

The applicants mentioned a tree whose roots were damaged by an Entergy contractor. Merriam Walker asked if they planned on replacing the tree if it died. The applicants said they would, but it would be cost prohibitive to replace it with the same size as a mature tree. Discussion was had on removal of dead trees on the property.

Bill Simpson referred to page 16 of the packet to review the ordinance language. Merriam asked to confirm if the contractor planned for visitors to the property to enter on Caroline Street. The applicants affirmed that was correct and the Pond Street drive was a service entrance that they planned to have a gate across. The applicants also mentioned future plans for a 4-ft picket fence and stone bench in the backyard. Dan Gazda the improvements sounded good but a full site plan was needed.

After additional discussions between the Commission and applicants, Bill Simpson asked to get back to the topic of the cedar fence. Britnee Ghutzman asked if there was a fence regulation in the city that describes the details on how fences can be built. Staff said the building code requires a permit for a fence over 7-ft tall but otherwise the city doesn't regulate fences outside the Historic District. Staff added that the Commission could table action on this item until they saw the full site plan. Bill Simpson said he'd like to address the cedar fence now. Mr. McCorquodale recommended if the Commission approved the fence to do so contingent on no more exterior work on the property until the Commission sees a full site plan showing all planned improvements to the property. Merriam Walker said she didn't feel that a 7-ft tall fence fits in the Historic District. She added that her preference was to not have the privacy fence along Pond Street.

Merriam Walker moved to approve the north property line 7-ft tall privacy fence, but not the west fence along Pond Street. Bill Simpson said the fence on Pond Street would serve to hide the dumpster, which the applicants affirmed would be located there and be inside an enclosure.

The motion died for lack of second.

Dan Gazda moved to approve the north fence but not the west fence until a full site plan is submitted and approved by P&Z. Britnee Ghutzman seconded the motion. The motion, as amended, carried unanimously. (5-0)

Merriam Walker added that they were not approving the stain color for the fence tonight. Bill Simpson asked for 3 or 4 stain color choices to be brought back for review by P&Z. The applicants said they would. Bill Simpson clarified that only the privacy fence and deck would be stained dark brown and the picket fence would be white. The applicants affirmed that was correct. The applicants asked with the hot weather they would like to stain the deck and privacy fence. The applicants said the stain color in the packet is the one they want to use.

Bill Simpson moved to approve 'Forester MW421' for the deck and north fence. Dan Gazda seconded the amendment. The motion carried unanimously. (5-0)

### **Commission Inquiry**

The Commission asked to confirm the new paint on the building at 14259 N. Liberty Street matched the colors approved by the Commission. Staff indicated the owners had been contacted previously to confirm that they were and would follow up with the owners again for more documentation. Bill Simpson said several people have asked about the building color and said he also spoke with the applicant about the color. He added that future paint requests should specify whether it is a flat finish, satin, or gloss finished. He said it's not something that people immediately think about. Jeff Waddell asked if the applicants should bring back the original color samples for review. Merriam Walker asked if the Commission could require the color to be changed, because they don't like the color. Bill Simpson said he wasn't going to go there. Mr. McCorquodale the only manufacturer for Jazzy Blue is Valspar so the exact paint used would be easy to track down. Bill Simpson asked if it was possible to develop a list of earth-tone approved colors for the Historic District in a matte finish. Several members of the Commission liked the idea. Mr. McCorquodale said it could be done by amending the design guidelines and go through the normal process to change a zoning ordinance. Staff affirmed that the project would move forward as time allowed and bring information back to the Commission. Bill Simpson asked to expedite the process to best serve the long-term interests of the Historic District. Merriam Walker noted the existing colors of historic structures that could be used as a starting point. Mr. McCorquodale said he would start with a basic set of colors and still try to allow the Commission the ability to consider something specific.


Bill Simpson mentioned the Facebook foodie group and an outside-city business being directed to the city. He asked for clarification on what our regulations would allow. Mr. McCorquodale said the business referenced was not a mobile food vendor and would have to meet the building code and historic district zoning requirements.

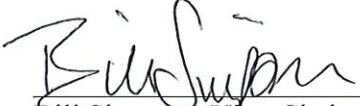
Jeff Waddell mentioned that after 8 years on the Commission, he would not be applying for reappointment, and he had decided to refocus his attention to other volunteer opportunities and thanked the city for the opportunity to serve. Britnee Ghutzman said she was expecting a new baby and she would also be stepping down from the Commission. She also was appreciative of the opportunity to serve the city.

Merriam expressed a frustration in applicants continuing to do work in the historic district before getting approval. She said prior approved improvements are sometimes not built like it was submitted and that the city needs to increase penalties for this type of activity. Mr. McCorquodale said there was a messaging responsibility on the city to communicate regulations, but there is also a responsibility on a property owner to research and understand what regulations apply to their property.

**Adjournment**

Britnee Ghutzman moved to adjourn the meeting at 7:42 p.m. Bill Simpson seconded the motion, which carried unanimously. (5-0)

Prepared by:  Date approved: 11/07/2023  
Dave McCorquodale

  
Bill Simpson, Vice-Chairman

Attest:   
Nici Browe, City Secretary