

**City of Orangeburg
Planning Commission Meeting Minutes
September 26, 2019**

Members Present

Guy Best – Chairperson
Shirlan Moseley-Jenkins – Vice-Chairperson
William Barrett (left meeting before vote)
William Evans
Paula Peyton
John Wolfe

Members Absent

Staff Members

John D. Singh, Assistant City Administrator
David Epting, Zoning Administrator
Linda McDaniel, Secretary
Leann Holloway, Secretary

City Attorney James F. Walsh

Citizens from the community	14
Press present	1

PUBLIC HEARING

Chairperson Best opened the Public Hearing. “I’d like to call the Planning Commission to order. Our first order of business is to hold a Public Hearing. The Public Hearing is for consideration of a Zoning District Map change from A-1 Residential, Single-Unit District to B-1 General Business District for property belonging to Phyllis Pelzer located at 1090 St Matthews Road, TMP# 0173-05-05-001.000, property belonging to Harry Ken Floyd, Jr. located at 1070 St Matthews Road, TMP# 0173-05-05-015.000 and property belonging to Glenda Zeigler located at 1080 St Matthews Road, TMP #0173-05-05-016.000. Is there anyone else to speak at the Public Hearing? Could you please come forward and state your name and address for the record?”

Attorney Martin Banks, 716 F R Huff Drive, St. Matthews stated, “I was employed by Mr. Ken Floyd to speak on behalf of these three petitioners. I want to start out by handing you the latest number of affidavit petitions to go forward, this is five more of the property owners in what we’ll be calling Pecan Terrace. I’d like to begin by giving you an introduction to this piece of property and how it developed. Back in 1970, well prior to 1972, there was a plan for this whole area, and I can show you the map here, just to give you a point of reference. The whole area started here in these red spots (Attorney Banks pointed to the map), all the way out to the 21 by-pass/Chestnut. In fact, one of my big points tonight is the Hwy 21 by-pass used to be a by-pass. It was literally a way to cut over without all the stop lights and so forth. It is no longer that. As you all know, it is anything but a by-pass. It is a major thoroughfare. At any rate, prior to 1972, this was all residential and there was a church on this property, and it was exempted. Long story short, in 1972 commercial

development began, but it was restricted to single-family residences only in these deeds, every one of these deeds. I'm not going into the details of why, but they started developing against those restrictions and there's a case or two that allowed for some of this to develop into businesses. So yellow (still referencing the map) we're using as residential and red as business on our map just to give a good illustration. We're now in 2019 and things have continued to develop, as you know, this is the old Orangeburg Mall. These are out parcels that have been sold to banks and all kinds of other businesses. Mr. Floyd, who owns this spot right here, where two sides are commercial, Mrs. Zeigler, owns the next lot, and Ms. Pelzer owns this corner lot. Of course, this is Boulevard, and this is the cross way over to Hwy 21. These are your three petitioners and I think it's clear just from that map how starkly this might be needed. If I may go as far as to say how it is needed but they're here to appeal the zoning map to allow them to go from Residential to Business. In the process, Mr. Floyd contacted me probably a decade ago and we worked a little bit on it. Anyway, he continued to labor and has worked long and hard on getting where he is today. You'll see mention of it in this packet that he got signatures from 2/3 of the homeowners in the entire neighborhood, that's like 200 signatures, just unbelievable. Over time, he would meet with them, talk with them, explain what was happening and he'd get approval for this to go forward. You've got, I'm not sure of the number, fifty or so, of the people who are really interested in getting this done including those I handed you today. He got all these signatures to get the restrictions amended. He took that and they filed the case. The case caption is about four pages long because they had all these people. They all defaulted essentially. They got Judge Jay Jackson, our Master of Equity here, to amend these restrictions to allow us to be here today to get this amendment done. Any questions so far? I feel like you were about to ask a question."

Chairperson Best stated, "No, we do have a five-minute time limit. I'm going to let you run over."

Assistant City Administrator John Singh stated, "Mr. Banks, we're actually going to allow you to speak in the New Business section. There may be some of the public that would like to speak."

Attorney Banks stated, "That's what I was thinking. If you gave five minutes to all these people, I could probably condense it down into 15 or 20 and maybe get rid of about 15 people back there. There's been a great deal of work and meticulous, top-notch work. They've had three or four lawyers over the course of this time working and working and working and here we are today. I feel like it's inevitable that this occur. I want to show you a picture and I couldn't get extra copies of this so I'm going to show it here. This is just an area photo of those three lots, so here are the three lots and you see, here are the driving lanes for the bank next door. The ATM is the closest thing from that business to Mr. Floyd's lot. It's literally about 15 feet from the property line. There are people going in and out of that ATM all hours of the night and loud music. He can't sleep at night because of the noise of that one commercial lot. He's lived there since he was four years old. He inherited it about 10 to 12 years ago when he started this process, and he can't live there anymore. He just can't do it. The next thing I want to show you is, and again, I don't want to overkill this, but this is the bank next door and all the traffic during the daytime. This shows you where the ATM is and how it is just a constant thing, especially on Fridays when he's trying to relax. I'm just going to show this. This is the final order from Jay Jackson. It was filed May 22nd and so they've spent these last months getting it polished for you guys to come in. I want to read you a couple of things that Mr. Jackson said in his order. By the way, they did a study. This is what we call Block A. Block A is 52% residential and 48% commercial and you can see

(indicating on his map) and on your zoning map. I've got a copy of that, but it's so small it won't do much good. I'm going to take a pen out and show you what your zoning map shows that's different than this map. Your zoning map shows these four lots are already zoned business. Our map is red where it's been developed as business. These four are already zoned for business. If you do just a quick comparison. You're talking about Dantzler Street here with no stoplights, no four-lane traffic. We're talking about this huge intersection and if that can be zoned, it's only fair that this be zoned business. I think you would agree with me."

Chairperson Best stated, "I'm going to have to call time on you. You've given us a lot of information, but we've got other people here."

Assistant City Administrator John Singh stated, "I'm not trying to cut into the Chairperson, but let's just give others a chance. If the Chairperson could ask if everyone here is for it then you've probably spoken for them unless they feel differently. If there's someone who feels differently, they need a chance to speak. You will have the opportunity to come back in New Business."

Mr. Banks stated, "Sure. I'll yield. I'm most of the way through my presentation. There's definitely some things I've left unsaid."

Chairperson Best stated, "Is there anyone else to speak at the Public Hearing? Is there anyone else to speak at the Public Hearing? Please come forward and state your name and address for the record."

Randy Shuler stated, "My wife owns the house on St. Matthews Road in the middle. To reiterate what Mr. Banks said, we've put a lot of work in it, we've gone through a lot to get the covenants and restrictions done. As you can see, it's pretty cut and dry on what is all around us, and I just personally feel like it would be beneficial to the city and everybody else if this could be re-zoned."

Chairperson Best stated, "Thank you. Is there anyone else to speak at the Public Hearing? Could you please state your name?"

Kevin Jackson stated, "We own the business Edisto Home Care and Hospice, 1180 Boulevard, Suite C. We lease the spot right behind Ken and the CPM. He's got thousands of cars that come through here every day right beside his home with a chain link fence, no privacy. I'm in agreement that it needs to be commercial zoned. I'd love to see a Chick-fil-A or something here that I could grab and take food to the doctors' offices. It's a huge benefit for Orangeburg if we could change it to commercial and get some interest in that area. We're missing a lot right there. I'm local right there beside it and I speak from experience. Thank you."

Chairperson Best stated, "Thank you. Is there anyone else to speak at the Public Hearing? Please come forward and state your name and address for the record."

Leon Howell stated, "My name is Leon Howell and I own the property at 1370 Schley Street, which is one house off Chestnut Street. The house in front of me is owned by somebody else, but if he ever sold his house commercial, I would be right behind him. The lot he has wouldn't be big

enough for commercial without me selling my property to be commercial also. That's why I'm for it today. I'm for the petition."

Chairperson Best stated, "Thank you. Is there anyone else to speak at the Public Hearing? Is there anyone else to speak at the Public Hearing? Mr. Walsh, would you like to speak?"

James F. Walsh, Attorney for the City of Orangeburg stated, "Just for the record, do you have the City's letter addressing the City's position from my office? Do you have that or not?"

Chairperson Best stated, "I don't believe I have it."

Attorney Walsh stated, "I'll just read it for the record. In these cases, the zoning administrator, requests me to review any application for re-zoning. I look at it from the stand point of the Comprehensive Plan and the zoning. In that, I issued an opinion to the Assistant City Administrator, Mr. John Singh, and I'll read it verbatim. The objective of the Comprehensive Plan is to conserve and protect the character and present use of existing single-family neighborhoods and subdivisions and to prohibit uses or development that would compromise or infringe on the prevailing conditions of such areas. That's referring to an A-1 Residential District. This property under the Land Use map is designated as Suburban Residential. The plan states the Planning Commission and City Council should deny zoning changes or ordinance amendments which would compromise or alter the use of property principally for single-family housing in neighborhoods so designated, which is an A-1 Residential District. Ordinance changes that would permit dissimilar uses (or commercial use) should be denied as a matter of policy, pending further study by the Commission and Council and subsequent amendment to the Plan Map. That's the future development plan map in the Comprehensive Plan. This policy effectively 'locks-out' development and zoning changes at variance with prevailing uses and conditions,' which is A-1 Residential. It is a policy of 'no change' until such time as the plan objectives are reevaluated and amended. In summary, the request for re-zoning cannot be granted without a review and amendment of the 2016-2026 Comprehensive Plan and without this zoning amendment being requested here from A-1 to Commercial would constitute 'spot zoning' which cannot be granted by this Commission or City Council. I'll go into more detail when the item comes up for consideration."

Chairperson Best stated, "Is there anybody to speak at the Public Hearing? Is there anybody to speak at the Public Hearing? Is there anybody to speak at the Public Hearing?"

Don Adkins stated, "My property is at the corner of St. Matthews and Chestnut. This may be zoned Residential, but it is not residential property. We have 34,000 cars coming down Chestnut and 17,000 a day on St. Matthews. It is not residential. It should be zoned, probably the whole Pecan Terrace should be zoned at least Office if not Retail business so I'm definitely in favor of the petition."

Chairperson Best stated, "Is there anyone else to speak at the Public Hearing? Is there anyone else to speak at the Public Hearing? Please come forward and state your name and address."

Elouise Hart, 1243 Chestnut Street stated, "I also work out of my home and I bought the property in 2002. From that time until this time, the traffic has tripled I would say. I like the location, but I also know that this is not Residential. Walgreens is across the street from me. There are always accidents at St. Matthews Road and Chestnut Street. I mean it's all day and all night. I have to sit in my drive way sometimes five to ten minutes just to get out from where I live. I think it should be re-zoned."

Chairperson Best stated, "Is there anyone else to speak at the Public Hearing? Please come forward and state your name and address for the record."

Marcia Adkins stated, "My husband and I own the property at 1374 St. Matthews Road. I would like to go back to the late '60s and early 1970s when all of that in red was a pecan grove. When the Orangeburg Mall was built, you threw the property owners on St. Matthews Road under the bus. This is your one chance to fix it. Thank you."

Chairperson Best stated, "Is there anyone else to speak at the Public Hearing? Please come forward and state your name and address for the record."

Harry Floyd stated, "I was going to point out some things like when the roads around this place used to be two lane roads when I was a kid. They're all four lane roads now and the traffic is insane. When we worked on the covenants, like 50% of the houses are rental houses, those owners choose not to live there, and they just have rental houses in there. You know people that rent houses are a little different than people that live there. In Block A where we are, it's almost 50/50 Commercial and Residential. There are ten commercial businesses back in my block. The teller machine 24/7 is way too much. Thank you. I appreciate it."

Chairperson Best stated, "Is there anyone else to speak at the Public Hearing? Is there anyone else to speak at the Public Hearing? Last call. Is there anyone else to speak at the Public Hearing? I'd like to thank everyone who's participated in the Public Hearing, and we will now close the Public Hearing and move into our scheduled meeting."

REGULAR MEETING

Chairperson Best opened the meeting. Commissioner Barrett made a motion to approve the June 20, 2019 minutes as distributed, seconded by Commissioner Jenkins. There was discussion.

Assistant City Administrator John Singh stated, "We do have one correction we need to make. We have one error that we stated that Chairperson Best made the motion to approve the minutes at the last meeting and it was Commissioner Barrett who made that motion and we will correct that within our minutes."

Chairperson Best stated, "Thank you. Any discussion? The vote was unanimous. Under Old Business, I see none. Under New Business, for consideration of a zoning district map change from A-1 Residential, Single-Unit District to B-1 General Business District for property belonging to Phyllis Pelzer located at 1090 St Matthews Road, TMP# 0173-05-05-001.000, property belonging to Harry Ken Floyd, Jr. located at 1070 St Matthews Road, TMP# 0173-05-05-015.000 and

property belonging to Glenda Zeigler located at 1080 St Matthews Road, TMP #0173-05-05-016.000. Mr. Singh, would you like to address the Commission?"

Assistant City Administrator John Singh stated, "Good evening Commissioners. First, I want to apologize to Attorney Walsh. We did receive the letter that he read. We normally ask our City Attorney to review and give an opinion. He has rendered an opinion, which is what his letter is, an opinion of what he sees of the law. From then forth, you've received information from the public and then this case is a little unique because we have representation for the other party. So now Mr. Banks is welcome to come back. After Mr. Banks has completed his testimony, then Attorney Walsh will come and give his testimony. Then any questions you have for them or for me, we will be glad to answer."

Mr. Banks stated, "Again, I'm Martin Banks. A few more things that I wanted to point out about this map is that if you look at this map all but three lots on Section A are bordering commercial properties. Everyone is affected in this Block A by the commercial development that is already there. Pointing out that these four are already zoned for that on this smaller street. It just makes no sense that these three shouldn't be. As far as Mr. Walsh's letter, I understand, I used to represent kids in juvenile court or general sessions court. There was always sort of a nod and a wink that went on when you could get the prosecuting attorney to say, well, based on policy we're going to do this, or we have to do this based on policy. In juvenile court, that always meant don't lock the kid up. That's not the right thing to do, that's not equitable and policy says he did something wrong, but don't lock him up. Maybe he brought a butter knife to school. Don't lock him up for something like that. I appreciate the policy. Policies are there for a reason and policies that were written a long time ago sometimes don't apply to the current situation. So, if the policy is to not make a change and take time to review that change. I understand that, but I think the change should be inevitable in this case. Policies should change, spot zoning should be made in this case of all cases. I've been involved in a number and this one is obvious to me and I would ask, I know, Mr. Walsh said after further review, maybe there could be changes made. I honestly think all these folks, by the way, everyone who didn't speak is for this change. If anyone is here that doesn't want this change, I'm sure they would be up here talking to you. At any rate, I would ask that this be your review because I think it's that obvious. This is all the review that you need to make the change that is appropriate here."

Chairperson Best asked, "Are there any questions for Mr. Banks? Mr. Walsh?"

Attorney Walsh stated, "First off, I hope the audience and the Commission understands that the City doesn't oppose re-zoning, doesn't consent to re-zoning, all we do is follow policy and law. That's what we try to do in giving the Commission our opinion. First off, there are two ways to control the development of property. Restrictive covenants, which has been addressed, which is agreements among the property owners and usually of a development of the property. The other way to restrict the development of property is through zoning, which is a Legislative function of a municipality. Now zoning is not policy. Zoning is based upon the grant of authority from the State Legislature to municipalities giving them permission to enact zoning regulations. Those regulations are based upon case law, well, originally, was based upon common law, then case law, and now statutory law. Statutory law meaning the Legislature has enacted a statute called the Local Land Development Act which specifically tells a municipality what they can and cannot do

when they zone property. The main thing that you're trying to avoid is spot zoning because spot zoning is not legal because you are treating one little small piece of property different from other property in that zoning district. In 1992; case law (this is case law), there was a case in Myrtle Beach, Talbert vs. Myrtle Beach and in that case, it tells you what spot zoning is. I'll read from it citing various other legal authorities. Spot zoning is when a Commission establishes a small district within the limits of a zone in which are permitted uses different from or inconsistent with those permitted within the larger area. Such spot zoning is invalid where the ordinance does not form a part of a Comprehensive Plan. We have that, that's required before you have zoning. Do they have the Comprehensive Plan?"

Assistant City Administrator stated, "We can show the slides."

Attorney Walsh continues, "So we had common law and we had case law. But then in 1994, the Legislature enacted and codified case law and common law into what I indicated was Local Government Planning Act. In that act, it authorizes municipalities to enact zoning. In that act, also there's a section that states 'zoning regulations must be in compliance with the Comprehensive Plan,' that's a direct limitation from the Legislature to the municipalities. Zoning regulations must be in compliance with the Comprehensive Plan so when a zoning request is made to the City, we first determine can we do this. The first thing we do is look at the Comprehensive Plan. This is the Comprehensive Plan dated 2016-2026. The Legislature requires that we review this every five years for any potential changes that may be necessary. It is a requirement that a new plan be enacted and adopted every ten years so this one was adopted in 2016 three years ago. It is good until 2026 unless this Commission and City Council decides that it needs to be reviewed and updated. If you look on the screen for the benefit of the audience, you'll see the Comprehensive Plan, this is part of it. As I indicated earlier, if you see, this property in the Land Use Plan, the Comprehensive Plan is designated Suburban, Single-Family, Residential land use. The objective of that section, which again, is on the screen, the objective is to conserve and protect the character and present use of single-family neighborhoods and subdivisions and prohibit uses or development that would compromise or infringe on the prevailing conditions in such areas. The Policy, the Planning Commission, and City Council should deny zoning changes, or ordinances, or ordinance amendments which would compromise or alter the use of property principally for single-family housing in neighborhoods so designated, which is an A-1, Residential District. Ordinance changes that would permit dissimilar uses should be denied as a matter of policy pending further study of the Commission and Council and subsequent amendment to the Plan Map. This has a Plan Map which designates this property as Suburban, Single-Family Residential. Then the next step is we have to look at the Compliance Table, which I think we should have that. This is the table that you use to determine what is and what is not permitted when you're looking at a zoning application. If you look at that section, you'll see Suburban, Residential, which may be a little hard, which is what the property is presently classified as. Again, if you look at that compliance, under Objectives, it says protect existing residential areas for single-family use. Principal Permitted Uses says single-family, detached site-built buildings. Compatible Zoning, what can this Commission, what can City Council do or change? It can't. The only compatible zoning is A-1, Residential. Alternative Zoning, which is permitted, is a Residential Planned Development District. It still has to be Residential; it cannot be Commercial. In some cases where an amendment is authorized, if you look at that Compatible Zoning schedule, for instance, if you look at, if this property was designated in the Land Use as Urban Residential, you could change it

to A-1, Office-Institutional, Planned Development District, or Historical District Overlay, that would be permitted, but we're not dealing with that classification. We're dealing with Suburban, Residential and the only Compatible Zoning change is A-1, which is what it is now. Somewhere in the application or on some document submitted by the landowner, he indicated that if the Commission decided to re-zone this property, he would agree to do certain things to protect adjoining property. That's what you call Contract Zoning and it is not permitted. You cannot contract zone, in other words, you can't say we're going to zone your piece of property if you do this, this, and this. That's contract zoning, illegal, cannot be done. In summary, what can be done is that you can ask and recommend to City Council that they review the Land Use Plan, the Comprehensive Plan, and decide if the designation of present property, Suburban, Residential should be changed to some other classification or change the Compatible Zoning District that is permitted. Presently, it cannot be done and that's the position of the City and the City Staff."

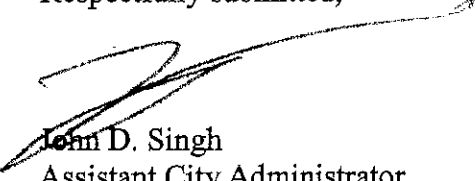
Chairperson Best asked, "Are there any questions for Mr. Walsh? I will entertain a motion to either approve or deny the request. I make a motion to approve it. Can I have a second?" (No second was made.) "Does anybody want to make another motion?"

Vice-Chairperson Jenkins made a motion recommending that the Commission send this to the City Council and give them the opportunity to review the Comprehensive Plan to see if it can be changed from Suburban to another classification. A second was made by Commissioner Payton. The motion passed. The vote was 4-1. Chairperson Best opposed.

Chairperson Best asked "Is there any other business to come before this Commission? Seeing none, I make a motion to adjourn."

Commissioner Wolfe seconded the motion. The motion was unanimous.

Respectfully submitted,



John D. Singh
Assistant City Administrator

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