

Sherwood Planning Commission Minutes

August 11th, 2020 – 5:00 p.m.
2201 E. Kiehl Avenue, Sherwood, AR 72120
Rob Middleton, Chairman

Agenda Items

1. Call to Order
2. Roll Call
 - Gillham
 - Knight
 - Martin
 - Middleton
 - Bruno
3. Approval of July 14th, 2020 Meeting Minutes
 - Bruno made a motion to approve the July 14th, 2020 meeting minutes.
 - Martin seconded the motion.
 - Unanimous roll call vote to approve the July 14th, 2020 meeting minutes.
4. Approval of the Agenda
 - Chairman stated that items 5 and 6 have been withdrawn by the applicant so there will be no Public Hearing held for these items, it may come back at a later time as a different request.
 - Chairman would like to add under New Business a discussion about R-3.
 - City Engineer, Richard Penn, added a Re-plat on the Circle K property located at North Hills Blvd and Country Club.
 - Chairman declares the Agenda set.
5. Amend the Land Use Plan at Langer Lane off of Hatcher Road. [Public Hearing]
 - Withdrawn by Chairman due to applicant's withdrawal of Zoning request.
6. Zoning Amendment to proposed Lot 17B, Block 2 Sylvan Acres off Hatcher Road and Parcel #: 22S0210000305 off Langer Lane from R-1 to R-3. Retail Store Construction, Owner/Agent. [Public Hearing]
 - Withdrawn by applicant.
7. Waiver Request for a fence at 6101 Tammy Lane. Nathan Hall, Owner.
 - Chairman stated that Planning Commission does have the authority to review this request, per Section 14.02.07.G. of the Zoning Code, where Planning Commission can approve a deviation from the prohibition of fences at the front building line. We looked at this briefly last time, but it wasn't an application.

- Mr. Penn stated that we did look at this last time, just testing the waters. It was in connection with the waiver that was granted on the same street. This is a rural area, zoned Industrial, however, it is not used as Industrial. If at some point in the future the owner came in with a Site Plan to utilize the property as Industrial, we would review it as such. However, staff will recommend approval at this time to allow the owner to erect a pipe fence in replace of barbed wire.
- Knight thought it looked good to replace the barbed wire fence.
- Bruno and Gillham agreed.
- Knight made a motion to approve the waiver.
- Bruno seconded the motion.
- Unanimous roll call vote to approve the Waiver from Fence Regulations at 6101 Tammy Lane to allow replacing a barbed wire fence with a pipe fence.
- Mr. Penn wanted to recognize the Halls who were here for the meeting.
- Mr. Hall appreciated the Commission approving it, they just want to clean up the area a little bit and get rid of the barbed wire.

8. Proposed Revisions to the Zoning Code regarding Fences. [Public Hearing]

- Mr. Penn stated that the effort that we're making, there are three basis for this recommendation. One is, as you've just seen, will come in for requests for fences in the front yard and those have been difficult to handle, with the current requirements we have. Another reason is that we are trying to expand peoples abilities to use their property, we're not trying to over-regulate, we're trying to open this up so that people can enjoy their property to its fullest extent; and third, we're trying to simplify and reduce the regulations for the safety of the public. Anything to do with screening, will be addressed somewhere else. The Sight Triangle consideration is an important part of this, but we'd like to move it out of the fence regulation, but make it its own thing. Considering the new information, allowing fences in the front yard up to three and a half feet tall. Would you like to go through this word for word?
- Chairman stated that his understanding was the only change to the draft presented to the Commission in July has to do with placement of the Sight Triangle.
- Mr. Penn confirmed that the placement as a discussion item as a definition or as an illustration in another place in the Code.
- Chairman opened the public hearing.
- There being no comments, either written or in person, Chairman closed the public hearing.
- Chairman stated that the next time you look at the Zoning Code on the City's webpage. You'll notice that the Schedule of Uses has been moved to the very back of the Zoning Code. We did that because we will get more revisions to the section 14.10 which is where the Sight Triangle ought to go, so this will fall in place there.
- Bruno made a motion to move the Sight Triangle and recommend that it and the Fence Draft to the City Council for approval.
- Martin seconded the motion.
- Unanimous roll call vote to move the Sight Triangle and recommend that it and the Fence Draft to the City Council for approval.

9. Proposed Revisions to the Zoning Code regarding Pools. [Public Hearing]

- Mr. Penn stated that again, we are trying to make pools easier for people to locate setbacks from buildings or from property lines. He noted that Item C had been revised since the July meeting, deleting the option of locating a pool in the rear half of the lot by right and requiring a pool to be located behind the principal structure, as had been discussed at the July meeting. The intent is to simplify this and be behind the structure, but if someone has the desire for a pool in front of their structure, you can look down to the recommendations for how that comes to Planning Commission as a waiver.
- Chairman suggested moving Item H into Item B, drafted as; “The Planning Commission may allow a pool to be located in front or to the side of the principal structure, provided that required barriers around the pool do not obstruct visibility of the principal structure from the street.” Chairman stated that previous Commission discussion didn’t like putting a pool in front of a house, however, there may be a situation such as, a house a quarter mile off the road, this would speak to that.
- Chairman opened the public hearing.
- Karl Goshen, 9816 Laurel Oaks Drive. He’s been doing some research of different cities. Little Rock regulations are 3 feet from the house, back property line. But 5 feet from the house and 5 feet from the property line would be great. In order to get a decent sized pool, you’d have to have at least a 15 feet wide pool and 20-30 feet long.
- Steve Deere asked for clarification if there was an L-shaped house, would it be 5 feet from the part that sticks out.
- Chairman confirmed it would be 5 feet from the structure.
- Chairman closed the public hearing.
- Knight asked if Chairman was proposing new language.
- Chairman confirmed that he was recommending new language for section B to allow the possibility of a waiver by the Planning Commission to permit a pool in the front.
- Knight agreed and thought it would clarify more.
- Martin confirmed that it would strike through H.
- Martin made a motion to recommend the Pools Draft to the City Council for approval as amended.
- Knight seconded the motion.
- Unanimous roll call vote to recommend the Pools Draft to the City Council for approval as amended.

10. Updated Boundaries on Land Use Plan [Public Hearing]

- Mr. Penn stated that the City of Sherwood and the City of Jacksonville cooperated on a Land Swap and the basis was to resolve an issue with utilities being available. We have long range plans in our waste water department, but we have sewer districts to the North that are Gravel Ridge and Runyan Acres. But, there were some properties that are better served by Jacksonville. The tiny triangle came to Sherwood. The upside down T-shaped went to Jacksonville, this standing oval came to Sherwood from Jacksonville and the smaller, southern area came to Sherwood. Jacksonville said that they will serve all of these areas. Jacksonville Cutoff is a new gateway into

Sherwood. These map changes will now clarify what's Jacksonville and what's Sherwood. There are a few other considerations such as Zoning.

- Chairman stated that the parts that are now in Jacksonville aren't an issue. The issue for us is what is the land use classification be on the little triangle and the bigger parcel. The little triangle looks like it is next to a utility station of some kind and the area in the back up of it high density multi-family.
- Mr. Penn stated that since it is road frontage, so it could possibly be commercial. But, he suggested waiting until someone asked to change it.
- Chairman stated that our former Planner was suggesting Parks and Recreation for the larger area, but he had understood that someone had plans or interest in developing subdivisions which would make Suburban Single-Family an appropriate land use classification.
- Chairman opened a public hearing.
- There being no comments, either in writing or in person, Chairman closed the public hearing.
- Chairman stated that we need to decide what we think the Land Use Plan map should look like and send to the City Council for adoption by resolution. He stated that when it comes into the city, its default zoning is R-1. That's probably the case with the triangle too. Unless there is a specific zoning designated in the annexation ordinance, it comes in as R-1. So, regardless of what it is, what do we think it ought to be.
- Mr. Penn stated that the little section that's a little bit of an offset is, in fact, zoned as Single Family Residential along with a lot of the property to the East.
- Martin stated that his thoughts on the larger tract that's along Jacksonville Cutoff should be some kind of Recreational along Bayou Meto and the remainder of it be Suburban Single Family. I don't know how you'd define the boundary.
- Mr. Penn stated that there is a floodplain boundary.
- Martin said that the floodplain line would be a good boundary. He corrected that he would like conservation instead of recreational. And leave everything else Single Family, and the triangle as well.
- Mr. Penn pulled up the floodplain map on the monitors for the Commission and explained the boundaries.
- Chairman asked Martin if what he preferred would be the boundary be defined by the floodplain and have that be defined as the conservation area.
- Martin stated that yes, as a minimum the floodplain be conservation and preserve the floodway at Bayou Meto.
- Chairman suggests we send this back to staff to see what that boundary would look like before we make a decision, by confirming the floodplain boundary.
- Bruno made a motion to table this item.
- Martin seconded the motion.
- Unanimous roll call vote to table this item.

11. Old Business

- Re-plat of Lot 5, Block 20 of Sylvan Hills Addition, also known as, 7517 Hwy 107. Bryan Pitts, Realtor.

- Mr. Penn stated this property is across the street from Metropolitan and the golf course. This is the property that came up for rezoning for the liquor store that is coming from a neighboring city. The rezone was contingent on the re-plat.
- Chairman stated that could not issue a certificate of occupancy or building permit without a re-plat.
- Martin asked for confirmation about the Council approving the Zoning last month.
- Chairman confirmed that Council had approved with replat requirement
- Mr. Penn recommends for the re-plat to be approved.
- Martin voted to approve the Re-plat of Lot 5, Block 20 of Sylvan Hills Addition, also known as, 7517 Hwy 107.
- Bruno seconded the motion.
- Unanimous roll call vote to approve the Re-plat of Lot 5, Block 20 of Sylvan Hills Addition, also known as, 7517 Hwy 107.

12. New Business

- Re-plat of plat at Circle K on Country Club and North Hills Blvd.
 - Mr. Penn stated that this drawing shows Lot A and Lot B. The new Circle K is built in this area. The owner is requesting to re-plat this lot into two. Which will leave .786 acres on the northern part bordering the golf course. They are requesting we approve the re-plat, he has reviewed it and been back and forth and got everything correct so Staff recommends approval of the re-plat.
 - Knight made a motion to approve the re-plat.
 - Martin seconded the motion.
 - Unanimous roll call vote to approve the re-plat.
- Discussion on R-3
 - Chairman read the provision in the R-3 zoning. He has an issue that a Planned Unit Development (PUD) shall be required if it can meet the requirements of the Zoning district and it doesn't want to do anything cute or interesting, it should not be subjected to the requirements of a PUD. A PUD comes in because they want to do something innovative or that would require a departure from the existing zoning requirements. If somebody wants to come in, they shouldn't be required to do something if they meet the requirements of the zoning they're in. He would like to hold a Public Hearing in the next meeting to strike that.
 - Bruno and Knight concur.
 - Chairman stated that it just doesn't make sense. It's hard enough in this City to get multi-family because elsewhere in the Code, it requires that any application in R-3 has to have a Site Plan Review and if you have any concerns about the impact on adjoining properties, you take it up in the Site Plan Review. That requires a Public Hearing anyway. And to make someone go through a PUD which is extensive and expensive when all they propose to do is meet the requirements of the Zone. That's a regulation we can do without harming anything.
 - Martin agreed they'd still have to have Site Plan approval.
 - Bruno made a motion to hold a Public Hearing in the September Planning Commission meeting.

- Martin seconded the motion.
- Unanimous roll call vote to hold a Public Hearing in the September Planning Commission meeting.
- Signs Discussion
 - Chairman stated that this has been a lingering thing and the Planning Commission has never had the responsibility for although the Board of Zoning Adjustment did as an appeal body, though that was illegal. There was a Committee appointed by the Mayor in 2014 that started working on the Sign Regulations. The first regulations were adopted in 1984 and there have been about 34 amendments, which is not unusual, but it gets kind of disjointed. In the middle of that work, the Supreme Court took on a case that upset every sign regulation in the Country except maybe 2 or 3. And that stopped the work of that Committee, nobody has done anything since that time and it's been driving enforcement staff crazy. He asked our City Attorney to give us an overview of the impact of the Supreme Court decision.
 - Mr. Cobb stated that the Reed decision started out as a suit between a church in Arizona and the town of Gilbert. Essentially what they had was an ordinance in place that required a permit for all signs except for about 23 difference categories. Three of these categories were churches, political signs, and directional signs. The church didn't have a specific location, they moved from facility to facility; so they would put out signs on Saturday morning and picked the signs up on Sunday afternoon. The city said it violated some of the terms of their ordinance so the church sued and literally lost every case until the U.S. Supreme Court. And then Judge Thomas wrote a scathing opinion that hinges basically on the 1st Amendment. If you are going to regulate speech, the court has felt that that falls under the strictest scrutiny, if you can't meet that test, then your regulation will fail. What this boils down to is, for regulations to be enforceable, they have to be content neutral and they have to be...well, we have different classifications in the old committee such as, real estate signs and commercial signs. None of those would pass because they were not content neutral. With those we're regulating a specific type of message, that's what you can't do. We started with a regulation that the Municipal League was advocating and Mr. VonTungeln, who does incredibly good work, was asked if he could recommend any regulation he had seen that would be a good example for us to look at. The example he provided was one he had written for Searcy. We've tweaked it a little bit, and we feel like we are ready to move forward to take care of staff and get them what they need.
 - Chairman stated that Justice Alito wrote a concurring opinion that they agree with Mr. Thomas' opinion, they recognize that municipalities, counties and states have the authority to regulate but are circumscribing what they can regulate. Cities can issue rules regarding the size, location, attached to building, lighted or unlighted, placed on public property, on-premise or off-premise. Some attorney's opinion saying that if it's in a residential area, it is strict scrutiny. You have a lesser degree of scrutiny in commercial and industrial. A lot of cities are still struggling with what they can regulate. We still have to be careful with the content. He feels that Alito gave us a little

window, but the rule of thumb is that; if you have to read the sign to determine if you can regulate it, that's content based....that makes it tough. What we are really concerned about is having too many signs, which clutters the landscape, which is partly a matter of aesthetic, the other part is if creates a hazard by distracting you from the road. His opinion is that it is reasonable for a commercial or industrial establishment to put their name out there and give you some indication of what they sell, within reason. Such as; Attorney, CPA, wrecker service, etc. When it becomes an issue is when there are things that distract you with movement. The only way to deal with that is to put something like a number and area code. You can deal with size and what this draft is based on is essentially is what Searcy has. Mr. VonTungeln has been on retainer for about 15 years. He wrote this in light of Reed vs. Gilbert, they have attorneys all over the place up there, so we thought it appropriate to look at this as a model. We also looked at Bentonville and Cabot. We started to keep the stuff in our code that we thought we could. If we departed too much, it would be culture shock. The final analysis we felt like we were constrained to limit size and number more than anything. If it's set up in residential, you can have 24 square feet. You can keep them up there all the time, or you can take them down, but we're not going to regulate it. We're not going to issue permits for it either, we ran by staff and the reaction was generally favorable. One thing that Staff thought may cause issue with enforcement, the one issue that was brought up, no signs in the right of way. How are we going to enforce political signs and yard sale signs? So they added one provision under 14.11.04 under prohibited signs; we do not allow signs in the right of way and the additional language would be, 'any sign found within a street or highway right of way, not subject to the above exception, shall be confiscated by the City without notice to the business or entity to which the sign pertains.' That gives the staff the authority to take signs out where they don't belong. We toyed with the idea of signs just off the right of way in a vacant field, and the only way to enforce that is to ask the property owner if they want that sign there but that would take forever and we'd have to hire five more people to go around the city to do that. So, we didn't feel that was realistic. We're trying to walk that fine line to keep it legal.

- Mr. Cobb confirmed.
- Mr. Penn stated this has been a challenge for staff. The review of an application not so much, but the enforcement has created some real difficulty with regard to elections, yard sales. With regard to the City rights of way, along the streets, it is well and good to consider we don't want signs there, but it is also a challenge to go out and measure it and find the exact measure of the right of way and basically leave the sign there. There are always going to be some challenges with enforcement. This draft, he thinks, is going to help us.
- Chairman stated that it has not been in the Zoning Code. It's a mixed bag whether cities choose to put it in the Zoning Code. The chief issue is that it relates to residential, industrial, and commercial uses. Cities that typically have it in their Zoning Code usually go through excruciating details of what can be done in a C-1 and another level of excruciating detail of what can be done in

- C-2, and so on. We're not proposing to do anything in that much detail, but we do state that there are slightly different standards for commercial, residential, industrial and PUD's. The other thing is that when the original sign ordinance was created or amended, they gave the authority to appeal to the Board of Zoning Adjustment. But, by law, the Board of Zoning Adjustment can only hear Zoning appeals. So, because it wasn't in the Zoning Code, they couldn't hear it. The City Council passed an ordinance stating that they will be the appeal body for the time being, this makes it cleaner. The other thing is what to do about home occupations. Right now, the current regulations basically are silent on it. Which means you can't put a sign up if you have a home occupation. The cities that he has seen does allow a sign on the house no more than 4 feet. That may be something we want to consider, because the way the draft reads right now is no commercial message on residential property, we've toyed with the idea that we don't want off-site signage on residential property. He couldn't begin to tell you the details of what's in the draft compared to current regulation. Staff felt like it was okay.
- Mr. Penn stated that he cannot speak for Andy Wilson, he's been tasked on reviewing applications and going out to collect signs. He's done a great job, but after time its wear and tear on your mental capabilities. So, without actually speaking for Andy, as Staff, whatever specific ideas we have as a group, this represents what we feel that this gets us where we need to be quickly.
 - Chairman asked if we need to review this more or if it's ready for Public Hearing. He would be surprised if it went to Council as it is written because we will probably get some good suggestions and comments during the Public Hearing but, he thinks we need to do sooner rather than later.
 - Bruno made a motion to hold a Public Hearing in the September Planning Commission meeting.
 - Martin seconded the motion.
 - Unanimous roll call vote to hold a Public Hearing in the September Planning Commission meeting.

13. Adjournment

- Knight made a motion to Adjourn.
- Martin seconded the motion.
- Unanimous roll call vote to Adjourn.

PASSED AND ADOPTED THIS 09th DAY OF September, 2020.

Robert Huddleston

PLANNING COMMISSION CHAIRMAN

Clare

PLANNING COMMISSION SECRETARY