

**MINUTES OF THE MEETING OF THE MADISON COUNTY
PLANNING AND ZONING COMMISSION HELD AND CONDUCTED ON
THURSDAY, THE 19th DAY OF OCTOBER, 2023 AT 9:00 A.M. AT THE
MADISON COUNTY COMPLEX BUILDING**

BE IT REMEMBERED that a meeting of the Madison County Planning and Zoning Commission was duly called, held and conducted on Thursday, the 19th day of October, 2023, at 9:00 a.m. in the Madison County Complex Building.

Present: Dr. Keith Rouser
 Rev. Henry Brown
 Jean McCarty
 Mandy Sumerall

Scott Weeks, Planning and Zoning Administrator

Absent: Bill Billingsley

The meeting was opened with prayer by Chairman Rouser, and all present participated in pledging allegiance to our flag, led by Chairman Rouser.

There first came on for consideration the minutes of the September 14, 2023, meeting of the Commission. Upon motion by Commissioner McCarty, seconded by Commissioner Brown with all voting “aye,” motion to approve the September 14, 2023, minutes passed.

There next came on for consideration, the need to open the meeting for public hearing of certain matters. Upon motion by Commissioner Brown to open the meeting for public hearing of certain matters, seconded by Commissioner McCarty, with all voting “aye,” the public hearing was so opened.

There next came on for consideration the Application of Chad Phillips for a Conditional Use for Public/Quasi Public Facility (The Oaks-Assisted Living Facility) with Site Plan. The property subject to the application is at 3265 Highway 22, is zoned C-1 Commercial District with a Planned Unit Development (“PUD”) overlay, and is in Supervisor District 4.

Prior to presentation, Attorney Clark advised the Commission that this Application was previously before the Commission at its August 14, 2023, meeting, and the Commission approved it conditioned on review by the Mannsdale-Livingston Historic Preservation District (“MLHPD”). MLHPD met following the Commission meeting, and denied the Application. Such denial is attached to these minutes as **Exhibit “A.”** Since that time, the Phillips have engaged Steven H. Smith, Esq., and have supplemented their Application. Attorney Clark advised that he and Administrator Weeks had met with two (2) of the MLHPD Board members, and asked that they convene, and review the supplemental information provided by the Phillips. Attorney Clark advised that MLHPD had declined to meet and review, and instead rely on their August denial. *See* MLHPD Letter dated October 17, 2023, attached hereto as **Exhibit “B.”** Attorney Clark

reminded the Commission that MLHPD and Planning & Zoning Commission approval are not contingent, or dependent on each other, and that the Commission has an opportunity to listen to the presentation, and make their decision.

Steven H. Smith, Esq. appeared on behalf of the Applicants. Mr. Smith advised that the Application was filed on April 1, 2023, and seeks to construct an assisted living facility in the PUD at the Town of Livingston. Mr. Smith reminded the Commission that the property was zoned as C-1, and that an assisted living facility is permitted thereunder. Mr. Smith also reminded the Commission that this Application was unanimously approved by the Commission on August 10, 2023, conditioned upon approval from MLHPD.

Mr. Smith explained that MLHPD reviewed the Application on August 14, 2023, and denied it for two (2) reasons: “lack of information about landscaping,” and “site elevations for the building were inappropriate.” See **Exhibit “A.”** Mr. Smith advised that his clients had revised the plans, addressed both issues raised, and requested that MLHPD revisit the revised plans. Mr. Smith submitted a screenshot of a text message between Crystal Gardner-Phillips, and MLHPD Chair, Rita McGuffie, advising that the Applicant should communicate with the Commission, or the Board of Supervisors regarding further submission. See **Exhibit “C,”** attached hereto. Mr. Smith advised that since that text, the Applicant had communicated and cooperated with the Commission, and on October 12, 2023, submitted a Supplemental Submission in Support of Application for Conditional Use setting forth the revised plans. See **Exhibit “D,”** attached hereto. Mr. Smith advised that on October 13, 2023, he received an email from Administrator Weeks outlining six (6) issues raised by MLHPD, and immediately revised their plans and met each issue by October 16, 2023. See **Exhibit “E,”** attached hereto. Mr. Smith addressed each of the six (6) issues raised, and argued that the Applicants had met each of the issues in order to comply with the Zoning Ordinance.

Mr. Smith advised that on October 17, 2023, having not heard from MLHPD on the request to review the supplemental submissions, Attorney Clark requested Rita McGuffie confirm whether MLHPD would so review the submission. Mr. Smith advised that Ms. McGuffie responded that MLHPD would not review the submission, and rely on their August 14, 2023, decision. See **Exhibit “F.”**

Mr. Smith argued that the Applicant had addressed and met each and every request from MLHPD, and was fully compliant with all required provisions of the Zoning Ordinance.

Mr. Smith reiterated that the proposed facility would be an assisted living facility, with only fifteen (15) beds, and a ratio of caretakers to residents that is much lower than a larger facility that is permitted. Mr. Smith argued that the surrounding uses are all commercial, and that the proposed facility is a Public/Quasi-Public Facility under Section 402 that is permitted in a C-1 Commercial use district, and a Planned Unit Development (“PUD”), both of which are applicable to the subject property.

Mr. Smith advised that the Applicant has a leadership team known as Residential Assisted Living Academy that is one of the top teams in the country to assist entrepreneurs in all aspects of operating and managing assisted living facilities. Mr. Smith stated that national statistics show

that assisted living facilities received approximately 85% of their residents from within a fifteen (15) mile radius of the location of the facility. Mr. Smith asked the Commission to acknowledge the residential growth in Madison County, and advised that based on the survey conducted by the Applicants, there is a need for the proposed facility, especially with such a low caretaker/resident ratio.

Mr. Smith next addressed the licensing and regulatory requirements for the proposed facility. Mr. Smith advised that the Applicants will have to get a license from the Mississippi State Department of Health, and submit a plan to meet all required criteria. Mr. Smith pointed to Miss. Code Ann. §43-11-13 as setting forth standards required by the State in the construction, operation, and management of the proposed facility, and entitled Minimum Standards for Personal Care Homes Assisted Living. *See Exhibit “G,”* attached hereto.

Mr. Smith next addressed concerns about how no one could have expected that an assisted living facility would be located at the Town of Livingston, that it would be out of character with the area, or doesn't fit with the architecture of the area. Mr. Smith advised that the rezoning of the Livingston Township PUD had been appealed to the Mississippi Supreme Court, and was upheld. Mr. Smith presented an architectural rendering of the Livingston Township PUD, which he argued was known to property owners in the area since 2010. Mr. Smith pointed out that the architectural rendering shows the property now owned by the Applicants as labeled “Active Senior Retirement.” *See Exhibit “H.”*

In response to questions from Chairman Rouser, Mr. Smith advised that the facility would not have a garbage dumpster area, but separate receptacles for garbage. Mr. Smith also pointed out where the facility would be located in relation to adjacent commercial development, and other residential areas in the vicinity.

In response to question from Commissioner Sumerall regarding deed restrictions, Attorney Clark advised that in looking at the historical land records, the Greaves family owned this property for quite some time. They conveyed the property with deed restrictions that it would only be used for residential use, and houses not less than 2,400sf. Attorney Clark advised that there is a clear record of termination of those covenants/restrictions, and in the deed from the Greaves to Chestnut Developers, there is clear language that the Grantor and Grantee understand that the property will be used for commercial development, and that any use would comply with the MLHPD. *See Exhibit “I,”* attached hereto. Attorney Clark advised that there is no doubt that the property falls under the MLHPD, but that the inclusion of the language in the 2007 Special Warranty Deed regarding MLHPD compliance was really unnecessary because the Board of Supervisors had already created the MLHPD in 2003, and the Greaves property was already in the MLHPD District at the time of the 2007 conveyance to the predecessor in title to the Applicant. Attorney Clark advised that there have been three (3) amendments to the Zoning Ordinance since the 2003 creation of the MLHPD—being 2005, 2013, and 2019. Attorney Clark advised that any time there is an amendment to the Zoning Ordinance, the old ordinance is repealed. As such, the governing ordinance applicable to the subject property is the 2019 Zoning Ordinance.

Mr. Smith also responded to Commissioner Sumerall that there are no current plans for the additional property owned by the Applicants.

Greta Barber-Mills appeared in opposition. Ms. Barber-Mills advised that she, and her siblings are adjacent property owners, and have many concerns regarding the proposed use. Ms. Barber-Mills stated that the subject property is subject to the provisions of the MLHPD based on the 2007 Special Warranty Deed for a period of fifty (50) years, and that time has not passed. Ms. Barber-Mills argued that the Applicants are proceeding forward without the approval of MLHPD, which they are obligated to have. Ms. Barber-Mills argued that one of the objective of the MLHPD is to protect the integrity of the area, and to encourage premium architecture for new construction. Ms. Barber-Mills argued that the proposed architecture does not meet the standards of the MLHPD, and would be out of harmony with the existing structures. Ms. Barber-Mills further stated that the unspecified definition of a personal care home is worrisome as it is vague, and could open the door to unwanted services. As an example, Ms. Barber-Mills stated that one of the definitions of a personal care home under the Mississippi Department of Health is any facility operating 24 hours a day, 7 days a week, accepting individuals who require personal care services or mental care services. Ms. Barber-Mills inquired as to whether this would involve drug or alcohol rehab. Ms. Barber-Mills argued that they have no way of knowing what type of services would be provided, and do not want to leave the door open to see. Ms. Barber-Mills argued that the MLHPD prohibits overnight occupancy other than residential—no hotels, no apartments, no inns. Ms. Barber-Mills argued that the Applicant’s facility would house 15-30 occupants, and staff, which is in complete violation of the MLHPD. Ms. Barber-Mills argued that the rooms at the facility would be apartments—30 people living under the same roof for an extended period. Ms. Barber-Mills asked why have rules if they are not to be followed? Ms. Barber-Mills argued that all of the businesses at the Town of Livingston have met the requirements of the MLHPD, and has contributed greatly to the Town’s beauty and charm, and have enhanced the real estate value of the surrounding property. Ms. Barber-Mills argued that the Applicants would benefit from the rich history of the area, but that there appears to be a general disregard for the surrounding property owners and businesses due to the proposed building materials, lack of adequate landscaping, and a proper buffer zone between the Applicant’s property and the adjoining land. Ms. Barber-Mills argued that the Applicants wish to be a part of the high standards, but are unwilling to meet the same standards which they are obligated to meet.

Mr. Smith responded to Ms. Barber-Mills, and stated that she brought nothing of substance, or that could be proved. Mr. Smith stated that everything she raised had already been addressed or debunked. Mr. Smith reiterated that MLHPD had two (2) initial reasons for denial, and then an additional six (6) issues raised. Mr. Smith argued that the Applicant had met and addressed each of them, and that there is nothing left to address. Mr. Smith specifically denied that there would be any sort of drug or alcohol rehab at the facility. Mr. Smith further denied that this use is an apartment, condominium, or boarding house, but is an assisted living facility, which is allowed in any zoning district under the Zoning Ordinance. Mr. Smith argued that the proposed facility does not violate anyone’s integrity or does not go with the community. Mr. Smith argued that the hours of operation would be less than those allowed under MLHPD, as they would be open to the public from 8:00 a.m. to 8:00 p.m., whereas MLHPD hours of operation are 6:00 a.m. to 9:00 p.m.

Sebastian Greaves appeared in opposition. Mr. Greaves advised that he lives adjacent to the proposed facility. Mr. Greaves advised that he has a background in title, and runs title for timber companies, oil and gas companies, and real estate developers. Mr. Greaves advised that when his family was approached by the developers of the Town of Livingston in 2007, they

conveyed the subject property subject to restrictions. Mr. Greaves argued that there are legal issues here, and that the property is subject to the standards of MLHPD. Mr. Greaves argued that there is a legal issue, and a zoning issue. Mr. Greaves argued that boarding houses, apartments, and multi-family residences are not allowed. Mr. Greaves argued that the MLHPD has authority to grant general descriptions. Mr. Greaves argued that a Board of Supervisors resolution was approved, and defined boarding house. He argued that if you are paying for a room and a meal, it's a boarding house. Mr. Greaves argued that everyone knows this use is an apartment or a boarding house, and is not a single family dwelling. Mr. Greaves argued that when one goes into an area to rezone, you have to look at what restrictions are in place. As an example, he argued that if he were to go into Annandale Subdivision, you have to look at their covenants and restrictions. He argued this is no different as there is a deed with restrictions that is tied to the MLHPD charter. Mr. Greaves argued that MLHPD approval had not been gained, and approval of the facility would be in violation of the standards of the MLHPD. Mr. Greaves asked that a copy of the deed be admitted to the minutes. *See Exhibit "J."*

Ms. Barber-Mills stated that in response to Mr. Smith's statement that he does not know of anything else the Applicant could do, she believed that approval of the MLHPD is the starting point. She further argued that the proposed facility not being apartments is "splitting hairs," and that she disagreed that there are no longer covenants that need to be enforced or upheld.

Mr. Smith responded that there are no legal issues preventing the construction of the Applicant's facility. He argued that the "hocus-pocus" about covenants, things not being allowed, and improper zoning is wrong. He argued that arbitrary denial by MLHPD is not lawful, and that everything else set forth in opposition is a "scare tactic."

Sebastian Greaves responded that this is a legal issue because when you have restrictions in a deed, they must be abided by.

Loistine Worthy of the Greater Livingston Missionary Baptist Church appeared and stated that she was not in opposition or in favor of the Application. Ms. Worthy advised that they had just heard of this Application, and that the church simply wanted to be included so that they could make an informed decision of what they want. Of particular concern to Ms. Worthy was the rear of the property because it adjoins the church's graveyard.

Chad Phillips responded and advised that they are there to serve the community, and he would be happy to share their plans with the church. He stated that they had complied with the notice requirements of the Zoning Ordinance as far as posting signs, and running ads in the newspaper, and apologized if the church was unaware.

Crystal Gardner-Phillips appeared and advised that they had done their due diligence to ensure that they were not in violation of the Zoning Ordinance. Ms. Gardner-Phillips advised that they have worked diligently with MLHPD and had hired a historic architectural specialist to ensure that they proposed facility is true Greek Revival to ensure compatibility with the area. Ms. Gardner-Phillips reiterated that the Applicants are more than willing to discuss the matter further with those in opposition.

In response to question from Commissioner McCarty, Mr. Smith responded that this facility would not fall under the Mississippi Landlord-Tenant Act; the residents would not sign leases for specific space within the facility, and the facility would not fall under any rental ordinance of Madison County, but that the resident’s bedrooms would be a part of the services that they are contracting for, and all of those matters would be regulated by the State Department of Health.

Rita McGuffie, MLHPD Chair, appeared and wanted to address the fact that their request that the Applicants approach Planning & Zoning first is simply standard procedure. In response to question from Commissioner McCarty as to whether there was a chance that MLHPD would reconsider its decision to stand on their August 14, 2023, denial, Ms. McGuffie stated that MLHPD had met with the Applicant on four (4) occasions, and MLHPD was concerned with the procedure of review because this was not a new submission, and was not a re-opening of a matter that they had already voted as being a final submission.

Upon motion by Commissioner McCarty to approve the Application of Chad Phillips for a Conditional Use for Public/Quasi Public Facility (The Oaks-Assisted Living Facility) with Site Plan, seconded by Commissioner Brown, with the vote being as follows:

Chairman Rouser	Aye.
Commissioner McCarty	Aye.
Commissioner Brown	Aye.
Commissioner Sumerall	Nay.

As such, the Application of Chad Phillips for a Conditional Use for Public/Quasi Public Facility (The Oaks-Assisted Living Facility) with Site Plan, was approved 3-1.

There next came on for consideration, the need to close the public hearing. Upon motion by Commissioner Brown to close the public hearing, seconded by Commissioner McCarty, with all voting “aye,” the public hearing was so closed.

With there being no further business, the October 19, 2023, meeting of the Madison County Planning and Zoning Commission was recessed until October 20, 2023, at 9:00 a.m.

Date

Dr. Keith Rouser, Chairman