

**MINUTES**  
**CITY OF MOUNTAIN BROOK**  
**PLANNING COMMISSION**  
**MARCH 4, 2024**  
**CITY HALL, 56 CHURCH STREET, MOUNTAIN BROOK, AL 35213**

The meeting of the Planning Commission of the City of Mountain Brook, Alabama, was held in person on Monday, March 4, 2024, at 5:30 p.m. The roll was marked as follows:

Members Present: Rob Walker, Chairman  
Carey Hollingsworth, Vice-Chairman  
Barney Lanier, Secretary  
Phil Black  
Frank Lassiter  
Maretta Ashford  
Winston McCalley

Absent:

Also present: Dana Hazen: Director of Planning, Building and Sustainability  
Glen Merchant: Building Official  
Tammy Reid: Administrative Analyst

1. **Call to Order:** Chairman Walker called the meeting to order at approximately 5:30 p.m., there being a quorum present.

2. **Approval of Agenda:** Chairman Walker presented the agenda.

Motion: Mr. Lassiter: Motion to approve the agenda as presented.  
Second: Mr. Black  
Ayes: Unanimous approval  
Nays: None  
Motion carries.

3. **Approval of Minutes:** Chairman Walker presented the November 6, 2023 minutes.

Motion: Mr. Lanier: Motion to approve the November 6, 2023 minutes as presented.  
Second: Mr. Hollingsworth  
Ayes: Unanimous approval  
Nays: None  
Motion carries.

4. **Case P-24-01: 3613 Montclair Road, Patrick and Virginia Cooney**

**EXHIBIT 1**

Cooney Addition to Mountain Brook recorded in instrument number 201106-19122 in the Office of the Judge of Probate Jefferson County, Alabama; situated in the NE ¼ of Section 5, Twp-18S, R-2W, Jefferson County, Alabama. 3613 Montclair Road

History:

This request is for the subdivision plat for a single-family lot in Res-A; on May 3, 2021, the planning commission approved this same plat, but it was not recorded in the requisite 60-day period.

Said property has frontage on an unimproved right-of-way; permission to pave with a driveway was granted by the city council via an encroachment agreement on November 13, 2023. The applicant and the civil engineer have satisfied the Fire Marshal and city council with regard to improvements necessary to provide for adequate emergency ingress/turnaround, as well as to provide proper drainage in the right-of-way.

Brian Krogsgard, Weygand, 173 Oxmoor Road, Birmingham, represented the applicant.

Public Comments: None

Motion: Mr. Black: Motion to approve the resurvey request as submitted.

Second: Mrs. Ashford

Vote: Ayes

Unanimous approval

Nays

None

Motion carries.

5. **Consideration for Recommendation to the City Council:** Amendments to Article XVI (Planned Unit Development) and Article XXV (Amendments) of the Zoning Code.

Dana Hazen, Director of Planning, Building and Sustainability, presented the proposed amendments. There are three major points to the proposed amendments to the two articles regarding the rezoning process (in general) and rezoning to PUD (more specifically); all involve the timing of PUD zoning expirations, and the granting of PUD time extensions prior to zoning expirations. Also included are minor clean-up revisions.

Specific changes:

**“ARTICLE XVI. – Planned Unit Development (PUD)**

**Sec. 129-266. – Additional requirements and provisions.**

- (c) *Failure to begin construction.* Construction of the approved development must begin (relevant permits must have been issued by the city, and related construction work must have commenced) within ~~one~~ two years from the date of the approval of the master development plan by the city council unless a different period is established by the city council as part of its approval of the application. Any approved changes in the plan shall not extend the time at which said ~~one~~ two-year period begins to run unless otherwise specified by the City Council as part of approval of such changes. The ~~planning commission~~ city council may, no sooner than 60 days prior to the end of said ~~one~~ two-year period, upon the written request of the applicant, extend such ~~one~~ two-year period for a period to be determined by the City Council of not more than six months if, in the judgment of the ~~planning commission~~ city council, such additional time is warranted. In any event, the

construction of the PUD must be started within ~~one two~~ years ~~and six months~~ or for other such time as is otherwise specified by the City Council, of the approval of the master development plan by the city council and must be completed within the period of time determined by the city council for each PUD (the "completion period"), subject to extension by the ~~planning commission city council~~, as provided hereinafter. If the ~~planning commission city council~~ extends the date by which construction of the PUD must be started, it may, but it shall not be obligated to, extend the completion period for the PUD by a period of time which may be less, but may not be greater, than the length of time by which the commencement date was extended. Failure to begin the development of the PUD within said ~~one two~~-year period, or the period as extended, or to complete the development within the completion period, or the extended completion period, shall automatically void the master development plan, and the zoning classification shall automatically revert to the zoning classification in effect for such parcel prior to its being rezoned a Planned Unit Development District.

No building permit shall then be issued (except a permit for a building which would be in compliance with such prior zoning classification) until a new master development plan has been resubmitted and approved in accordance with the procedures set forth in this article for an initial submission and approval. The development of a PUD shall be considered to be complete when the land has been resurveyed or subdivided in accordance with the subdivision regulations of the city (if such resurvey or subdivision is required), the subdivision plat has been recorded in the office of the Judge of Probate of Jefferson County, Alabama, the installation of all utilities which are to be used in the PUD has been completed (except for service lines to individual dwelling units), all required streets (public or private), curbs, gutters and sidewalks have been installed in the PUD and the final coat of paving has been placed on all streets in the PUD.

- (d) *Development in phases.* If a PUD is to be constructed in stages, the construction (~~relevant permits must have been issued by the city, and related construction work must have commenced~~) of the first stage must begin within ~~one two~~ years from the date of the approval of the master development plan by the city council, and each additional stage must begin no later than the construction commencement date for each such stage as provided for in the development schedule approved by the city council. In all cases, progress towards completion of the development should proceed in accordance with said development schedule. Failure to comply with this provision shall constitute a deviation from the master development plan, and the provisions and procedures of this section shall apply accordingly.
- (e) When the PUD application is filed, a processing fee, as provided for in section 19-471(c), must be paid to the zoning officer, and the applicant shall provide the city with ~~17 copies a digital copy~~ of the preliminary plan and attendant documents and information. During the time the preliminary plan is under consideration by the planning commission, the applicant shall furnish the zoning officer with ~~17 copies a digital copy~~ of any revisions of the preliminary plan. During the time the preliminary plan or the master development plan is under consideration by the city council, the applicant shall furnish the zoning officer with ~~15~~

~~copies~~ a digital copy of any revisions of the preliminary plan or the master development plan.

## ARTICLE XXV. – Amendments

### Sec. 129-432. – Petitions for rezoning.

The owner of any parcel, or an authorized representative of such owner, may present a request for rezoning of such parcel by filing an application for rezoning and a preliminary site plan of such parcel with the ~~city clerk zoning officer~~. Materials and/or information in addition to that provided for by the application may be required with respect to requests for changes to certain zoning classifications, as set forth in this chapter. Such additional materials or information must be filed with the application, or, if some or all of such additional materials are requested by the zoning officer or the planning commission after the application has been filed, such materials must be filed with the zoning officer within a reasonable time after such request, to enable the members of the planning commission to review the materials prior to the public hearing to be held by the planning commission.

### Sec. 129-435. Amendment procedure.

After an application for rezoning has been determined to contain all of the required materials and information, the application will be submitted to the planning commission for consideration. The planning commission will hold a public hearing, after giving notice, as permitted by applicable law, of its consideration of the rezoning application. Following the public hearing, the ~~zoning officer~~ ~~planning commission~~ shall forward to the city council ~~it's the planning commission's~~ recommendation with respect to the proposed rezoning. After receiving the ~~planning commission's~~ recommendation from the ~~planning commission zoning officer~~, the city council shall also give notice as permitted by applicable law and hold a public hearing to consider the proposed rezoning, after which the city council will take action on the proposed amendment.

### Sec. 129-436. Time limit.

- (a) If the city council denies an application for an amendment to this chapter, another application for the same amendment to this chapter ("subsequent application") ~~(in the case of proposed PUD, the same master development plan), and made by the same applicant~~ shall not be considered by the planning commission or the city council until ~~two one years~~ ~~have has~~ elapsed from the date on which the application was denied by the city council ~~or~~. If the application is withdrawn by the applicant prior to the city council making a decision with respect to such application, but after the planning commission made a recommendation to the city council with respect to such application, ~~until two years have elapsed from the date on which the planning commission made its recommendation.~~ another application for the same amendment to this chapter may be made to the planning commission at any time.

Notwithstanding the foregoing, within less than ~~two one~~ years from the date on which an application for an amendment to this chapter was denied by the city council ~~or, if the application is withdrawn by the applicant prior to the city council making a decision with respect to such application, but after the planning commission made a recommendation to the city council with respect to such application, within less than two one years from the date on which the planning commission made such recommendation~~, the city council, by a resolution adopted by its members, may request the planning commission to make a recommendation to the city council with respect to, a subsequent application and, after receiving such recommendation from the planning commission, consider the subsequent application.

- (b) If the city council denies an application for a change in the zoning classification of a parcel, another application for the same change in the zoning classification of the parcel ~~(in the case of proposed PUD, the same master development plan)~~, or any part of such parcel, ~~and by the same applicant~~, shall not be considered by the planning commission or the city council until ~~two one~~ years ~~have has~~ elapsed from the date on which the application is denied by the city council or, if the application is withdrawn by the applicant prior to the city council making a decision with respect to such application, but after the planning commission made a recommendation to the city council with respect to such application, until ~~two one~~ years ~~have has~~ elapsed from the date on which the planning commission made its recommendation.
- (c) Notwithstanding the provisions of subsection (b) above, if the decision of the city council to grant an application for a change in the zoning classification of a parcel is challenged in the Jefferson County Circuit Court ("circuit court") and if the final judicial determination is that such application will not be granted, regardless of whether such decision is made by the circuit court or by an appellate court to which the decision of the circuit court is appealed, another application for the same change in the zoning classification of the parcel ~~(in the case of proposed PUD, the same master development plan)~~, or any part of such parcel, ~~and by the same applicant~~, shall not be considered by the planning commission or the city council until ~~two one~~ years ~~have has~~ elapsed from: (i) the date on which the decision or order of the court, whether it be the circuit court or an appellate court, is final and the time for appeal, or further appeal, has expired; or (ii) the date on which such legal proceeding is dismissed if it is dismissed prior to a final judicial determination being made with respect to such application.
- (d) Notwithstanding the provisions of subsection (b) above, if the decision of the city council to deny an application for a change in the zoning classification of a parcel is challenged in the circuit court and if the final judicial determination is that such application will not be granted, regardless of whether such decision is made by the circuit court or by an appellate court to which the decision of the circuit court is appealed, another application for the same change in the zoning classification of the parcel ~~(in the case of proposed PUD, the same master development plan)~~, or any part of such parcel, ~~and by the same applicant~~, shall not be considered by the planning commission or the city council until five years have elapsed from: (i) the date on which the decision or order of the court, whether it be the

circuit court or an appellate court, is final and the time for appeal, or further appeal, has expired; or (ii) the date on which such legal proceeding is dismissed if it is dismissed prior to a final judicial determination being made with respect to such application.

- (e) Notwithstanding the provisions of subsections (b), (c) and (d) above, the city council may consider an application for a proposed change in the zoning classification of a parcel, or any part of the parcel, **and by the same applicant**, which, under subsection (b), subsection (c) or subsection (d) above was not to have been considered within the respective ~~two one-~~ year periods referred to in said subsections (b) and (c) or within the five year period referred to in said subsection (d), after receiving from the planning commission a recommendation with respect to such proposed rezoning of the parcel; provided, that prior to the consideration of the proposed change in the zoning classification of such parcel, or any part of such parcel, by the planning commission: (i) the city council determines that, because of reasons which would be proper for the city council to consider with respect to the proposed change in the zoning classification of the parcel, or such part of the parcel, it would be appropriate for the city council to consider changing the zoning classification of the parcel, or such part of the parcel, at such time; and (ii) the city council adopts a resolution providing that it has made such determination.
- (f) If an application for a change in the zoning classification of a parcel is filed with the **city clerk zoning officer** and: (i) at any time prior to the city council's consideration of the application at a meeting of the city council, the city council determines that the application is one which, under subsection (d) above, is not to be considered by the planning commission or the city council until the expiration of the five year period referred to in said subsection (d); (ii) the city council does not make the determination and adopt the resolution referred to in subsection (e) above; and (iii) ~~two one years have has~~ elapsed from the date on which the decision or order of the court referred to in subsection (d) above is final and time for appeal, or further appeal, has expired or ~~two one years have has~~ elapsed from the date on which the legal proceeding referred to in subsection (d) above is dismissed if it is dismissed prior to a final judicial determination being made with respect to the application which was the basis for such legal proceeding, the city council may, by a resolution adopted by its members, agree to consider the application on the conditions that the applicant agree in writing that: (i) if the city council denies the application to change the zoning classification of the parcel and the applicant challenges such decision of the city council in the circuit court, the applicant shall be obligated to reimburse the city for the costs incurred by the city in defending such challenge (including, without limitation, attorneys' fees, court costs and fees and expenses of expert witnesses) (collectively, "costs") if the final court order with respect to such decision of the city council, whether it be the order of the circuit court or a decision of an appellate court, shall uphold the city council's decision to deny the application to change the zoning classification of the parcel; and (ii) that the applicant post a bond in an amount which the city council determines will be sufficient to reimburse the city for the costs ("bond"). ”

Mr. Hollingsworth asked if the amendments are approved, will they be retroactive. He is not in favor if so. Mrs. Hazen stated that has not been discussed, but she can include that point in her report to the city council.

Chairman Walker called for a motion.

Motion: Mr. Hollingsworth, motion to recommend to the City Council approval of the presented amendments to the Zoning Code, with the understanding that the amendments will not be retroactive.

Second: Mr. Black

Vote: Aye                      Nay

Ashford

Black

Hollingsworth

Lanier

Lassiter

McCalley

Walker

Motion carries.

6. Election of officers for 2024

Motion: Mrs. Ashford nominated the following slate:

Chairman – Rob Walker

Vice Chairman – Carey Hollingsworth

Secretary – Barney Lanier

Second: Mr. Lassiter

Vote: Unanimous consent.

7. The meeting stood adjourned. The next meeting is scheduled for Monday, April 1, 2024.

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Tammy Reid, Administrative Analyst