

**Planning and Zoning Commission
Meeting Minutes
September 10, 2018**

1. Call to Order

Commissioner Todd Batiste called the meeting to order at 7:00 p.m. with the following present:

Members Present

Chad Woodard
Maurice Clark
Johanna Storm (present but not voting)
Tim Butler, Alternate
Todd Batiste, Alternate

Staff and Council Present:

Mayor Laura Bianco
Cathy Stein, Council Liaison
Sherry Roberts, City Administrator
Lola Hazel, City Secretary
Fritz Quast, City Attorney

2. Subdivision Ordinance Waiver – 2801 W. Pleasant Ridge

Commissioner Todd Batiste opened the public hearing at 7:02 p.m. for the following item.

a. Conduct a public hearing regarding a waiver to the Subdivision Ordinance, specifically the platting requirement, for applicant located at 2801 W. Pleasant Ridge, Dalworthington Gardens, Texas.

1. Mike Hassett, Jones Hassett Attorneys: spoke in favor of the subdivision waiver on behalf of the applicant, Laurie Bianco.

With no one else desiring to speak, Commissioner Todd Batiste closed the public hearing at 7:08 p.m.

b. Discussion and possible action to consider a waiver to the Subdivision Ordinance, specifically the platting requirement, for applicant located at 2801 W. Pleasant Ridge, Dalworthington Gardens, Texas.

Background information on this item: The Bianco family has begun stages to build a new home. However, upon contacting the City, it was discovered the property had not been platted. Both City ordinances and state law require property be platted before any building permit can be issued for new construction.

City Ordinances:

Sec. 10.02.004 Platting required

No person, firm, association or corporation shall subdivide land in the city except by platting of the same in compliance with chapter 212 of the Texas Local Government Code and the rules and

regulations provided in this article. No building permit shall issue for the construction of improvements on any property not platted as aforesaid.

Local Government Code:

Sec. 212.004. PLAT REQUIRED. (a) The owner of a tract of land located within the limits or in the extraterritorial jurisdiction of a municipality who divides the tract in two or more parts to lay out a subdivision of the tract, including an addition to a municipality, to lay out suburban, building, or other lots, or to lay out streets, alleys, squares, parks, or other parts of the tract intended to be dedicated to public use or for the use of purchasers or owners of lots fronting on or adjacent to the streets, alleys, squares, parks, or other parts must have a plat of the subdivision prepared.

The Bianco family submitted a plat application on May 30, 2018 which was forwarded to the City Engineer for comments and recommendation. In the engineer's letter, he recommended consultation with the City Attorney regarding concerns over division of the property. The City Attorney was consulted and submitted comments as well.

The Bianco plat was scheduled to go before Planning and Zoning (P&Z) and Council for consideration. However, meetings were canceled due to a schedule conflict with the Bianco's attorney.

Concurrently, as the plat was being placed on the agenda, City staff presented an item to City Council for consideration to create a waiver process for subdivision ordinance requirements. Similar to how Zoning Board of Adjustments (ZBA) considers variances and hardships to the zoning ordinance, P&Z and Council will consider waivers to the subdivision ordinance. A large portion of the subdivision ordinance refers to platting requirements, and P&Z was chosen for this waiver process as P&Z is more familiar with platting than ZBA.

These are the items listed in the ordinance to consider prior to approval of a waiver.

Sec. 10.02.351 Standards for Waiver

(a) In granting a waiver, the City Council may prescribe conditions that it deems necessary or desirable to protect the public interest. In making the findings herein below required, the City Council shall take into account the nature of the proposed use of the land involved, existing uses of land in the vicinity, and the probable effect of such waiver upon traffic conditions and upon the public health, safety, convenience and welfare in the vicinity. No waiver shall be granted unless the Council finds that all of the following conditions exist:

1. That there are special circumstances or conditions affecting the land involved such that the strict application of the provisions of this Ordinance would deprive the applicant of the reasonable use of his land; and
2. That strict application of the provisions of this Ordinance is not necessary to promote the public health, safety and welfare; and
3. That the granting of the waiver will not be detrimental to the public health, safety or welfare, or injurious to other property in the area; and
4. That the granting of the waiver will not have the effect of preventing the orderly subdivision of other land in the area in accordance with the provisions of this Ordinance; and
5. That the granting of the waiver will be in harmony with the spirit and purpose of this Ordinance.

(b) Waivers may be granted only when in harmony with the general purpose and intent of this Ordinance so that the public health, safety and welfare may be secured and substantial justice done. Pecuniary hardship to the landowner, standing alone, shall not be deemed to constitute unnecessary hardship.

The Bianco's did have their surveyor address comments and corrections made by the City Engineer. Although the plat is not on the agenda for approval (but rather a waiver to the platting requirement), the corrected plat is included in your packet for review.

A motion was made by Commissioner Chad Woodard and seconded by Commissioner Maurice Clark to approve a waiver to the subdivision ordinance, specifically the platting requirement, for applicant located at 2801 W. Pleasant Ridge, Dalworthington Gardens, Texas.

Motion carried by the following vote:

Ayes: Members Woodard, Clark, and Butler

Nays: None

3. Discussion and possible action to consider an Ordinance making changes to Chapter 14, Zoning, to create a Specific Use Permit process.

Background information on this item: At the last Planning and Zoning (P&Z) meeting, a specific use permit process was discussed in conjunction with the creation of the mixed-use overlay ordinance. Specific use permits (SUPs) provide an avenue to consider land uses on a case-by-case basis that are not allowed "by right". A land use allowed by right is typically one where an applicant can apply for a permit and receive approval without having additional stipulations or conditions placed on the land use. The way we're crafting the mixed-use overlay ordinance would require each applicant to go before P&Z and Council for approval, much like our planned development process. Having a SUP process in place means P&Z and Council could require conditions be placed on uses marked with an "S" in not only the mixed-use overlay ordinance, but in any zoning district where a land use is added to a given district as allowed through the SUP process.

The attached ordinance proposes a SUP process that would apply to the entire zoning ordinance. However, this doesn't mean an applicant could submit a request for any land use not already addressed in the zoning ordinance. Uses must be listed as being allowed by SUP to be considered. In the attached ordinance, two uses have been added to the single-family zoning district for consideration through the SUP process (page 3 of the ordinance). These two uses would allow the sale of Christmas trees with conditions, and also the sale of farm produce not grown on the property with conditions.

The City's current ordinances allow the sale of Christmas trees but only in commercial and light industrial districts. The current ordinances allow the sale of produce in the single-family zoning district, but only produce grown on the same premises as the primary residence.

Both the mixed-use overlay ordinance and the SUP ordinance were crafted to aid in the City's economic development goals. These two ordinances will assist existing properties and businesses through the permitting process and also help build and maintain those relationships.

A motion was made by Commissioner Maurice Clark and seconded by Commissioner Chad Woodard to approve the ordinance as presented by staff.

Motion carried by the following vote:

Ayes: Members Woodard, Clark, and Butler

Nays: None

4. Mixed-Use Ordinance Items

a. Discussion and possible action on the creation/addition of a mixed-use zoning district.

Background information on this item: At the last Planning and Zoning (P&Z) meeting, the Commission approved the creation of a mixed-use overlay zoning district. Prior to the Council meeting that followed P&Z's approval, staff noticed some needed changes, and also began the process to create and apply specific use permit requirements for some of the uses. Although P&Z discussed the creation and application of SUPs to certain uses, it was never finalized at the P&Z level. Due to the amount of changes, Council and staff agreed the ordinance should go back to P&Z for consideration. The attached ordinance is a draft and may have a few changes following submission to P&Z. If more changes are applied, staff will go over those changes at Monday's meeting.

Below is a brief summary of additional changes:

- The "Purposes" seemed too complicated
- The "Intent" spoke to residents only. DWG wants areas to be inviting to travelers/surrounding areas as well as local residents.
- "Bed and Breakfast" was simplified to invite businesses that may serve meals other than breakfast and also the need to be a member of NBBA (it was difficult to find other cities requiring such a membership)
- "Commercial Building" and "Commercial Ready" contradicted what we've discussed for our MU Ordinance, and also contradicted each other. Changed to reflect our idea of MU
- Definition for "Farmers Market" added
- "Horizontal Mixed Use" allows separate buildings with different uses. It was felt this didn't fit our idea of MU.
- "Live-Work Dwelling" was simplified
- Under "Permitted Uses", page 4, a correction was made to remove staff approval from the process
- Under "Parking Facilities", page 4, a correction was made to the equation for parking spaces. The existing equation assumes only 70% capacity for parking at a given time. In looking at other cities where parking issues exist, staff felt it was best to assume 100% capacity.
- "Setbacks", page 4, corrections were made to language
- "Building Material", page 5, corrections were made to change "should" to "may" giving the approving authority more options, and a correction made to remove staff from the approval process.
- "Matrix of Permitted Uses", page 6, redundant uses were deleted, "S" was applied to certain uses, and uses not fitting our city were removed.
- Page 8, "Contradictions" was added for areas where MU regulations contradict other zoning district regulations.

In addition to these changes, staff is seeking guidance on residential components to consider in the ordinance. Staff has been in discussions with a requestor interested in doing a mixed-use development with a "live-work" component and residential units on the top level. Because this ordinance is still in draft form, staff would like guidance on whether or not to include more residential components.

The Commission discussed “Dwelling Units located above the ground floor” listed in the use matrix and whether the use should be allowed by right or with an “S” designation to require a specific use permit. The Commission was in agreement to leave the use listed in the matrix but with an “S” designation to require a specific use permit.

A motion was made by Commissioner Chad Woodard and seconded by Commissioner Tim Butler to approve creation/addition of a mixed-use overlay zoning district as presented, with the addition of the following change: adding an “S” designation to require a specific use permit for “Dwelling Units located above the ground floor”.

Motion carried by the following vote:

Ayes: Members Woodard, Clark, and Butler

Nays: None

b. Rezoning 2608 W. Arkansas Lane

Commissioner Todd Batiste opened the public hearing at 7:42 p.m. for the following item.

- i. Conduct a public hearing on rezoning property from Commercial Zoning to Mixed-Use Zoning, being 0.9831 acres of land located in the Dalworthington Gardens Addition, Block 2, Lot 6A1; and commonly known as 2608 W. Arkansas Lane, Dalworthington Gardens, Texas 76016.**

With no one desiring to speak, Commissioner Todd Batiste closed the public hearing at 7:42 p.m.

- ii. Discussion and possible action on rezoning property from Commercial Zoning to Mixed-Use Zoning, being 0.9831 acres of land located in the Dalworthington Gardens Addition, Block 2, Lot 6A1; and commonly known as 2608 W. Arkansas Lane, Dalworthington Gardens, Texas 76016.**

Background on this item: A few meetings ago, Planning and Zoning (P&Z) heard from a resident adjacent to the property at the corner of Bowen and Arkansas who was interested in having her property rezoned to mixed-use. At the August 16 council meeting, Council approved for staff to begin the process to rezone this property. Following that meeting, staff contacted the property owner and confirmed she was still interested in being considered for a rezone to mixed-use, and also sent out notices and publications in accordance with state law. Rezoning this property squares off the corner property at Arkansas and Bowen, making the entire piece available for mixed-use developments.

A motion was made by Commissioner Maurice Clark and seconded by Commissioner Chad Woodard to approve rezoning property by applying mixed-use overlay zoning to the existing B-2 commercial zoning, being 0.9831 acres of land located in the Dalworthington Gardens Addition, Block 2, Lot 6A1; and commonly known as 2608 W. Arkansas Lane, Dalworthington Gardens, Texas 76016.

5. Discussion and possible action on changing a small error regarding mobile food units in the B-3 business district.

Background information on this item: Earlier this year, P&Z made changes to ordinances regarding mobile food unit and establishments. Staff recently found what is believed to be a sentence that was missed when

making those changes. Section 14.02.224 lays out allowed uses for the B-3 business district. 14.02.224(a)(1) allows uses permitted in the B-2 district to be allowed in the B-3 district. Since the process was changed in the B-2 district part of the ordinances for mobile food units, that sentence in (a)(1) suffices to allow the same use in B-3. What was missed is a sentence located in (b)(8) which requires a special exception for mobile food units.

Staff is requesting P&Z to approve the removal of (b)(8) which contradicts allowing mobile food units by right in B-3. Mobile food establishments are only allowed by special exception, but the “units” are what should be allowed by right.

A motion was made by Commissioner Tim Butler and seconded by Commissioner Maurice Clark to approve changes the Chapter 14, Zoning, by removing 14.02.224(b)(8), “Any use that involves a mobile food unit is allowed only pursuant to a special exception”, which contradicts changes to the ordinance to allow mobile food units by right.

Motion carried by the following vote:
Ayes: Members Woodard, Clark, and Butler
Nays: None

6. Adjourn

A motion was made by Commissioner Chad Woodard and seconded by Commissioner Maurice Clark to adjourn the meeting at 7:45 p.m.

Motion carried by the following vote:
Ayes: Members Woodard, Clark, and Butler
Nays: None