

ORDINANCE NO. 17 - 06

A ORDINANCE RELATING TO A PROPERTY REZONE AUTHORIZING MAYOR TO EXECUTE SAID ORDINANCE, AND AUTHORIZING CITY SECRETARY TO AUTHENTICATE MAYOR'S SIGNATURE TO SAID ORDINANCE, GRANTING AUTHORITY TO THE CITY MANAGER OR HIS DESIGNATE TO AUTHORIZE ZONING CHANGE, AND AUTHORIZING CITY SECRETARY TO AUTHENTICATE CITY MANAGER'S SIGNATURE TO ANY AND ALL INSTRUMENTS REQUISITE IN IMPLEMENTING THIS ORDINANCE.

A regular meeting of the City Council of the City of Commerce, Texas, was held in Commerce, Texas, at City Hall, on the 18th day of April 2017 at 6:00 p.m., a majority of Council Members being present and constituting a quorum, the following Ordinance was adopted:

WHEREAS, the owners of the property located at Tract 102494, in the City of Commerce, reference is made thereto for all purposes, said owners have made application for a zoning change from General Business (2.5272 acres) and Residential 7 (5.8968 acres) to Planned Development, for the use of said premises being more particularly described in said application, as well as in the minutes of the City of Commerce, Texas, Planning and Zoning Commission meeting of March 13, 2017, and which minutes are attached hereto, marked Exhibit "A" and made a part hereof just as if copied herein verbatim; and

WHEREAS, the Planning and Zoning Commission of the City of Commerce, Texas, in accordance with Section 19 of the Zoning Ordinance of the City of Commerce, Texas, after conducting a public hearing on said request and all other prerequisites relating thereto, and after consideration of the grounds for a zoning change to Planned Development, voted unanimously to approve; and

WHEREAS, the City Council, after having reviewed the action of the Planning and Zoning Commission and this recommendation, as well as having complied with all prerequisites of the Zoning Ordinance of the City of Commerce, Texas, relative to a change in zoning to Planned Development, deems it in the best interest and general welfare of the City of Commerce that said application for a Zoning Change to Planned Development be granted and that Zoning Change should be authorized for the owners of the property shown on map, attached hereto and marked Exhibit "B".

NOW, THEREFORE, BE IT RESOLVED that the Mayor of the City of Commerce, Texas, be authorized and he is hereby authorized to execute this Ordinance, and the City Manager or his designate in accordance with this Ordinance be authorized and he is hereby authorized to approve zoning change on such property described in said application.

BE IT FURTHER RESOLVED that the City Secretary be authorized and she is hereby authorized to attest to the signature of the Mayor to this Ordinance, and to attest to the signature of the City Manager to any instruments requisite to implementing this Ordinance.

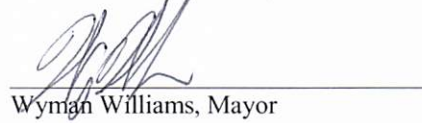
PASSED AND APPROVED on the FIRST READING at a regular meeting of the City Council of the City of Commerce, Texas, on the 21st day of March, 2017.

PASSED AND APPROVED on the SECOND READING at a regular meeting of the City Council of the City of Commerce, Texas on this the 18th day of April, 2017.

ATTEST:

CITY OF COMMERCE, TEXAS

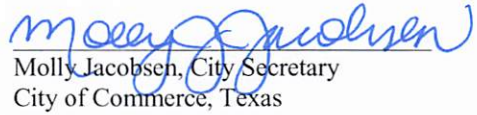

Molly Jacobsen, City Secretary


Wymon Williams, Mayor

(seal)

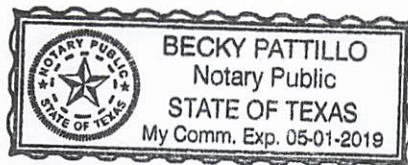
I, Molly Jacobsen, City Secretary of the City of Commerce, Texas, do hereby certify that the above is a true and correct copy of an Ordinance, and that the same has not been repealed and is in full force and effect.

(seal)


Molly Jacobsen, City Secretary
City of Commerce, Texas

Sworn to and subscribed before me, on this the 19th day of April, 2017 to certify which witness my hand and seal of office.

(Seal)




Notary Public, State of Texas

MINUTES
PLANNING AND ZONING COMMISSION MEETING
March 13, 2017 – 5:30 p.m.

MEMBERS PRESENT: Chairman Charles Elliott, Carolyn Trezevant, Henry Ross,
Terry Harris,

MEMBERS ABSENT: Gary Thompson, Michelle Martinez

STAFF PRESENT: City Manager Darrek Ferrell, Interim Director of Community
Development Gabe Wittkopf, Assistant City Secretary Becky Pattillo

OTHERS PRESENT: Fred Ballard, Robert Rabb, Tom Chessher, Craig Childs, Ron Krape,
and several residents of Commerce

1. **Call to Order:**
Chairman Charles Elliot called the meeting to order at 5:31 p.m.
2. **Approval of Minutes:**
Member Carolyn Trezevant made a motion to approve the minutes from the December 6, 2016 regular meeting. Member Henry Ross seconded the motion, resulting in a unanimous vote.
3. **Consideration of motion accepting resignation:**
Member Carolyn Trezevant made the motion to accept the resignation of Mike Roberts. Member Henry Ross seconded the motion, resulting in a unanimous vote.
4. **Consideration of motion recommending new member to fill vacant position:**
No action taken.
5. **Public Hearing and Consideration on Re-zone Application for the property located on Mangum Street (R30374), Legal Description A0675 MARLER H (Hunt County), TRACT 2, ACRES 11.236 from R-10 to General Business (GB):**
Interim Director of Community Development Gabe Wittkopf stated that Robert Rabb had requested the change in zoning to construct a retirement/assisted living facility and they were going to make a presentation.

Robert Rabb stated that it would be a complex of single family homes with a small assisted living facility, small memory care and adult daycare. They would have common landscaping and they planned to include a park and walking trail.

Project Manager Fred Ballard stated that it was a beautiful piece of property off Mangum Street and they planned to construct apartments and such restricted to seniors 55 and

older. They would have an HOA that would control the east side and the south side where between a combination of fences and plantings they would provide a visual and sound barrier for the private homes that were already in the area. Mr. Ballard continued that the idea was that if one spouse had to go into memory care, the other spouse could live on-site and be closer. He indicated that the building in the middle of the complex would be an adult day center, where breakfast and lunch would be served for day guests only. He continued that all of the landscaping would be controlled by the HOA.

Chairman Charles Elliott asked if the property would be accessible only off Mangum Street. Mr. Ballard responded that it would. Member Carolyn Trezevant asked if any consideration had been given to the size of Mangum Street. She felt that the road was too narrow and emergency vehicles wouldn't be able to get down the road easily. Mr. Ballard responded that would be up to the civil engineering and they would have to approve of what they were doing.

Member Terry Harris asked if because they were going to have an HOA, the homes were going to be owner occupied. Mr. Ballard responded that they would be but they were going to be the primary owners. Mr. Harris asked why they would need an HOA if they were going to own it. Mr. Ballard responded that was a good point.

Craig Childs, part of the senior facilities team stated that they weren't opposed to selling some of the homes, but they were providing the gradual care and they were going to hold most of them in their portfolio. They were looking for the farmhouse appeal.

Member Carolyn Trezevant stated that she remembered that Dewayne Cogburn had built lovely apartments a few years ago that he had intended for senior citizens. Legally, he couldn't do that without the land use being designated as a planned development. She added that she knew a couple of senior citizens who had moved in and within a short time, it was filled with college students and she was afraid that's what would happen to this project. She then asked why this wasn't being brought to them as a planned development.

Member Terry Harris asked if they had done this type of thing somewhere else. The response was Raymondville, Texas, but it wasn't occupied yet because the project lacked about two weeks being completed.

Member Trezevant stated that she liked the concept, but really felt that it needed to be a planned development. Robert Rabb stated that he felt that planned development was how it should be done in the beginning. After meeting with the City Manager, they determined that because there was general business on both sides of this property, it should remain general business.

Craig Childs stated that they were looking at 30 to 35 jobs during the first phase of this project. This would be a continuing care retirement facility from independent living all the way up to nursing home care and all under one umbrella and the need for this type of facility was great in Texas.

Chairman Elliott asked how much the rent was going to be. Mr. Childs stated that it would be very affordable and only \$2,000 to \$3,000 a month to start and the memory care would obviously be a little more. They wanted to engrain themselves into the community for a variety of reasons and that very rarely would you get a developer who wanted to build community center and walking trails and parks, but it worked with their plan. He added that economic development boards were very excited to talk to them because of the creation of jobs and there were a lot of seniors who were looking for something like this and they just didn't exist. Chairman Elliott then opened it up for discussion from the public.

Jenna Hill, 2007 Creekview, came forward stating that because she was the vice president of the Commerce Economic Development Corporation, she was fully aware and understood the importance of business and tax roll growth and expansion in our city. The property in question is zoned single family residential and she was asking that they deny the request to rezone the property to general business, because the economical impact to the homes directly south of the area would be devastating. When she bought her home eleven years before, she was promised by Robert Rabb, who was the developer of Creekview, that the adjoining area was also zoned single family residential and would be the second phase of the Creekview Estates. She was also concerned about the drainage issue and how the new addition would affect it because every home in the Creekview had had to add French drains or something similar and some of the homeowners had even been watching the creek erode their property. Ms. Hill felt that by adding all of the proposed units along with the parking that would be necessary, it was likely to double or even triple the amount of water, which was already a big problem in the area and the proposed site would make it worse. She was also concerned that Mangum Road was the only entrance to the proposed development and thought that the city would be forced to redo the whole road. Ms. Hill continued that she was not opposed to a project of this sort and offered a few suggestions of locations that she felt would be better suited for it.

Chairman Charles Elliott reminded the group that all that the Planning and Zoning Commission could do was make a recommendation to the City Council and that it would be up to them to make the final decision.

Dr. Tom Deaton, resident of Creekview, presented the Commission with some pictures showing the flooding on his property. He added that after getting no response from the city, he had taken photos to the tax assessor's office and they had knocked money off of his property taxes because of it and shortly after that someone from the city was trying to clean up the creek so it wouldn't flood in my yard. He also wondered why they were avoiding the planned development, but he suspected that they were avoiding the EPA and asked that they explore that because he would like to see the Commission ask for a third party, such as the EPA or the Core of Engineers, to look into the drainage problem to see if the planned development was being avoided. He then asked the Commission not to recommend that this project be undertaken.

City Manager Darrek Ferrell stated that he wanted to clarify that Mr. Rabb had met with him requesting a planned development, but that he felt that since the zoning was general business on three sides of the property in question, that it would be better to make it all general business. The intent was that the planned development was a little harder to make sure that everything was done correctly, but there were no requirements to contact the EPA that he knew of. He continued that if the Commission wanted to recommend that a planned development be done, they would work through it.

Dr. Keith McFarland, 2010 Creekview, stated that he would recommend that the Commission not rezone the property. He stated that when he, like all other on his street who built or bought, his house, there was an understanding that the land in question would be developed as a single family residences and what Mr. Rabb told them would be phase two of his housing development. If the request (to rezone) was granted, there was no question that the value of all of the land on Creekview will go down because you can't have general business join your land and it not have negative impact. Dr. McFarland was also concerned about drainage and light pollution from the additional lighting that would be required for the new facility. He continued that there was a fine assisted living facility up the street and they had been meeting the needs of this area for over 25 years and they always have available spaces. He again urged the Commission not to recommend approval of rezoning this from residential to general business.

Linnea Smith, 2805 Harlow, stated that the first phase of the project would be right beside her property and because she was in this type of business, she didn't oppose it because she wanted the best facilities for our seniors, and would like for something like this to be in Commerce, if the need was here. There was an assisted living facility in Commerce that had been here for over 25 years and struggles to fill all of their rooms. She felt that adding another facility would be detrimental to both. Many people in Commerce had to place their loved ones into the nursing home solely because of the finances. Nursing homes are funded by Medicaid, and with the average income in Commerce being \$22,000, a majority of seniors qualify for that. Medicaid didn't pay for assisted living facilities. There were currently no adult daycare facilities in Hunt or Hopkins County because there aren't enough participants to warrant the building of such. Ms. Smith continued that there was already an empty nursing home and hospital in Commerce and didn't want possible vacant buildings by their property. She added that they had been informed that one lot, adjacent to the home on Creekview is being sold to that homeowner and if this were true it changed the scope of the project as presented. She wondered how they could change what they were presenting to the city on a whim and it raised the question of what the true intent was for this zoning and whether the project would actually be built or if something else would go in once the zoning was changed to general business. The buyers on Creekview were told when buying their prime property that the remaining land would be residential. She concluded that her and her husband, if they thought this type of project would financially work in Commerce, would be for it, even with it being against their home, but they didn't want empty buildings there and they were afraid that's what was going to happen.

Chairman Elliott asked if there was anyone in the audience that wanted to speak in favor of this project. Interim Community Development Director Gabe Wittkopf stated that he had received a letter from Alton Biggs who owned 2006 Creekview, and was offering his support for the project. Mr. Biggs felt that the city should always encourage the development of any property that would increase the tax base. He also stated in the letter that since Commerce had already been certified as a retirement community by the State of Texas, this was the only type of project we were lacking and urged the support of the Commission for this project.

Jenna Hill asked if Mr. Biggs was the one person who had been told that he could purchase the one lot that was behind his house to protect it. The response was yes.

Greg and Alicia Hulsey, owners of two lots on Creekview Drive, dittoed what everyone else had said and urged the Commission not to approve this project.

Randy Starks, 2012 Creekview, stated that he would echo what had been previously said about the drainage, that in the past he would have water up under his deck to where he could put a fishing pole in the water and look like he was on the lake somewhere. He added that thankfully, when the city did some work on Harlow, it helped with the drainage, but that didn't mean that it still didn't happen. It got worse and worse every time a house was added to our area and it seemed reasonable that this project would add to the problem. Mr. Starks stated that he was against this project.

Susan Lampe, 2015 Creekview, stated that her main concern was the drainage, but also if they approved the zoning change to general business and this project didn't work, what could happen in the future. She stated that she was against the zoning change.

Mark Keahey, 2005 Creekview, stated that he also supported the efforts to oppose the zoning change because he had the same concerns that had already been brought up.

Linnea Smith added that Mangum Street, as it is, is a one car road and emergency vehicles wouldn't be able to get down it so something would have to be done about widening it. She wondered if the city would be responsible for doing something about the road. Chairman Elliott asked the applicants what plans they had for the street. The response was that it would come under the civil engineering.

***The Planning & Zoning Commission also received letters from Thomas C. Selvaggi and Gordon and Janet Skaug addressing this issue. Both letters were against the project. ***

6. **Public Hearing and Consideration of a Re-Zone Application for the property located on Culver Street (R102494) Legal Description A0675 MARLER H (Hunt County) TRACT 7-1, ACRES 8.424, from R-7/GB to Planned Development (PD):**

Interim Director of Community Development Gabe Wittkopf stated that Ron Krape wanted to change the zoning from general business to a planned development and the proposed project would be located behind Dollar General on Culver Street.

Ron Krape stated that he had discovered this property when a friend's daughter who was looking going to school at Texas A&M University – Commerce. His friend had said that one of the challenges her was finding a suitable apartment. Mr. Krape said that he had gone to the Bradford Apartments in August and the manager had said that there was a lengthy wait list and other people in the city had said that there was a shortage of apartments.

He was looking at 1, 2 and 4 bedroom apartments, which would not be exclusively to the student populations and would have 174 units and would have the ability to lease out on a per bed.

Member Carolyn Trezevant asked where the entrances would be. Mr. Krape responded that they would all be off of Culver Street. He added that they were planning to build an 8-foot net along the Park Street side to help with privacy issues. Member Trezevant then asked if the creek going through the property was the same creek that they had been talking about during the previous issue. Mr. Krape responded that it was and it was definitely worth checking into. Mr. Wittkopf stated that he had provided city staff with 100 year plans and how he planned to assist with the drainage problem.

Member Terry Harris stated that it appeared that he was planning to use 100% of the land, so there wasn't a place for retention. Mr. Krape responded that it wasn't designed for onsite drainage now, but he was willing to work with the city and find the best way to address drainage retention.

Member Harris then asked if it was a planned development because of the height of the proposed apartments. Mr. Wittkopf responded that it was because he wanted to construct a 3-story building and that the city required two parking spots for each apartment and he wanted to do one per bedroom, the landscaping was a requirement and there were other variables. The planned development made it so that the city would have more control over what Mr. Krape was doing.

Chairman Charles Elliott asked if there was anyone in the audience that would like to speak concerning this project.

George Savage, 2512 Park, stated that he lived on the other side of the proposed 8-foot fence since 1979. He said that it was heartbreaking to him because they had that big pasture in his back yard and it was serene. He added that when the Dollar General went in, all they got was a bunch of people walking past their house and throwing trash in the yard and that was still a problem. He was against this project because he didn't want 800 people in his back yard.

Member Henry Ross stated that they were talking about a facility that was going to be a 3-story building and were talking about constructing an 8-foot fence. People on the second and third floor have access to a person's back yard and activities that they would have going on in their back yard and that was a major concern for him. Mr. Krape responded that was why they were putting parking between them and there was not only going to be a fence, but an 8-foot screen that would eventually be covered with vines. So if they were further back they would be able to see the tops of the roofs, but not necessarily the yards.

Mr. Savage asked Mr. Krape what kind of fence he was proposing. Mr. Krape responded that he was putting in a chain link fence with the tennis court dark green netting, with eventually vegetation on it. Member Carolyn Trezevant asked how far from the back of Mr. Savage's property he planned to be from Mr. Savage's property. Mr. Wittkopf said that they were looking at the minimum 70 - 75 feet from building to building. Member Trezevant stated that she was asking how far from the property line to the fence. Mr. Wittkopf stated 25 feet.

Jeff Harrison, business partner of Mr. Krape's stated that they will do everything they can to be good neighbors and that they thought the need was substantial and that was communicated to them by the city, coaches at the university, parents and students at the university, which they had confirmed over the last several months of the need for good quality apartments. The city would have a hard time getting quality apartments in the city if there wasn't cooperation on both parts and he reminded the Commission that the addition of the apartments would mean additional property tax base for the city.

Board Member Carolyn Trezevant made the motion to accept the change in rezone from R-7/GB to PD. Member Terry Harris stated that before they did a second, he was still concerned about the water issue and wondered if there was any way that they could make sure that issue was taken care of. The Civil Engineer on the project stated that normally, for the Planning and Zoning meeting, they didn't normally get into the drainage, because there were no requirements for engineering plans at this time, they were trying to get the early stages of approval. Member Trezevant stated that she wanted to amend her motion to include that it be contingent upon thorough investigation to be sure that the drainage issues were addressed satisfactorily. Member Ross stated that he was still concerned about the privacy to the local residents with the 3-story building and an 8-foot fence. Mr. Krape stated that most builders are going to 3-story because it is more cost effective. He stated that he could go to 2-story on the outside and 4-story in the middle to have the same number of units. Chairman Elliott asked if that was feasible. Mr. Krape responded that he would have to install elevators in the 4-story buildings and that would be much more expensive, but if that's what they wanted, he could make it happen.

Chairman Elliott stated that he wondered if this project could be put on hold until something could be determined on protecting the privacy of the residents on Park Street. Mr. Wittkopf stated that the Commission could put stipulations on what they wanted so that the project could move forward. Member Harris stated that this was a huge project from his point of view and he was seeing it for the first time. He added that he loved it in

a lot of ways, but it was going to affect traffic up and down on Culver Street, which was sometimes pretty busy.

City Manager Darrek Ferrell stated that this property was between the Dollar General and the Fix and Feed and even though there were homes there, they weren't going to get more homes. They had an opportunity to put something there that otherwise might never develop.

Board Member Carolyn Trezevant amended her motion again to stipulate that the Park Street side of the development be two-story apartments. The Civil Engineer on the project stated that was going to dramatically effect economics because they were talking about 3-story apartments turning into a 2-story and that was a dramatic change on the amount of money. The motion died due to lack of a second.

Mr. Wittkopf asked Mr. Krape if he would be willing to change his screening along Park Street. Mr. Krape asked if it would be better if he pushed the fence up to 12 feet. Member Terry Harris asked if they had to do anything with the motion to get the 12 foot fence. Mr. Wittkopf stated that they could put that stipulation in the motion if they wanted to.

Member Terry Harris made the motion to approve the zoning change from Residential/General Business to Planned Development with the stipulation that there be a 12-foot screen on the Park Street side. Member Henry Ross seconded the motion, resulting in a unanimous vote.

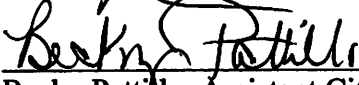
7. Other Business:

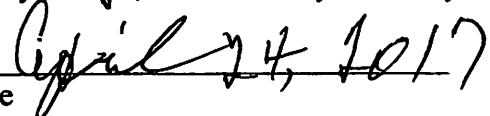
None.

8. Adjourn:

Chairman Elliott adjourned the meeting at 7:24 p.m.


Chairman Charles Elliott


Becky Pattillo, Assistant City Secretary


Date April 24, 2017