

CHATHAM COUNTY-SAVANNAH METROPOLITAN PLANNING COMMISSION

MPC MINUTES

ARTHUR A. MENDONSA HEARING ROOM
110 EAST STATE STREET

May 15, 2007

1:30 PM

Members Present: Robert Ray, Vice Chairman
Jon Todd, Secretary
Susan Myers, Treasurer
Douglas Bean
Michael Brown
W. Shedrick Coleman
Ben Farmer
J. David Hoover
Timothy S. Mackey
Lacy Manigault
Adam Ragsdale

Members Not Present: Stephen R. Lufburrow, Chairman
Russ Abolt
Freddie Gilyard

Staff Present: Thomas L. Thomson, P. E., AICP, Executive Director
Harmit Bedi, AICP, Deputy Executive Director
Jim Hansen, AICP, Director, Development Services
Beth Reiter, AICP, Director, Historic Preservation
Dennis Hutton, AICP, Director, Comprehensive Planning
Debbie Burke, AICP, Development Services Planner
Gary Plumbley, Development Services Planner
Amanda Bunce, Development Services Planner
Keia Butts, Land Use Planner
Janine Person, Administrative Assistant
Marilyn Gignilliat, Executive Assistant
Lynn Manrique, Administrative Assistant

Advisory Staff Present: Bob Sebek, County Zoning Administrator
Tom Todaro, City Zoning Administrator

I. Call to Order and Welcome

Vice Chairman Ray called the meeting to order and asked everyone to stand for the Pledge of Allegiance and Invocation. He explained the agenda for the benefit of those who were attending the meeting for the first time.

II. Notices, Proclamations and Acknowledgments

A. Notice(s)

1. Next Regular MPC Meeting: June 5, 2007, at 1:30 PM in the Arthur A. Mendonsa Hearing Room, 112 East State Street.

B. Items Requested to be Removed from the Final Agenda

1. Zoning Petition – Map Amendment

301 West Jones Street
Harold Yellin, Agent
Crystal Beer Parlor, LLC, Owner
Jim Hansen, MPC Project Planner
MPC File No. Z-070316-41185-2

The petitioner has requested that this item be removed from the Final Agenda and continued to the June 19, 2007, Regular Meeting.

Mr. Todd **moved** to remove 301 West Jones Street, MPC File No. Z-070316-41185-2, from the Final Agenda and continue it to the June 19, 2007, Regular Meeting. Ms. Myers seconded the motion.

MPC Action: The motion to remove the MPC File No. Z-070316-41185-2 from the Final Agenda and continue it to the June 19, 2007, MPC Regular Meeting carried with none opposed. Voting were Mr. Ray, Mr. Todd, Ms. Myers, Mr. Bean, Mr. Brown, Mr. Coleman, Mr. Farmer, Mr. Hoover, Mr. Mackey, Mr. Manigault, and Mr. Ragsdale.

III. Consent Agenda

A. Changes to the Agenda

1. Victorian Planned Neighborhood Conservation District / Certificate of Compatibility for New Construction

John Clegg, Barnard Architects, Petitioner
Jerry & Robin Baldwin, Owners
223 West Bolton Street
MPC File No. N-070420-35443-2

This item has been requested to be moved from the Consent Agenda to the Regular Business Agenda.

2. Major Subdivision / Concept Plan

Highway 17 Subdivision (Horton Tract)
5638 Ogeechee Road
Coastal Landworx, LLC, Owner
MPC File No. S-070117-87094-1

This item has been requested to be moved from the Consent Agenda to the Regular Business Agenda.

3. Request for Authorization for the Executive Director to Execute a Contract with Karp, Ronning & Tindol to perform the MPC 2006 Annual Audit.

Mr. Ray said that the Commissioners agreed in today's pre-meeting to remove this item from the agenda. It will be handled according to procedures outlined in the By-Laws.

Mr. Todd **moved** 1) to move MPC File No. N-070420-35443-2 and MPC File No. S-070117-87094-1 from the Consent Agenda to the Regular Business Agenda, and 2) to remove the Request for Authorization for the Executive Director to Execute a Contract with Karp, Ronning & Tindol to perform the MPC 2006 Annual Audit from the Final Agenda so that it can be handled according to procedures outlined in the By-Laws. Ms. Myers seconded the motion.

MPC Action: The motion to 1) move MPC File No. N-070420-35443-2 and MPC File No. S-070117-87094-1 from the Consent Agenda to the Regular Business Agenda, and 2) to remove the Request for Authorization for the Executive Director to Execute a Contract with Karp, Ronning & Tindol to perform the MPC 2006 Annual Audit from the Final Agenda so that it can be handled according to procedures outlined in the By-Laws, carried with none opposed. Voting were Mr. Ray, Mr. Todd, Ms. Myers, Mr. Bean, Mr. Brown. Mr. Coleman, Mr. Farmer, Mr. Hoover, Mr. Mackey, Mr. Manigault, and Mr. Ragsdale.

4. Zoning Petition – Map Amendment

209 East 40th Street
Murray K. Barnard, Agent
Charles Russo, Jr., Owner
MPC File No. Z-070426-35710-2

Mr. Todd **moved** that this item be moved to the end of the Regular Business Agenda. Mr. Mackey seconded the motion.

MPC Action: The motion to move MPC File No. Z-070426-35710-2 to the end of the Regular Business Agenda carried with none opposed. Voting were Mr. Ray, Mr. Todd, Ms. Myers, Mr. Bean, Mr. Brown, Mr. Coleman, Mr. Farmer, Mr. Hoover, Mr. Mackey, Mr. Manigault, and Mr. Ragsdale.

B. Approval of the May 1, 2007, MPC Meeting Minutes and Briefing Minutes.

Mr. Manigault **moved** to approve the May 1, 2007, MPC Meeting Minutes and Briefing Minutes. Mr. Todd seconded the motion.

MPC Action: The motion to approve the May 1, 2007, MPC Meeting Minutes and Briefing Minutes carried with none opposed. Voting were Mr. Ray, Mr. Todd, Ms. Myers, Mr. Bean, Mr. Brown, Mr. Coleman, Mr. Farmer, Mr. Hoover, Mr. Mackey, Mr. Manigault, and Mr. Ragsdale.

C. Victorian Planned Neighborhood Conservation District / Certificate of Compatibility for New Construction

John Clegg, Barnard Architects, Petitioner
Stefanas Zbin, Owner
523-525 East Park Avenue
1-R Zoning District
PIN: 2-0043-17-021
Beth Reiter, MPC Project Planner
MPC File No. N-070503-47827-2

Nature of Request: The applicant is requesting approval of a two-story four-unit residential structure with attached four-car garage. Two two-foot side yard setback variances and a 33-foot rear yard setback variance are requested.

Staff Recommendation: Approval of two two-foot side yard setback variances and **approval** of a 33-foot rear yard setback variance

Mr. Todd **moved** to approve the staff recommendation. Mr. Coleman seconded the motion.

MPC Action: The motion to approve the staff recommendation carried with none opposed. Voting were Mr. Ray, Mr. Todd, Ms. Myers, Mr. Bean, Mr. Brown, Mr. Coleman, Mr. Farmer, Mr. Hoover, Mr. Mackey, Mr. Manigault, and Mr. Ragsdale.

D. Zoning Petitions – Map Amendments

1. 4414 Abercorn Street
Cliff Kennedy (Kennedy, Ragsdale & Associates, Inc.), Agent
Cathryn Dunn (Abercorn Terrace Investments, LLC), Petitioner/Owner
PIN: 2-0106-04-003
Amanda Bunce, MPC Project Planner
MPC File No. Z-070406-54306-2

Issue: The rezoning of 4414 Abercorn Street from a B-N (Neighborhood Business) zoning classification to an R-M-25 (Multi-family Residential, 25 Units per Net Acre) classification.

Policy Analysis: The proposed rezoning is consistent with the Tricentennial Land Use Plan and will establish a zoning district that is more compatible with the existing development pattern.

Staff Recommendation: Approval of the request to rezone the subject property from a B-N (Neighborhood Business) zoning classification to an R-M-25 (Multi-family Residential, 25 Units per Net Acre) classification.

Mr. Farmer disclosed that he purchased a piece of property near the site in question but that the two issues are unrelated and his ownership would not affect his ability to render a fair and unbiased decision in the matter under consideration.

Mr. Ragsdale stated that he would recuse himself from the discussion on this petition and abstain from voting due to a conflict of interest. He stepped down from the dais.

Mr. Bean **moved** to approve the staff recommendation. Mr. Coleman seconded the motion.

MPC Action: The motion to approve the staff recommendation carried with none opposed. Voting were Mr. Ray, Mr. Todd, Ms. Myers, Mr. Bean, Mr. Brown, Mr. Coleman, Mr. Farmer, Mr. Hoover, Mr. Mackey, and Mr. Manigault. Mr. Ragsdale recused himself and **abstained** from voting due to a possible conflict of interest.

2. 615 Montgomery Street
Phillip McCorkle, Agent
Second Bethlehem Baptist Church Board of Trustees, Owner
PIN: 2-0045-24-012
Jim Hansen, MPC Project Planner
MPC File No. Z-070416-40853-2

Issue: The proposed rezoning of a 0.64-acre parcel located at 615 Montgomery Street from the existing R-B-C-1 (Residential-Business-Conversion-Extended) zoning classification to the B-C-1 (Central Business) zoning classification.

Policy Analysis: The proposed rezoning is consistent with the Tricentennial Future Land Use Plan and the proposed MLK/Montgomery Corridor Plan. The rezoning will also establish a zoning district that is more typical of the type and density of development in the general vicinity.

Staff Recommendation: Approval of the request to rezone the subject property from an R-B-C-1 (Residential-Business-Conversion-Extended) zoning classification to a B-C-1 (Central Business) zoning classification.

Ms. Myers **moved** to approve the staff recommendation. Mr. Todd seconded the motion.

MPC Action: The motion to approve the staff recommendation carried with none opposed. Voting were Mr. Ray, Mr. Todd, Ms. Myers, Mr. Bean, Mr. Brown, Mr. Coleman, Mr. Farmer, Mr. Hoover, Mr. Mackey, Mr. Manigault, and Mr. Ragsdale.

IV. Old Business

None

V. Regular Business

A. Victorian Planned Neighborhood Conservation District / Certificate of Compatibility for New Construction

1. John Clegg, Barnard Architects, Petitioner
Jerry & Robin Baldwin, Owners
223 West Bolton Street
PIN: 2-0044-17-008
3-R Zoning District
Beth Reiter, MPC Project Planner
MPC File No. N-070420-35443-2

Nature of Request: The applicant is requesting approval of a two-story carriage house behind 223 West Bolton Street.

Staff Recommendation: Approval subject to the condition that the building be shifted four feet to the East to meet the setback requirement on the Jefferson Street side.

Speaking about the Petition: **Jerry Baldwin, owner**, said the Sanbourne maps show the auto garage against the property line and his architect felt that the proposed one-foot setback for the carriage house would be more in keeping with the original plans for the site and would align better with the other buildings on the property and with buildings in the neighborhood.

Beth Reiter conceded that the Sanbourne maps did show the building on the lot line, however, the ordinance calls for a five-foot side yard setback and there is room to do that. She does not believe either setback would detract from the neighborhood in any way.

Mr. Farmer **moved** to approve the staff recommendation. Ms. Myers seconded the motion.

MPC Action: The motion to approve the staff recommendation carried with none opposed. Voting were Mr. Ray, Mr. Todd, Ms. Myers, Mr. Bean, Mr. Brown, Mr. Coleman, Mr. Farmer, Mr. Hoover, Mr. Mackey, Mr. Manigault, and Mr. Ragsdale.

B. Major Subdivision / Concept Plan

Highway 17 Subdivision (Horton Tract)
5638 Ogeechee Road
PIN: 1-0991-01-016
Coastal Landworx, LLC, Owner
Chad Zittrouer (Kern-Coleman & Company), Agent
Amanda Bunce, MPC Project Planner
MPC File No. P-070117-87094-1

Nature of Request: The petitioner is requesting approval of a Concept Plan for a proposed single-family residential development with 127 lots located on both sides of a new public right-of-way to extend approximately 4,600 feet northwest of Ogeechee Road within an R-A (Residential-Agriculture) zoning district. The petitioner is also requesting the following variances: 1) a 10-foot lot width variance from the required 60-foot minimum; and, 2) a 1,000-square-foot lot area variance from the required 6,000-square-foot minimum.

The property was cleared of all vegetation in January, 2007, with no permit. A stop-work order was issued by the County Engineering Department. The developer has been required to submit a proposed replanting plan at this time as opposed to submitting a typical landscape plan along with the Preliminary (Construction) Plans. The developer's engineer has worked with both MPC staff and the County Arborist to develop a replanting plan that attempts to mitigate the premature clearing that has occurred, but ore importantly to locate the trees to be the most beneficial for future residents of the subdivision.

Staff Recommendation: Approval of a 10-foot lot width variance and a 1,000-square-foot lot area variance for the lots within this subdivision. Staff further recommends **approval** of the proposed Concept Plan subject to the following conditions: 1) Approval by the County review departments, and 2) approval by Georgia DOT.

Speaking about the petition: **John Kern, Agent**, assured Mr. Farmer that petitioner would be agreeable to running the finished design through the computer to be sure that large trucks carrying cement, lumber, etc., would have sufficient room to maneuver and turn around within the subdivision and particularly around the cul-de-sacs.

Mr. Farmer **moved** to approve the staff recommendation subject to the condition that the final street design must provide room for large semi-trucks to maneuver and turn around safely within the subdivision and around the cul-de-sacs without backing up. Ms. Myers seconded the motion.

MPC Action: The motion to approve the staff recommendation subject to the condition that the final street design must provide room for large semi-trucks to maneuver and turn around safely within the subdivision and around the cul-de-sacs without backing up carried with none opposed. Voting were Mr. Ray, Mr. Todd, Ms. Myers, Mr. Bean, Mr. Brown, Mr. Coleman, Mr. Farmer, Mr. Hoover, Mr. Mackey, Mr. Manigault, and Mr. Ragsdale.

C. Zoning Petitions – Map Amendments

1. Woodville Rezoning Study
Staff Study
Dennis Hutton, MPC Project Planner
MPC File No. Z-070315-30874-2

Issue: Map amendments to the City of Savannah Zoning Ordinance related to the Woodville Neighborhood in west Savannah.

Policy Analysis: It is the desire of the City of Savannah to protect the integrity of existing single-family neighborhoods.

Staff Recommendation: Rezone the properties in the Woodville Neighborhood as recommended in the staff report.

Speaking about the Petition:

Tyrone Ware, President of the Woodville Neighborhood Association, said this rezoning has been under discussion since 2004. His organization is very active and they have made every effort to get the word out to everyone in the neighborhood. He knows of only one person who is opposed to the plan. The majority of Woodville residents overwhelmingly support the proposed rezoning. They are anxious to maintain the residential nature of the area and believe the proposed R-6 zoning plan is the only thing that can protect the integrity of their neighborhood. The current R-4 zoning is encouraging structures that are incompatible with the historic significance of this community. Over 50 percent of the homes are single-family residences and the R-4 zoning allows developments that will adversely impact the overall density of the neighborhood.

Les Fussell, said he was speaking on behalf of his mother-in-law and his wife, who will inherit the property currently owned by his mother-in-law on Alfred Street, and on behalf of his wife's brother-in-law, Lloyd Collick who resides at 230 Alfred Street. His family strongly supports the proposed rezoning.

Catherine Jackson, was born and reared in Woodville. Her 93-year-old father is a resident of Woodville as are other members of her family. She supports the proposed rezoning.

Calvin Wright, is opposed to the proposed rezoning. His property is zoned R-4. There is a single-family residence on his property now. He previously petitioned for a 10-foot variance so he could put an additional house on his property and was denied. Since he cannot put another single-family home there, he would like to be able to put a duplex there.

Mr. Thomson pointed out to Mr. Wright that even under the proposed R-6 zoning there will be non-performing lots—lots less than 6,000 square feet—that will require variances in order to be buildable. An option for him would be to go before the Zoning Board of Appeals with a subdivision and ask for a variance in lot width to enable him to build two single-family homes in keeping with the character of the neighborhood.

Mr. Mackey **moved** to recommend approval of the Woodville Staff Study and forward it on to City Council. Mr. Farmer seconded the motion.

MPC Action: The motion to recommend approval of the Woodville Staff Study and forward it on to City Council carried with one opposed. Voting in favor were Mr. Ray, Mr. Todd, Ms. Myers, Mr. Coleman, Mr. Farmer, Mr. Hoover, Mr. Mackey, Mr. Manigault, and Mr. Ragsdale. Opposed: Mr. Bean. Mr. Brown was not in the room when the vote was taken.

Excerpt from the May 15, 2007 Regular MPC Meeting

2. 1617 East Montgomery Crossroads
and 8402-8404 Old Montgomery Road
Harold B. Yellin Agent
Terry Montford, Owner
Gary Plumbley, MPC Project Planner
MPC File No. Z-070412-50994-1

Issue: Rezoning from an R-1/EO (Single Family Residential – Five Units per Net Acre-Environmental Overlay) classification to a PUD-IS-B/EO (Planned Unit Development-Institutional/Environmental Overlay) classification to allow a medical complex that will include offices for patient care (patient infusion medical center) and corporate offices.

Policy Analysis: The proposed rezoning is inconsistent with the recently approved Future Land Use Plan. Rezoning this site to a PUD-IS-B classification will allow the expansion of non-residential uses into an established single-family residential area. Such an intrusion could be detrimental to the adjacent residential properties which could increase the pressure to rezone additional properties and further erode the stability of the residential properties in close proximity.

Recommendation: Denial of the request to rezone 1617 East Montgomery Crossroads and 8402-8404 Old Montgomery Road (PIN 1-0477-08-020) from an R-1/EO classification to a PUD-IS-B classification including a request to establish a medical supply retailer as a special use.

Speaking about the Petition:

Harold Yellin, Agent, said that the PUD-IS-B is a transitional zoning between commercial and residential. There are eight separate structures on this piece of property. His client has been looking for some time for a site that resembles a campus rather than an institution. The property would have three uses: 1) medical infusion, 2) corporate

offices, and 3) the pharmacy would only serve MIT patients and provide specialty items such as oxygen tanks and wheelchairs, which would typically be delivered to someone's site because they are usually too sick or infirm to pick them up. The pharmacy is in every sense ancillary to the other uses. Under PUD-IS-B, Use "71" is a medical office which is permitted in the B-N and B-N-1 zoning classification. PUD-IS-B specifically allows office health services and practitioners including hospitals and physicians and "similar to those listed." The petitioner believes that last category applies to MIT. There is a health service clinic that includes a pharmacy as an accessory use. It is unclear whether this means a pharmacy generally or only one that is an accessory to a health clinic. If that does not seem to fit what petitioner is asking, then Use "5," a special use, could be applied. The traffic count maps prepared by MPC and CUTS shows the traffic count on Montgomery Crossroad in front of this property as 40,400 vehicles per day. This is much heavier than most of the streets where PUD-IS-B is granted all the time. Any changes to the existing buildings would be nominal such as changes mandated by ADA to make the buildings handicap accessible. The two-story building will be used for offices.

John Sabia, CFO, MIT (Medical Infusion Technology) Holdings, said that their mission is patient care. All of their equipment is stored in accordance with OSHA regulations. They have been in business for 15 years and there has never been a safety issue at their present facility located within the City of Savannah. The trucks used to receive and deliver equipment are the size of UPS trucks.

Tom Todaro, City Zoning Administrator, pointed out that the PUD-IS-B approved on Stephenson Avenue, which has been used as a comparison to this petition, was already zoned PUD-IS-B. Further, the property on Stephenson was not a case of rezoning residential; it was a church being converted into a funeral home.

Ardis Wood said that in her opinion this is not a transitional use because her research has shown that medical uses generate a large volume of traffic. Such a facility would adversely impact the adjacent residential uses.

Mr. Todd **moved** to approve the staff recommendation and recommend denial of the requested rezoning. Ms. Myers seconded the motion.

MPC Action: The motion to approve the staff recommendation and recommend denial of the requested rezoning carried with five opposed. Voting in favor were Mr. Ray, Mr. Todd, Ms. Myers, Mr. Brown, Mr. Coleman, and Mr. Manigault. Opposed: Mr. Bean, Mr. Farmer, Mr. Hoover, Mr. Mackey, and Mr. Ragsdale.

Mr. Todd **moved** to recommend denial of the requested special use. Ms. Myers seconded the motion.

MPC Action: The motion to recommend denial of the requested special use carried with four opposed. Voting in favor were Mr. Ray, Mr. Todd, Ms. Myers, Mr. Bean, Mr. Brown, Mr. Coleman, and Mr. Manigault. Opposed: Mr. Farmer, Mr. Hoover, Mr. Mackey, and Mr. Ragsdale.

3. 124 Quacco Road
Gregory Dean Elmgren, Owner
Gary Plumbley, MPC Project Planner
MPC File No. Z-070430-40223-1

Issue: Rezoning from an R-1 (Single-family Residential – five Units per Net Acre) classification to a P-B-1 (Planned Business Limited) classification.

Policy Analysis: The proposed rezoning is not consistent with Chatham County's Comprehensive Future Land Use Plan. The proposed P-B-1 classification would allow non-residential uses within an area that is predominantly low-density residential and would adversely impact the existing residential properties in the general area.

Staff Recommendation: Denial of the petitioner's request to rezone the property known as 124 Quacco Road (PIN 1-1006B-01-011) from an R-1 (Single-family Residential – Five Units per Net Acre) classification to a P-B-1 (Planned Business Limited) classification.

Speaking about the Petition: Eric Gotwalt, Attorney for petitioner, said the property is currently being used as offices for Gregory Dean Elmgren's landscaping services and nursery (located at another site) and Joy Dunegan's graphic design business. Ms. Dunegan has several employees. Customers generally do not come to Ms. Dunegan's office; she goes to them. The neighbors immediately adjacent to the site, Patricia Phillips and Sam Mann have provided letters indicating that they have no objections to this rezoning. Margaret Anderson, who owns the 52-lot mobile home park nearby has also provided a letter stating that she has no objections to the proposed rezoning. The property is approximately 1,200 feet from the intersection with Highway 17. The staff report states that "the intent of the B-1 district is to create and protect areas in which limited businesses and certain industrial activities which have limited traffic generation potential are permitted. This district is intended to be applied in areas which would not be appropriate for more intensive commercial districts because of the character of the surrounding land use and other factors." This site with the uses that surround it is no longer suitable for a one-acre residential homesite. His client will be happy to provide any type of planted buffers which might be required in conjunction with the requested rezoning. He would also be agreeable to conditions limiting the type of businesses allowed on the site. He simply wants to be able to continue his small business to earn a living.

Mr. Ragsdale **moved** to approve the staff recommendation for denial of the request to rezone the property at 124 Quacco Road from an R-1 (Single-family Residential-Five Units

per Net Acre) classification to a P-B-1 (Planned Business Limited) classification. Mr. Manigault seconded the motion.

MPC Action: The motion to approve the staff recommendation for denial of the request to rezone the property at 124 Quacco Road from an R-1 (Single-family Residential-Five Units per Net Acre) classification to a P-B-1 (Planned Business Limited) classification carried with none opposed. Voting were Mr. Ray, Mr. Todd, Ms. Myers, Mr. Bean, Mr. Brown, Mr. Coleman, Mr. Farmer, Mr. Hoover, Mr. Mackey, Mr. Manigault, and Mr. Ragsdale.

4. 209 East 40th Street
Murray K. Barnard (Barnard & King Architects), Agent
Charles Russo, Jr., Petitioner/Property Owner
PIN: 2-0075-08-003
Amanda Bunce, MPC Project Planner
MPC File No. Z-070426-35710

Issue: The petitioner is requesting an amendment of a site plan that was approved in association of the rezoning of 209 East 40th Street from TN-2 (Traditional Neighborhood-2) zoning classification to a TC-1* (Traditional Commercial-1*) classification pursuant to Section 8-3031(D)(1)(a). The petitioner wishes to change the use approved on the site plan from “take-out restaurant only” to “restaurant (no alcohol).” The City of Savannah Zoning Ordinance requires that any changes to a site plan or use of a property approved with a rezoning be approved in accordance with the map amendment (rezoning) process.

Policy Analysis: The proposed rezoning is not consistent with the Tricentennial Future Land Use Plan which calls for Traditional Neighborhood land uses at this location.

Staff Recommendation: Denial of the request to amend the site plan that was approved when the property was rezoned from a TN-2 (Traditional Neighborhood-2) zoning to a TC-1* (Traditional Commercial-1*) classification in accordance with Section 8-3031(D)(1)(a).

Speaking about the Petition:

Tom Todaro, City Zoning Administrator, said that according to the City Council minutes, which are part of the court proceedings, this was approved as a General Development Plan. The minutes state that “the subject property shall only be used as a take-out restaurant.” When the petitioner applied for a building permit, the application showed they were “converting a one-story house into a take-out restaurant.” The Certificate of Occupancy was issued for “a take-out restaurant.” There is no specific definition for a take-out restaurant in the Zoning Ordinance. “Take-out” is mentioned under “Fast-food or Drive-through Restaurant.” It says “a food establishment which provides meals for take-out and/or meals for drive-through service.” In Mr. Todaro’s mind and, he believes, in the mind of City Council, a take-out restaurant is one where food is to be taken off the premises. Russo’s was approved with a specific development plan under those specific conditions.

Murray Barnard, Agent, said it appeared the staff report assumed that this property is zoned TN-2 and petitioner is requesting to change it to TC-1, which is not the case. It is true that when this was originally submitted two years ago, it was stated on the site plan that there would be no seating inside. However, since the restaurant has been in operation since September of 2006, Mr. Russo found that there were many patrons who wanted to eat their lunch there, rather than take it out, so he provided tables and chairs for them to sit down. The restaurant operates about 30 hours per week, from 11:00 a.m. to 5:00 p.m., Tuesday through Saturday. Mr. Russo has operated his seafood market in its present location for many years and has never had any problems with the neighbors and would not knowingly do anything that would be detrimental to the neighborhood. He pays extra money to have a sanitation company pick up the remains from the restaurant and

fish market so that there are no odors or waste to draw flies. His waste is kept refrigerated until it is removed. The Assistant City Manager said that Mr. Russo could have all the outside seating he wanted but not inside. It seems to Mr. Barnard that the outside seating would be more detrimental to the neighborhood than indoor dining.

Tom Mahoney, Attorney for Petitioner, said that following City Council's approving rezoning this property to TC-1 with site plan, Mr. Russo worked diligently with the City, especially regarding construction of the deck to City specifications, the renovation of the building inside to City specifications, and at an expense of more than \$350,000 began operating his restaurant in September, 2006. He opened with counter service only. Customers order at the counter. This is a single-family residence converted to this use. About four people can be accommodated at the counter at one time. There are tables and stools available for people to sit and wait on their food to be prepared. When the food is ready, the customer pays at the counter and takes possession of his food. To petitioner, that is a take-out facility. As business increased some people complained that they could not get their food at the counter and sit back down where they had been waiting. There were no problems or complaints until February 6, 2007. There has been much discussion about the definition of a take-out restaurant. Following the City's rezoning of this property, the City issued a business tax certificate for a full-service restaurant for Calendar Year 2006. After February 6, 2007, the City came back and said they had given the full-service restaurant business tax certificate in error and should have given Mr. Russo a take-out license certificate instead. Petitioner inquired what was a take-out license and no one can tell him. This restaurant has been operated exactly as it was represented to this Board and to City Council. Since "take-out restaurant" is not defined anywhere, petitioner thought it prudent to come back to this Commission, following the ordinance and saying that there are only two definitions in this district: 1) Restaurant with service of alcohol, and 2) Restaurant without service of alcohol. Since there is no take-out, petitioner desires to be a restaurant that does not serve alcohol. Staff's recommendation even concedes that the designation that petitioner seeks is very close except that cars will remain in the parking lot longer. However, if you look at the operation of the restaurant since September, 2006, cars actually have not remained in the parking lot longer. The staff recommendation asserted that there would be an increase in traffic volume, noise, odor, and airborne particulate matter which would be detrimental to the neighborhood. In fact, none of that has occurred. Since the citation was issued in February, some 1,438 people to date have walked into the restaurant and signed a statement that the operation of this restaurant is a positive thing for the City of Savannah and for this neighborhood. Petitioner has followed exactly what he was required to do in regard to buffers and has installed a landscape

buffer and an eight-foot fence between the restaurant and the adjacent property. The front exterior of the structure has not been changed. As staff reported, the purpose of the TC-1 district is to ensure the vibrancy of historic mixed-use neighborhoods with traditional development patterns characteristic of Savannah, Georgia, from 1890 to 1930 during the streetcar and early automotive era. Petitioner simply wants the use clarified consistent with the definitions in the ordinance we all live by.

Amanda Bunce noted that combining the restaurant parcel with the seafood parcel into one lot of record, would have created a group development (two principal use buildings on the same property) and would have had to come before the Planning Commission for approval. Further, she has just been informed that the City Attorney some years ago gave

an opinion that the recombination process cannot be used in essence to effectuate a zoning change.

Mr. Mackey asked what happened in Recorder's Court.

Mr. Mahoney replied that Recorder's Court has not yet heard and ruled on the case. Mr. Russo was cited on February 6, 2007, and the case has been docketed two or three times. At the last court appearance the two judges attempted to find a way to settle this matter without a court hearing without a finding of guilt or innocence because of the confusion within the ordinance. It was suggested to petitioner that he file this present petition with the MPC.

Virginia Mobley said when Mr. Russo came before MPC in March, 2005, asking for a take-out restaurant only. She outlined the other documents related to this petition that referred to "take-out restaurant, no seating." Mr. Russo has now returned to request a more intense use as a restaurant with seating. The minutes from the City Council July 7, 2005, meeting state that "the ordinance passes in conjunction with the general development plan in accordance with the Section 8-3031(D)(1)(a)," which is a City-wide section. What is done with this petition affects the entire City. Mayor Johnson stated in those minutes, "This City Council stands in its word and they will support the zoning that they have passed. The Council agrees that this will be the last exception and until something changes or this Council changes, this will be their position." An issue was raised in the minutes as to whether or not the uses be allowed in TC-1 also be allowed on this site. City Manager Brown said, "Only uses allowed at this site would be stated on the site plan which is the use of a take-out restaurant. They are restricted to do this use." In the words of the ordinance: "To promote an environment of stable, desirable character in harmony with the established and proposed land use pattern in the surrounding area." Nothing has changed in the neighborhood with other surrounding properties. The only change has been this new request for an expanded use—a use that has been going on since this business opened; a use that has been before the courts since February. You are being asked to resolve the issue of a violation of a City ordinance, which should be in the hands of the court.

Yvonne McQueen owns the property immediately next door to the restaurant. She opposed the establishment of the restaurant from the beginning. She appreciates MPC's denying the original petition and hopes they will do so now. She said she is home most

of the day and there are traffic problems. The small parking lot means there are cars parked in front of her house all the time.

Ardis Woods said that as the visual presentations have shown, this business is in the middle of the block in a residential neighborhood. The decision in this case will impact zoning throughout the City. It took a decade to arrive at the right zoning mix for the Thomas Square neighborhood. It was clearly identified that the proper balance is businesses on the corners and residential in the interior. When the final zoning was signed, sealed and delivered, Mr. Russo was given a “perk” in having this business at all. It was restricted to “take-out only.” There is no reason to believe, if given this, that he will not come back asking for even more in the future.

Jack Knopps, President, Fairway Oaks Neighborhood Association, said that his Association’s interest in this matter is that intrusion of commercial into one neighborhood, threatening the livability of that neighborhood, sometimes foreshadows such intrusion into other residential areas. He asks MPC to please uphold the land use plan that many neighborhoods, including Fairway Oaks, have fought to get established in this City.

Mr. Brown **moved** to approve the staff recommendation for denial and send the petition to City Council for their action. Mr. Todd seconded the motion.

MPC Action: The motion to approve the staff recommendation for denial and send the petition to City Council for their action carried with three opposed. Voting in favor were Mr. Ray, Mr. Todd, Mr. Bean, Mr. Brown, Mr. Coleman, Mr. Manigault, and Mr. Ragsdale. Opposed were Mr. Farmer, Mr. Hoover, and Mr. Mackey. Ms. Myers was not present for the vote.

VI. Other Business

None

VII. Adjournment

There being no further business to come before the Commission, the May 15, 2007, Regular Meeting was adjourned.

Respectfully submitted,

Thomas L. Thomson, P.E., AICP
Executive Director

Note: Minutes not official until signed