

**PLANNING COMMISSION**

Demery Bishop  
Marianne Bramble  
Rob Callahan  
Henry Levy  
John Major, Vice Chair  
Tyler Marion  
Monty Parks, Chair



**CITY MANAGER**

Diane Schleicher

**PLANNING & ZONING MANAGER**

Steele Knudson

**CITY ATTORNEY**

Edward M. Hughes

**MINUTES  
Planning Commission Meeting  
November 15, 2011 – 7:00 p.m.**

Chair Monty Parks called the November 15, 2011, Planning Commission meeting to order. Other Commissioners present were Demery Bishop, Marianne Bramble, Rob Callahan, Henry Levy, John Major, and Tyler Marion.

Chair Monty Parks asked for consideration of the Minutes of the October 18, 2011, meeting. Henry Levy moved they be approved. Rob Callahan seconded the motion. The vote was unanimous.

Chair Monty Parks asked if there were any Disclosures or Recusals. Demery Bishop said with item 1 he wanted it to be known that the petitioner, Tom Beytagh, and he are friends. He said he could be impartial and did not feel a need for recusal.

Chair Monty Parks opened a Public Hearing for a **Zoning Variance** for **1113 Butler Avenue**, PIN 4-0006-19-007, Zone R-2. The petitioner was Tom Beytagh for William Lanier. Steele Knudson said it was the old telephone company building. He said the addition was proposed for the south side. He noted it was next door to the grocery store. He said the addition would create a new entrance with a porch and would remove the front stairs from the setback. Knudson said the analysis in terms of encroaching in the setback was that this was going to reduce some of that encroachment so the variance was only needed for the porch section of the structure that would be part of the new front entrance. He reviewed Section 5-090(A), Standards for Variances, and he also noted the historic building was built long before setbacks were in place. He said if this was in a residential district and not on the commercial strip of Butler [Avenue] there was a part of our ordinance that allows us to look within 200-feet on either side of the building to say what is the average setback. Knudson said next door the setback was the grocery store and on the other side a corner lot that was empty so on the other side of the street it was interesting to note the setback was actually 3-feet but because our ordinance applies this only in residential areas we do not have an outlet on

the setbacks that pre-exist our ordinance and so the variance would be required in order to do this addition. Referring to the packet, Demery Bishop commented that this variance was approved in 2009 but it expired. He asked if there were any changes from the '09 variance that was granted. Knudson said there has been a slight change in the plan in terms of using a front porch instead of an enclosed space in the first 20-feet of what would be the setback so instead of expanding the building into the setback the only thing that was in the setback was the porch and we are removing the front porch on the other side. Bishop said the variance that was being requested would actually be a benefit; the existing detriment of 2.6 would go to 7.5, recognizing that it was still a 20-foot setback. Knudson said that was correct. Rob Callahan confirmed with Knudson the structure was built in 1930. Callahan asked if there were any historic implications to this structure that they needed to take into account. Knudson said buildings built over 50 years ago are eligible to gain historic status but he did not believe this one has applied or has any designation of historic on it. Marianne Bramble asked for clarification. Knudson said buildings that are over 50 years old are eligible for the National Register of Historic Places which then would add a burden of requirements on facades, on materials, etcetera, and then would also give more protections and preservation. He said this was eligible but he did not believe it was on any historic register. John Major asked if the addition that was on the south side did not require a variance. Knudson said most of it does not; it is that front porch section at the entrance that requires the variance and what would be removed was the existing stoop there. Major said if it were not for moving the stoop we would not be here and Staff would look at that. Knudson said exactly. He said he would be able to approve this entirely without a Public Hearing. Major said there was a large palm tree about three-quarters of the way down the south side. He asked if that was gone. Knudson said no, he believes that does not need to be removed but the applicant can correct him if he is wrong. Major said he would like to discuss that. Tom Beytagh said the palm tree would not interfere with the addition but they are probably going to move it back on the lot so parking will not be affected so they could still get two cars parked, one in front of the other, on that side. Parks asked if there was anybody from the public that wished to speak to this. There was no response. Parks closed the Hearing and asked for a motion. Henry Levy moved it be approved. Bishop seconded the motion. The **motion to approve passed** unanimously. The item would be considered by the Mayor/City Council on December 8.

Chair Monty Parks opened a Public Hearing for a Map Amendment and an Article 13 Text Amendment for six lots in the Brewer's Landing area. The addresses were 6 A and B Brewer's Landing, and 923, 921, and 919 A and B Old Highway 80. The PINs were 4-0026-08-029 and -030, 4-0026-08-028, 4-0026-08-006, and 4-0026-08-031 and -032. A zoning boundary line ran through these lots so they were zoned both

C-2 and E-C. Parks said he believed this was coming back to the Planning Commission from Council. Steele Knudson said that was correct. He said this was the same portion discussed a month ago and the action taken was to rezone three parcels out of the nine and then to reexamine the remaining six parcels and the City Council recommended we rezone from what was the divided zoning that was C-2 with a piece of the Environmental zone to R-2. Parks clarified for the record that the PowerPoint presentation be stricken. Knudson said okay. Parks said they were working off the packet. Knudson said the original packet. Major said what was in pink and R-2 are all one block. Callahan said but the package listed number 4 through 9, six of the properties. Knudson said that was correct; it was only six of the properties that are being rezoned. He said the first three have already been rezoned. Demery Bishop read the addresses of the six lots and asked if those were the six parcels that were recommended by Council to become amended zoning R-2. Callahan said so they are not considering changing C-2 to R-2 in the properties not listed. Referring to a map onscreen, Knudson said the properties not listed were rezoned by the City Council in their resolution what are designated on this map as lots 1, 2, and 3. Callahan said he was talking about the unnumbered lots. Knudson said the unnumbered lots were not within this rezoning; we are going to address the rest of this C-2 corridor in a series of public meetings to get input before trying to rezone anything. Knudson responded it is very important for us as planners to listen and so we do not want to proceed with the rest of those unnumbered parcels until we have a much larger informal public session. Callahan said the ones that are not numbered will be considered for the same later. Knudson said yes; we are going to be addressing the entire C-2 corridor. He said on the Zoning Map there is our large C-2 corridor that stretches in a line that was originally drawn 200-feet on either side of Butler Avenue and zoned commercial. He said we feel this does not really reflect what the community wants or what is there. He said he would not feel comfortable trying to rezone this huge swath without major public input outside of the simple forum of public hearings; we need to gather stakeholders, etcetera. Referencing the map, Knudson said this is called the Arts, Eats, Eco-Activity corridor. He described various uses within different portions of the corridor. He said the 200-foot measurement does not reflect existing land use, desired land use, or intended land use, and so that will be addressed in a major series of public forums so tonight we are just addressing the lots that are part of Brewer's Landing. Major said given where we have split lots and there are C-2 and E-C, and our ordinance says that we go with the more restrictive of the zone that is involved, to go from that to R-2 was really becoming less restrictive, allowing residential which reflects what was already there. Knudson said that was correct. He said we are trying to make our zoning match what the intent and what is existing rather than an arbitrary line. He said he was sorry; he has been working off of multiple agendas and Staff has done an incredible job, by the way, in his absence and he has to compliment them and he appreciates them following through where it

was difficult to coordinate out of an emergency room. Bishop asked the other issues emanating, the catalyst being the sign petition from Mr. Weber, from that area and that subdivision that is there, moving east up to and through the Byers Street, right on along that corridor, that was where the public hearings will come into play in the future. Knudson said that was correct. Parks asked if a motion was needed. Knudson said the motion would be to approve what was now C-2 and E-C to R-2. Callahan said so moved. Bishop seconded. The **motion to approve passed** unanimously. The item would be heard by the Mayor and City Council on December 8.

Chair Monty Parks opened a Public Hearing for a **Text Amendment of Article 7, Tree Removal Regulations**. Commissioner Tyler Marion provided information related to three topics within Article 7 that City Council had requested be reviewed. He said in the low country, South Carolina and Georgia, he picked six municipalities and looked at just pines, fines, and fees; anything that fell under significant trees, what the fee structures were, and what the fines were. He said the information was very general and since he collected the data Bluffton, South Carolina, radically changed their tree ordinance program effective November 10. Beginning at the northward point and moving down, Marion explained that from Aaron Pope of the City of Folly Beach the fine for any illegal cutting was \$500 per occurrence, it does not matter what kind of tree. He said the tree fund was one of their primary sources of keeping up with some type of tree ordinance and re-giving back to the community. An in kind fee to the fund was \$100. He suggested Tybee consider including their language, "Outside of what is considered the significant trees, in addition to these all other canopy trees not listed above are also protected." Marion explained that Eliza Hill of Buford, South Carolina, felt that perhaps they could use Tybee as a model but right now they hit people that violate the law with a \$1,027 fine. Marion said that sounded fairly close to Tybee's. He shared Buford's fees as being \$20 for removal of 1 to 2 trees, \$40 for 3 to 5 trees, and going on to \$200 for 41 or more trees. Marion explained that Bluffton, South Carolina, was interesting as the contact said in his three years they have never had issues and have never had to fine anybody and they expect no fines in the future under the new ordinance. Marion explained that the Bluffton contact said under the new ordinance something he thinks was very beneficial was it requires 75% of the tree canopy cover to be maintained for any piece of property. The permit fee for Bluffton was \$25. Marion referred the others to Bluffton's list of significant trees in the handout he had provided. The next community was the City of Tybee Island which Marion summarized as having a fine not to exceed \$1,000 per occurrence, mitigation of \$50 per inch, and the list of significant species. Marion then talked about St. Simons Island, Georgia. They let the courts decide fines and the mitigation fees are decided by a tree board based on a tree credit program. Steele Knudson asked how they designate the trees. Marion discussed that Mike Franklin kept referring to the

size of the tree which Marion presumed indicated the age of the tree. He referred to the handout which included a significant trees list for St. Simons. Marion's explanation of St. Marys, Georgia, included a standard fine not to exceed \$1,000 per occurrence, in kind donation of \$100 to a tree fund like Folly Beach, a tree canopy ordinance, a tree credit program, an historic tree preservation program, and a tree board. Marion concluded that Tybee stood to bode well if the approach in raising the fees was consistent with what was listed in the PowerPoint handout. He said they need to run not just with the significant trees they have but add every tree they have got because without trees they have got nothing. His final comments were pine trees, yes; increase the fees where we can, and he does see us as in the middle of the road so we can go up.

Knudson said in terms of defining outside of what we have written here perhaps an historic tree designation as part of our Historic Preservation ordinance in terms of looking at what a lot of cities call champion trees. He said that was a tree that has been here for over 200 years and it was significant to the history and culture of our community. Knudson said in the tree ordinance proposal the big issues that were addressed by City Council were to look at mitigation costs, fines, and whether or not we want to include pines as significant species. He said in terms of mitigation costs, the initial cost to remove a tree was in the hundreds of dollars and since the Council decided it wanted to consider pines we have had a least a dozen requests to remove pine trees while the ordinance still allows it. Knudson said in our tree mitigation fund we usually replace with palm trees around the island; it can be anywhere from \$85 for a really cheap one to \$200 and they go up from there but in general we are spending between \$100 and \$200 for a new tree and that was for a new palm. He said we talk about replacing the DBH, diameter at breast height, which was standardized at 54-inches. He said you have to replace a large tree; you need several more trees to replace that to get up to the diameter so a 10- to 12-foot hardwood tree costs about \$375 and that was before you install it so in looking at our mitigation versus a fine the question was will somebody make a rational choice and add up that fee and then calculate, well, I'll just take my chances, go to court and I can't get fined more than \$1,000 and it is up to \$1,000 so there is one item in the proposed ordinance in Section 7-090, Penalties for Unlawful Tree Removal, on the second to last page where he has in red under B, we have a fine not to exceed \$1,000 and we actually say for each tree in our ordinance and the question is do we want to keep the language of "in lieu of" or "in addition to" and the question is if you do "in lieu of" you can say, well, we are not going to fine you \$1,000 but you go ahead and plant now and sort of do this specific performance requirement where we require somebody, you took out the trees, now we are going to make you plant them. He asked if we want to do that "in addition" or "in lieu of;" he thinks that is a conversation that needs to happen. Knudson said if somebody goes ahead and takes out the trees without a permit should we fine them and then make them put in the trees or let

them have that option. He said what was nice about the proposed ordinance was that in terms of construction we can withhold an occupancy permit and that gives us real power to enforce until the trees are put into place on new construction.

Knudson discussed aspects of an onscreen photo of the profile of an ocean beach. He said in the proposed ordinance under the Finding of Facts he added a preamble that discusses that the maritime forest is irreplaceable and is an asset that protects the entire island; it stabilizes the soil, it provides hurricane protection; it is habitat, and all of those are in our Findings but in discussing pines versus hardwoods, there are three types of roots. He listed them as tap root which goes really deep, heart root which spreads out, and flat root which is closer to the surface. He said hardwoods have deeper tap roots but pines do have significant tap roots that reach really low and even after you cut down a pine that root system will stay and remain and stabilize the soil for some time until it starts to deteriorate.

Knudson said in hurricanes a lot of the concern that people brought to him was, oh, if the wind blows too hard my pine tree is going to snap and fall on my house. He said as it turns out in hurricanes trees that have larger canopies and more leaves tend to collapse more often and the pines tend to snap but the pine trees do not survive as well as the hardwoods because they are damaged slightly in the hurricane and then there is some bug outbreak or virus and then they all die and so their survivability from hurricanes is not the same. He said in a hurricane the rainfall increases so the soil becomes saturated and then you get that uprooting effect on the larger canopy trees. He said a 3-second gust on an average sized hardwood will break a large limb at 74 miles per hour; a 91 mile per hour wind will uproot your average hardwood tree; a 110-mile per hour wind will snap a tree trunk of average size. He said the concern that was brought to him about pines is, oh, my pine is going to fall on my house, well, the numbers on the winds are so close as to be almost insignificant. He provided additional effects at various wind speeds.

Knudson said the question is in choosing a pine as a significant protected species in terms of balancing hurricane survivability with the benefit of the root system the average age of our pine canopy on Tybee is 50- to 60-years; we have very large pines. Knudson said they constitute the majority of our tree canopy. He summarized that the new language was in green and some of the other changes within the proposed ordinance. He said the questions that come up are do we feel that the costs are enough, do we want to set those any differently in the proposed ordinance, do we want to remove the words “in lieu of” so that you can fine somebody and require them to replace trees, and then do we want to add pine as a significant species. He discussed that Marion had suggested adding language, “All other canopy trees not listed are protected.” Parks asked what the definition of a canopy tree would be. Marion discussed that for Tybee the pine tree was the primary canopy tree and suggested that anything of a specific height should

constitute canopy cover. Knudson said in his notes canopy was usually defined as height. Discussion of heights followed. Marianne Bramble noted that Marion's handout had some of the municipalities including palms as significant trees and she proposed adding them. Rob Callahan discussed if the canopy definition was based on height the palms would probably fall below it but palms were canopy trees just as much as any other tree. He said they needed to be very careful how they worded the definition of canopy. He suggested language of something that provides shade for things beneath it. John Major said as they went through Article 3 and Article 5 every time it referred to tree previously it had the word "significant" in front of it and they removed every one of those and he believed Council had approved that. He said he did not like to see the word "should" in an ordinance. He was referring to the next to the last line in Section 7-010. Knudson agreed and spoke about the preamble. Henry Levy said if you want to make it optional you say "may;" if you want to require you say "shall."

Parks said for the record there were several items that were not included in the packet that had been presented and there was a significant amount of information. He said there were recommended changes that were not in the packet. Parks said he did not want to put any Commission member in the position of doing anything on something they had not had the chance to review. He thanked Marion for the information he had provided. Demery Bishop said he agreed with removal of "in lieu of" in [Section] 7-090 and making that "in addition to." He said he was opposed to pine trees being a significant tree. He said they are burdensome, they are absolutely useless, and they create severe problems in storms, blight and insects and other things. Bishop said there have been studies to show they are a cash crop; they are grown for that and that is their purpose in the southeast, they are great for pulpwood and for building homes; they are not significant in any way.

Parks said he would like to put out an option that a homeowner can replace a pine with a hardwood. He asked the Commission if they felt comfortable taking this material home; no motion tonight. Knudson said we could get definitions on canopy that are precise and have options ready for that definition if they choose to include that. Parks and Knudson discussed height. Callahan requested confirmation that the issue was deferred until the next meeting and there would be information in the next Planning Commission package. Knudson said the proposed regulation would include points from Mr. Marion's presentation, all of the options that needed voting on would be highlighted and as of now the question was are the fines appropriate, do we want to change out and make "in lieu of" just "in addition to" in Section 7-090, and the big question was are we going to designate pines or palms significant, and the next ordinance will have them all on the list and we can cross them out or include them as is moved by this Commission. Parks told the Commissioners that he would anticipate that at the next meeting they will be asked for specific motions on those three points and that they will come up for vote.

Chair Monty Parks opened a Public Hearing for a proposed **Text Amendment** to be **Article 18, Lighting**. Steele Knudson said what was addressed here was putting together an ad hoc committee to address this in the same way an ad hoc committee was formed for the shoreline protection act. He said what they see is a proposed resolution that the City Council would make to appoint this group and so the question comes up is what should the membership be on a committee to address the lighting ordinance. Knudson said in looking for expertise to assist with this he has contacted jurisdictions around the state, some outside of the state, and he learned some interesting things. He said municipalities that do enforce their lighting ordinance and that have somebody that can go out and with a light meter test either lumens or foot candles that ordinance enforcement is done by their building officials not by the zoning enforcement. He said in most municipalities they do not even own a light meter to measure even if their ordinance discusses measurements of foot candles and lumens; it is simply done, well, the light is shining off of the parking lot into somebody's house, we send a letter and it gets addressed. Knudson said the only cities that do have them are the traffic and safety folks that have light meters to measure streetlights. He said at one point we thought there was a light meter somewhere on the island; it turns out that the turtle volunteers do have one and have measured various parking lots but it has not ever been done officially by code enforcement or this department so he is going to purchase a light meter for our department and he will make sure we are all trained on how to use it and will offer this to the public. He said that anybody who wants to come in and learn how to use it, anybody who might consider being on this ad hoc committee who wants to see how we measure the standards for any light ordinance is welcome to come so what we have is a proposed resolution to form this committee on addressing light issues.

Knudson said it discusses looking at Dark Sky and at the standard IDA model ordinance and the question for this Commission was what should that membership be. He said the membership proposed for the last committee was two members of the Planning Commission, the Planning Commission Chairperson would be the chairperson of the ad hoc committee, and he did not want to volunteer anybody; before we send something like this up he wanted input from this Commission on what that ad hoc committee should be like. Parks asked if there would be two volunteers to be on the committee. Discussion resulted in Marianne Bramble and Tyler Marion volunteering. Commission Chair Monty Parks agreed to serve as chairperson. Parks confirmed it was three citizens. Bishop asked if those individuals would be appointed by City Council. Knudson said correct. It was agreed by all that Knudson would take the resolution to City Council.

The final agenda item was Text Amendments for **Section 5-080, Site Plan Approval**, and **Section 5-090, Variances**, from Article 5, Procedures for Administration and Enforcement. Steele Knudson said variances have sensitive legal definitions; the term hardship is defined in many cases and on our island variances have led to some litigation in the past. He said he has been extremely cautious, he has met with [City Attorney] Bubba [Hughes] on these two issues to say this needs more than just a cursory glance at let's update the code section by section, we need input and what he is recommending is that we need to consider the creation of a board of zoning appeals. Knudson said that variances are a legal proceeding not a legislative proceeding, that they need to go through a judicial body or in this case a quasi-judicial so that there is a remedy before we get to the courts so that things can be addressed by an appointed body that's sole purpose is judicial and not in any way political. He said that many decisions on variance issues are made at a staff level and then appealed to the BZA as opposed to going through a public hearing process where on a legal question public hearings usually do not carry much weight. Knudson said this would require much more input than we can do just in one meeting here; the creation of a board of zoning appeals is going to require some consideration at all levels but he wants to put it out there as his recommendation that we do need something of this fashion because addressing a variance application after variance application he thinks puts us on shaky ground and he would like to create a more sound legal procedure for variances and this is something that agenda-wise is going to need a lot of input and a lot of council to approach but his recommendation is that we do need to change what is in the ordinance and that we need to address it by creating a board of zoning appeals. Chair Monty Parks suggested a Commission/Council joint workshop if they are going to do the variance route. John Major asked if under this scenario variances would not come to the Planning Commission nor would they come to Council. Knudson said no, they would not. Major said they would be decided by staff and then appealed to a board. Knudson said what would happen is you would have a situation for special use permits or conditional use permits rather than creating the legal standard for a variance that requires the finding of a hardship so certain things like fences and other things could still be approached by the Council and the Commission but just under a different category that has different legal ramifications and is addressed differently in ordinances around Georgia. He said this is something that is going to take working with our lawyers, working with City Council, and probably some sort of sessions to address. Bishop asked but all of the amendments and plans and proposals, would that not be deliberated by this Commission. Knudson said it certainly would. Bishop asked outside of a working committee or something, would it have to be deliberated here and a working group, or would a working group handle all of that without input from the Commission as a whole. Knudson said a zoning board of appeals could not be created without coming through the Planning Commission and the City Council to have a resolution to do so. He said this is such

a thorny issue and in looking over all of the litigation in the past he just feels it is not something they can do as a sort of standard review of one section of the ordinance; it warrants much more than that.

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Chair Monty Parks asked if there was any impact from the holidays for the next meeting of the Commission. The meeting was scheduled for December 20. No one expressed that they had plans that the meeting would interfere with.

Rom Callahan moved to adjourn the meeting and a second to the motion was made by Tyler Marion. The vote was unanimous and the meeting adjourned.