



RECORD OF PROCEEDINGS: MAPC PUBLIC HEARING HELD MAY 8, 2012

RZ 12-06: Grayson Investments, 3701 E. Johnson Ave.

A request to consider a recommendation to Council for a rezoning/modification of a "C-3 L.U.O.", General Commercial list of permitted uses.

Applicant:

Mr. Jim Lyons: Attorney- Representing Grayson Investments. Mr. Lyons presented the case noting that the property is located next to Bill's Fresh Market on E. Johnson Ave. Since the last traffic count and the most recent 2010 traffic count, approximately 25,000 cars are reflected at the point which is exactly where our property. The City of Jonesboro has done two (2) things in the recent past that will increase the likelihood of this property being commercial by: 1. *approving the NEA Baptist Memorial Hospital*; and, 2. *approving the development of the fairgrounds towards Brookland*. That has increased the traffic in this area. There is a change in the character of the neighborhood. Mr. Lyons showed slides of the current uses of the properties in the vicinity, including the rear of the property along Maplewood Terrace and properties along Highway 49N, as well as the C-3/ C-3 L.U.O. Zoning abutting.

Mr. Lyons noted the eye care facility to the east and the property underdevelopment as C-3 showing the dirt work underway in the photo to the north across E. Johnson. It is our position that this land is clearly commercial. He noted that he drove from the Ace Hardware Store and it measured 1.1 miles to Bill's Market. All of the properties are either commercial, 11 were unused and others used as residential, but those properties were for sale. He added that there were 3 or 4 properties which are currently residential, but he could not tell if it looked like one home may have been used as commercial. The rest of the properties along E. Johnson are commercial. Mr. Lyons stated that he understands that residents are opposed to this request. He understands the reason for that. When a City makes a decision to allow the building of the hospital, and makes a decision to rezone property for the fairgrounds, the result is that as Brookland grows, as Paragould grows, and Jonesboro has a substantial increase in traffic. He added that he would dare say that if we took a traffic count today, it would be at least 10% higher as a result of the development of the hospital and the other area out there. Obviously, if you continue to go past

the hospital, virtually all of those properties are also for sale, because people are going to develop those as commercial properties. He added that eventually all of the property along Johnson is going to be commercial, and he thinks that it is proper for this to be rezoned or changed as a limited use overlay- applied for to be changed for those uses of which we have asked for today.

Staff:

Mr. Spriggs gave a summary and history of the case. The former Gillespie case was applied for in December of 2005. It was acted on by the MAPC and forwarded to City Council for approval; and, it was acted on by the Council in a series of 2 meetings, denied and was litigated in the Circuit Court of Craighead County. As a part of that, Mr. Spriggs noted that he was actually hired at the same time and attended those proceedings. The judge handed down the Court Order of which you were copied- with a Rezoning to C-3 L.U.O. having specific uses and conditions. This is what is in question tonight: The applicant is petitioning a revision to that Limited Use Overlay. City Council did not follow up and rezone the property to C-3 L.U.O. by ordinance; however the rezoning remains valid with those conditions and specific uses that were listed. The applicant has requested (36 plus 10 original uses) as noted in the report. Those are your typical C-3 allowable uses, and the applicant is proposing to allow those for marketing or other reasons. Also there are specific conditions added by the court which covers screening, buffering and setbacks in proximity to existing and proposed structures. All of those are to remain in force. With the expansion of the use list, MAPC is asked to modify that order. We are dealing with process tonight; the MAPC is making a recommendation to City Council and Council will make any official decision from that point. The City Attorney's office is here to answer any questions as well as Planning Staff.

Mr. Tomlinson asked for clarity of whether we are considering a rezoning? **Mr. Spriggs** stated that this is technically a rezoning/change to an existing C-3 L.U.O. District. Any current district would be petition in this same manner to be modified. It has to go through this same process for modifications. This constitutes the same process for rezoning. **Mr. Tomlinson:** I wonder why they don't just go to the court and ask them to make the decision. **Mr. Spriggs** noted that is an option.

Mr. Jim Lyons: Before you can file an action against the City, the City has to refuse this or say we will *a, b and c*, but we will not allow *d, e and f*. We can't just file suit against the City and just say- We don't know what the City will do. It is necessary to have a true action against something claiming that it was improper what the City did. So we have to come to you first, before we can go back and ask the Court to re-do this. The City has to refuse. And, the proper method to do that, is this process. We were not trying to avoid going to Court.

Mr. Tomlinson: This was done in 2005; so, has the intensity of the area development has gone up considerably? **Mr. Lyons:** Yes, substantially. **Mr. Tomlinson:** I wish that the applicant would had derived a list of things that they desired to be there, as opposed to taking the whole C-3 ordinance, and turning it over and saying we want it all. Some of the listed uses couldn't be done anyway due to the size of lots and setbacks. **Mr. Tomlinson** added that he does think those uses need to be increased. There is a C-3 L.U.O. next door. You probably do not have as many uses as we granted them. **Mr. Spriggs** stated he would have the list of the property next door- I would like to see that. The minimum should be to permit what was allowed next door to you. I don't like to take all the time to write uses in the meeting. If they had submitted a list of what they would have thought to be required, then that would have been a great help to me.

Public Input:

Mr. Allen Jones, 3207 Maplewood Terrace: Agreed Highway 49N will be and is becoming commercial. At this lot, is where the commercial and residential uses intersect. And, I think the City Council recognized this in 2006 and denied the C-3 request that went to Circuit Court, who also recognized this and agreed, and allowed only the 10 restrictions. I think they got it right; I do not like the animal care use being next to residential.

Mr. Jones: I don't think that City Council can change what circuit court said; but I am not an attorney. I think that City Council should reject this, and they go back to Circuit Court to let them say you can change these accepted uses. I don't know the property owner's intent- Are they wanting to add these 27 acceptable uses to make it more attractive to a land purchaser, or is their actual intent hidden somewhere in those 27 additional or acceptable uses. I hope it is not for a communication tower or an arena. I request City Council to deny this and let Circuit Court make that decision again.

Mr. Jim Carter: 3013 Maplewood Terrace (40 Years). Stated that has a great neighborhood. Your Staff Report will show that in 2006, our neighborhood settled in Circuit Court that the property in question will be a C-3 L.U.O., with specific stipulations. At this point, there has not been anything to warrant a change in that settlement. We may talk about traffic counts, but the property in question has not been changed. The neighbors are there and it abuts a residential neighborhood that will be heard. We believe the court settlement was fair to our neighborhood, and we still feel the same way in 2012. We ask that you recommend to the City Council that the property stays as settled in Court in 2006; and, you not start peeling away one restriction at a time, so they end up with a regular C-3 out there. **Mr. Carter** added that he doesn't know the Grayson

Corporation, and they should have known that there were restrictions on the property when they purchased it. It is also a fact that will probably be given to you this evening that they really do not care how our neighborhood looks, by the way they have taken care of the property, since they have owned it.

Mr. Jerry Reece: Asked for clarification of the property- was it a part of the Maplewood Subdivision? **Mr. Carter:** Stated that he believe it was and they sold it off, lot by lot.

Mr. Lyons: Stated that if it were a part of the subdivision, then a bill of assurance would have existed. And there was no bill of assurance applied to the subject property.

Stacey Schratz, 3104 Maplewood Terrace: Referring to application Item 13: Ms. Schratz noted that the owner of Hilltop Eye Care (east of property), Doctor Megan Moll, stated that no one has discussed this with them and she objects; she could not be here.

Stacey Schratz: On the application, it says that the property purchased by the owner in 2008 was vacant and has since remained vacant. That is incorrect. She presented pictures to the MAPC. **Mr. Lyons:** Concurred that it is currently occupied. She added they are not good about keeping the property up. Other neighbors mow portions of the property, because they get tired of looking at it.

Ms. Schratz added that Mr. Osment or whoever owns this doesn't care about it. She has filed a complaint with code enforcement about having the property cleaned. She read the Rezoning Criteria for approval. She also spoke on nuisances on the property.

Wendy Jones, 3207 Maplewood Terrace read a letter from neighbors who are gone out of town- Dr. George and Phoebe Harp, **3206 Maplewood Terrace.** Spoke on increased pedestrian traffic on Maplewood Terrace. She is opposed to having access to this property from Maplewood Terrace. **Ms. Jones** made comments on the character of the neighborhood, and noted that a change of more uses is not desirable as a through-street.

Mr. Lyons: We are not asking for vehicular access to Maplewood Terrace, and there is no vehicular access from that point. On the property, we are required to build a fence where it touches residential property. There is a provision for no access to Maplewood Terrace in the request.

Mr. Reece: Isn't there a sewer easement that goes through that property and will it affect any new buildings? **Mr. Lyons** stated that it should not be an issue of interference of the sewer.

John Hatcher, 3105 Maplewood Terrace: The very issue raised about accessing through Maplewood Terrace lets us know that this affects Maplewood. Mr. Hatcher noted that he can look out his window and see the property due west of him. It is not a house that backs a residential neighborhood; it is in a residential neighborhood.

Ms. Schratz: Noted that the limitations next door is the same and is very limited.

Mr. Hoelscher: Asked what limitations were placed on the adjacent property. Mr. Spriggs continued to research the records to locate the files.

Ms. Nix: What would give us the right to rezone it legally?

City Attorney's Office, Ms. Carol Duncan reported that she did some research on that question, as well as consulted with Attorney Jim Lyons about case law he had found. Nothing was found to reflect either way. Either way we will end up, with this Commission's recommendation to City Council. **Ms. Duncan** stated that she does not feel the court wants to be in the business of rezoning our property forever. The gut instinct is that- if the City had rezoned the property by ordinance after the Court order and consistent with the Court order, there would be no question. We could have then made the decision and they could file against our decision in Circuit Court; but, we didn't do that- so the gray area exists. We will continue to research that issue upon review by Council, then the issue will be addressed; I am sure, at the Council level. There was just not any research available on that certain topic.

Mr. Kelton: It's my understanding from Mr. Lyon's presentation that he could not go back to Circuit Court, and ask for a change until a decision has been rendered by the Planning Commission and the City Council- Is that correct?

Ms. Duncan: Concurred that is what Mr. Lyons stated.

Mr. Kelton: So he is just following procedure? **Ms. Duncan** reiterated that there is no guidance in the law; this is the procedure that he and Mr. Spriggs worked out; *they are to go through the same steps as you would for any rezoning.* We are still researching the matter; I do not feel that the Court wants to be rezoning property for ever, just because litigation was filed.

Ms. Nix: Stated that she still would like a legal opinion about the process.

Ms. Duncan: You won't get a definitive answer, because there is no case law that does so; they are following the only procedure that we have available.

Mr. Lyons: If Mr. Spriggs would have said- *ya'll don't need to come here before the MAPC, then we would not be here.* You have to have a case of controversy, before you go to court. You can't just file suit for nothing. Then, there would be

a Rule 11 petition before me, because I am filing for nothing. Carol Duncan could issue sanctions against me; I've never had one filed against me. I am trying to do my job and get these additional uses on this property; and we believe that this is the proper way to do it. If a judge says that it is not, then it is not. We believe and Mr. Spriggs thought so- I still believe that we have to go through this process. The City Council must rule on that, before we will have a basis to file suit against the City. They might turn us down, but we don't know until we go and ask them by going through this process- which is coming to you, and a recommendation is made that then goes to City Council for action. We are not trying to do this for any purpose to cause any problems for the City. We are trying to make sure we follow the necessary steps, so those modifications could be acted on. I don't file suits that are not necessary.

Mr. Hoelscher: Is the issue at hand that the City was ordered to rezone the property? **Ms. Duncan:** The judge made the decision to rezone the property.

Mr. Hoelscher: So there wasn't an ordinance filed? **Ms. Duncan:** True, and had it been filed, it would have made it clearer.

Mr. Lyons: Read the order language which said.... *no other action was necessary; if the City so desires it may* (It was not required).

Mr. Kelton: Is it possible for you to pair this list down? **Mr. Lyons** stated, yes.

Mr. Spriggs: Stated that located the conditions from the 2002 case and read them:

ORD 02:0577, Rezoning by Phillip and Lonette Byrd, Adopted 08/05/2002, C-3 L.U.O., Specific Land Uses permitted under Ordinance 02:0577 include:

- (1) Animal Care, Limited
- (2) Automated Teller Machine
- (3) Bank of Financial Institution
- (4) Church (with conditional use permit)
- (5) Day Care, Limited
- (6) Day Care, general
- (7) Government Service
- (8) Library
- (9) Medical Service/Office
- (10) Office, General
- (11) Safety services
- (12) Utility, Minor

At the time this property changes uses from its present R-1 use to a C-3 L.U.O. use, the following improvements shall be made prior to obtaining a Certificate of Occupancy: A wooden screening fence, eight feet in height, shall be installed along the property lines abutting property zoned R-1. Trees, a minimum of

eight feet in height , shall be planted along the fence to provide an extra layer of screening and buffering between properties zoned R-1.

Prior to further development of the subject property, a Site Development Plan meeting the requirements of Section 14.36 of the Zoning Ordinance shall be prepared and submitted for review and approval by the City's Planning Department. This plan shall specifically show the relationship of the subject property to existing and proposed streets, driveways, utilities, and buildings within a 300 foot radius of the subject property.

Mr. Scurlock: Asked for clarification on the setbacks and fencing installation.

Mr. Spriggs: Stated that the adjacent property was never redeveloped and the current owners only went before the MAPC to have living quarters remain above the Optometrist's business.

Mr. Reece: Asked: *Will the action taken here tonight be passed on to City Council for an ultimate decision?*

Mr. Spriggs: *My recommendation is that you take some action tonight and recommend to Council based on the information provided to you. I honestly feel you have enough information to make a decision.*

Mr. Kelton: Stated that following along with the 2002 conditions, he noticed that they are almost identical, such as the 8- ft. fence and the trees which mirror the Judge's conditions. He noted difficulty in the Judge's stipulation of the 40 ft. setback from any structure, parking and any R-1 property. **Mr. Spriggs** clarified that it is the proposed structure in relationship to the adjacent R-1 zoned property- which is the property line.

Mr. Lyons presented the cut-down list: (These uses are to be allowed if approved).

- d. Automated teller machine
- e. Bank or financial institution
- f. Church
- g. College or university
- i. Construction Sales Service
- k. Day care, limited
- l. Day care, general
- s. Medical service/office
- u. Office, general
- w. Parks and recreation
- x. Post office
- bb. Restaurant, fast food
- cc. Restaurant, general

dd. Retail/service

ee. Safety services

kk. All other previously approved uses by the Court (Case CV-2006-88(JF)) is as follows:

- Animal Care, Limited,
- Automated Teller Machine
- Bank or Financial Institutions
- Church (with conditional use permit)
- Day Care, Limited
- Government Service
- Library
- Medical Service/Office
- Office, General
- Utility, Minor

Mr. Carter: Reiterated that this is *“free/ peeling away a little at time”* and revamping what we went through before with all this. We went to Council; they denied it, and they went to court; we settled; now we come back and they are peeling away. This is like our freedom. Send this to City Council with no approval, and let us get alone about our business. What we thought was fair was fair. It’s good enough for the Hilltop Optometrist and it should be good enough for the person that bought this property.

ACTION:

Mr. Dover made a motion to approve the rezoning for property of 3701 E. Johnson as C-3 L.U.O., as stated with the narrow down list of permitted uses as proposed and make recommendation to City Council. Motion was seconded by Mr. Kelton.

Roll Call Vote: Mr. Scurlock- Aye; Mr. Hoelscher- Aye; Mr. Kelton- Aye; Mr. Reece- Abstain; Mr. Tomlinson- Nay; Ms. Elmore- Nay; Ms. Nix- Nay; Mr. Dover- Nay.

Case Denied. 3- Aye to 4- Nay; 1- Abstain