

## **ZONING COMMISSION JUNE 21, 2022**

The Zoning Commission of the City of Texas City met in a regular meeting on Tuesday, June 21, 2022 at 5:15 p.m. Zoning Commission members present: Chairman Perry O'Brien, Co-Chairman Gary Potter and Thelma Bowie. Staff members present were: Kimberly Golden and Veronica Carreon. Guests were: Rafique Ali, Jimmy Vo, Anish Mardia, John Chark, Aiman Ali, Ken Howard, Iverson Williams (Summer Intern), Leslie Ornelas, Ivette Jones, Sherman Jones, Clementine Carter, Adam Jones, Shelia Dixon, Roy Jones and Leon Harper.

Chairman O'Brien indicated a quorum was present and called the meeting to order.

**APPROVAL OF MINUTES. A motion to approve the minutes of June 7, 2022 was made by Gary Potter/Aric Owens. All other members present voted aye.**

**ITEM NO. 1 Consider and take action on a request from Sherman Jones to rezone the property at 2828 Texas Avenue, Texas City, TX from District "F-1" (Outdoor Industrial) to District "E" (General Business) to operate Kingdom Wings with Heavenly Flavors – a take-out food service with a drive-thru window. (Action)**

Ms. Golden stated that the property at 2828 Texas Avenue has an existing building and paved parking. It operates as a church one day per week and the applicant would like to operate a take-out food service as a drive-thru and walk-up. The application indicates the operation would be to get your food and leave with no on-site consumption. The existing zoning is listed as District "F-1" (Outdoor Industrial). Outdoor Industrial is intended to provide light industrial uses which are predominantly operated outdoors. Because of potential visual and noise impacts of the uses permitted in the district additional buffering may be required to protect the adjacent areas. The current church use is not compliant with this district, nor would their requested change to operate the food service be compliant. The applicant is requesting to rezone to District "E" (General Business). The District "E" (General Business) is intended to provide a variety of enclosed retail and commercial services to serve the overall needs of the community. Due to the variety and potential intensity of those uses they should be located along major transportation corridors and be appropriately buffered from residential areas. Texas Avenue is a major transportation corridor so it would meet that requirement. The only residential area is located to the north of the site. It is zoned District "C" (Multi-Family Residential), and has been developed as apartments which is compliant with that zoning. To the west and east of the building both areas are zoned as "District "F" (Light Industrial) and to the south is District "IBD" (Industrial Business District). The rezoning to District "E" could be seen as a transition zone from the light industrial and outdoor industrial uses of the surrounding Districts "F-1" and "IBD" to the residential use of District "C". It could be considered compliant with the Land Use Plan because this particular area is along a major thoroughfare. This is also a revitalization corridor. This area is a unique because of the influence of the heavy industry in IBD. It is in a Gateway Overlay District, which has some additional requirements on top of the zoning that's for the use. There will be some masonry construction and landscaping requirements, along with some screening

requirements. There will be some setback requirements. It does not comply with the Gateway Overlay District requirements in full yet, particularly the landscaping. It would have a requirement for about 3600 sq. ft. of landscaping to be compliant. Staff is suggesting that if this request for rezoning is approved that the applicant be required to be compliant with the requirements of the Gateway Overlay District.

Co-Chairman Gary Potter stated that he was a little confused by the request. He read the Analysis from Ms. Golden's memo which states, "The existing use as an institution for religious function is not an allowed principal use in the District "F-1", nor would it be permitted use in District "E" (General Business)..." and asked how would this work for them if the facility cannot be used under the new zoning. Ms. Golden stated this is a confusing point and she can't make it not be confusing. The Applicant is trying to do two things that are not compatible in the same building. The difference is that they are only having worship one day per week and this could be considered not a principal use. Their principal use, if approved, would be the food service because they would be doing that 6 days per week. Co-Chairman Potter then asked if the food service was being done for profit, to which Ms. Golden stated he would have to ask the applicant that question, but she has no reason to think it's not.

Mr. Aric Owens asked how the applicant got occupancy if it is not permitted use for a church to begin with. Ms. Golden replied that she did not have personal knowledge of how they became a church. She heard of this when the Building Official stated the applicant had applied for a building permit to add a kitchen to the church. It was then observed that the occupants were using the building to prepare food for take-out. The Building Official told them they had to go through the rezoning process for the food service to be compliant with the zoning. In the process, the applicant went from doing straight take-out to wanting a drive-thru. Ms. Golden stated if the board decided to approve the rezoning request, the applicant will then have to go through Planning Board for development approval and that is when everything will be worked out about compliance with the Gateway Overlay District, their drive-thru window and the rest of the things they want to do. What the Zoning Commission is looking at is the change from District "F-1" to District "E" so that they can operate the take-out food service as principal use.

Chairman Perry O'Brien then asked if Ms. Golden could indicate on the map the other buildings that are currently being used for food services. Mr. Owens indicated the businesses/restaurants in the area that serve food.

Co-Chairman Potter then asked if they are selling the food for profit and if they would worship only one day per week. Ms. Golden replied that is what the applicant stated on the application. The applicant, Sherman Jones, then stated that they do only worship one day per week, but it is separated from the restaurant. He wanted to make it clear that they are not currently selling to the public, but they are trying to open to the public. He has done the plumbing and electric work and replied to everything requested by the Fire Marshal and Building Official. The church and the restaurant have their own addresses – 2828 Texas Avenue for the church and 2828-B for the restaurant. He repeated that they are two separate entities.

Co-Chairman Potter asked if they are operating the church more than one day per week to which Mr. Jones replied they only meet in the building one day per week and his other classes are conducted online on Mondays and Thursdays. On the one day they meet at

the building they already had the kitchen because "Christians like to eat". This idea of serving the wings came during the pandemic. He stated he contacted the Health Department and the Fire Marshal but was not aware that he had to contact Building Inspections. He added that he grew up in Texas City and has seen the growth in the city. He also stated that he does not have a problem with adding the landscaping.

Co-Chairman Potter then stated his dilemma. He stated to Mr. Jones that he has a church, and he is used to them operating more than once a week, and if he has growth in attendance, then his understanding is that this is not going to be a problem. Mr. Jones replied that they used to have more than one meeting per week, but then the pandemic had everyone afraid to go out and it was easier for them to meet via Facebook, which a lot of people have gotten used to. It's possible they could meet more than once per week, but the reason they are doing this now is because of the Coronavirus.

Co-Chairman Potter then asked Ms. Golden if the applicant and members wanted to meet more than one day per week, would there be an issue with the principal use of the building. Ms. Golden stated it is possibly so, if they decide to become a full-service church that has something going on every day of the week related to church. She doesn't know how they could do two things that different in one place. Co-Chairman Potter wondered if there was a better district to place them in, but he did not see anything that would fit. Ms. Golden stated that the one reason a church may not seem totally out of place is District "C", which is a residential area.

Chairman O'Brien then stated there is another church nearby. He added that the applicant has stated that worship will take place one day per week and the food service will take place the other 6 days, he has no reason not to believe him. He then asked if District "E" is appropriate for the food service, would it also be appropriate for a church service if it was to grow. He reminded everyone that this is not what the applicant is here for today. Ms. Golden stated that the applicant is asking for rezoning to be allowed, not to operate as a church, but to be allowed to conduct the take-out food service.

Mr. Owens stated that the application is for a food service that also wants to operate as a church. He does not know of a right way to do this and that is the part that he is struggling with. He does not have a problem with the whole thing, but how do they allow someone to do this. He is worried that it will "open up a can of worms" for a lot of other things going forward. He then asked how did we get here to operate a church in a zoning district where it's not allowed. He understands that the rules weren't followed to begin with, so this is a struggle for him on how we got to this point.

Chairman O'Brien asked Ms. Golden if District "E" is the appropriate zoning for the food service. Ms. Golden replied the application was not to operate a church. If it was to operate as a church, they have to look at it differently. Chairman O'Brien then asked what the zoning would be if it were a church to which Ms. Golden replied that churches are generally permitted in the residential zoning and this one is adjacent to the existing multi-family.

Chairman O'Brien asked if it would stand to reason that the church that is literally half a block over is zoned residential, even though it is located on the Gateway corridor. Ms. Golden stated that it would not surprise her to see that, but she hasn't reviewed that. Mr. Owens stated that based on the age of it, it could be something that never got rezoned.

Ms. Golden stated it might even be “grandfathered” in. Chairman O’Brien asked if there was really not another “pocket” to put them in to which Ms. Golden replied she did not see one. Which is why she intentionally looked at the request very narrowly, focusing only on the use they are requesting in the application. It would be a precedent lived with and dealt with, if the board approves it.

Mr. Owens thinks he can get a little more comfortable knowing it’s not going to operate as a church. He added it can operate as one or the other, but not both. He does not see a wall down the middle indicating the church on one side and the restaurant on the other side. If the principal use is going to be a restaurant, but now knowing that church services could take place more than once a week changes the principal use and he’s worried that they may have rezoned something that doesn’t fit correctly. He added that if it were just going to be a restaurant, he would be all for it. Knowing the facts now, he feels like it is a sticky situation.

Mr. Jones asked Mr. Owens if the church would only conduct once a week would he be okay with that. Mr. Owens replied now that Mr. Jones told them they could meet more than once a week in the future, it changes his view. Mr. Jones stated conducting the online services is working for him and that as a pastor and entrepreneur this is a great opportunity to serve the public.

Co-Chairman Potter stated he is familiar with online services, but the issue here is if they approve his request, then they have something approved that does not fit in the zoning and this bothers him a lot. He added that if they are approving the zoning change to “E” then the food service is what gets approved. If Mr. Jones wants to go with the church, then that’s a different zoning district. They both don’t fit under one zoning, and they don’t normally approve that type of request.

Chairman O’Brien asked if the Land Use Plan could fit both, to which Ms. Golden replied it could – but not together. She added that the work he does in his office falls under Office Professional, which also falls under District “E”. It’s the church assembly piece that is not compliant with the re-zoning to E. Chairman O’Brien stated that the other thing that he relies on for these decisions has been the Land Use Plan, Zoning Map and city recommendations – and he recalled that staff has no objections. Ms. Golden replied that she is not addressing the use of a church, the application is to rezone this property to use for the take-out food service. Chairman O’Brien stated if it gets rezoned and then goes to the Planning Board, it may work out that it is just used as food service period. Ultimately, the elected officials will have the final vote. He reiterated that it does not matter if they approve or deny people, there is another path forward.

Chairman O’Brien now wonders what the next step is because if he opens Public Hearing and they have that take place and then they close it, at that point he’ll ask for a motion from somebody. At this point, there is no telling if it is for or against. He asked if there was any homework that they could go back and do a little more of at this point or that the applicant can do if they were to table this request for now. Ms. Golden guessed to satisfy the Zoning Commission, Mr. Jones could go back and clean up his application to make it clear that he is asking for one and not both. She added that this could seem to resolve the matter. Co-Chairman Potter then asked would that mean the Applicant would not be able to operate a church there. Ms. Golden replied not as a principal use. The Applicant, Mr. Jones, then asked if they go with only take-out service in the application and are

approved for rezoning, what would prevent them from gathering for worship one day per week? Ms. Golden stated in that case the worship would not be an official principal or accessory use. She is sure there are restaurants all over the place that allow people to gather for worship. Co-Chairman Potter remarked that at the top of Applicant's building, though, it does not say restaurant. It is clearly identified as a place of worship.

Co-Chairman Potter asked if this could be approved purely as a restaurant, to which Ms. Golden stated that was how she read their application.

**There were no further questions, to which a motion was made by Co-Chairman Gary Potter/Aric Owens to open the Public Hearing. All other members voted aye.**

Chairman O'Brien asked if there was anyone in attendance that would like to share their opinion for or against this request.

- Ms. Leslie Ornelas, Executive Director for United Way Galveston County, stated that they share a parking lot with Mr. Jones. She added that having him next door has been an absolute pleasure. As far as landscaping he has worked on the landscaping at their building and has really brought life back to the building. She has told him that whatever he can do to bring people into her area, she would love because it brings attention to what they do at United Way. She is in favor of enriching people's lives and empowering them. She feels that Mr. Jones will bring attention to the community. She fully supports his business.
- Mr. Roy Jones stated he is located to the west of Mr. Jones [the Applicant] and he also feels that Mr. Jones has brought life to the community. Mr. Jones [the Applicant] keeps the area clean. Mr. Roy Jones stated he and his employees are looking forward to having a place to eat and feels the take-out restaurant would be a plus to the neighborhood.

**There were no questions or further discussion, to which a motion was made by Co-Chairman Gary Potter/Aric Owens to close the Public Hearing. All other members voted aye.**

**After presentation, a motion was made by Co-Chairman Gary Potter/Chairman Perry O'Brien to approve the zoning change request to District "E" (General Business) for the operation of Kingdom Wings with Heavenly Flavors. All members present voted two in favor of the motion and one [Owens] opposed to the motion.**

**ITEM NO. 2 Consider and take action on a request from Jimmy Vo to rezone the property at 615 Hwy 3, Texas City, TX from District "A-1" (Single Family Residential) and District "F" (Light Industrial) to District "D" (Neighborhood Services) to open and operate On-Track III, LLC, - a Convenience Store, Fuel Station and Retail Stores. (Action)**

Ms. Golden stated that the property located at 615 Hwy 3 is the subject of a previous application in 2018 which was denied by the City Commission on February 20, 2019. A similar application for rezoning the nearby 2.485 acre site located +/- 750 feet southeast of the intersection of Memorial Drive and SH 3 was denied by City Commission in October 2021. Both previous applications were met with organized opposition from the existing nearby residential area. This particular lot is 1.08 acres of undeveloped property. The

applicant intends to develop the property into a fuel station and convenience store. Either District "E" (General Business) or District "D" (Neighborhood Service) would accommodate this use. Because District "E" was shot down previously, staff reviewed as a District "D" (Neighborhood Service). The difference is General Business can serve the community wide and Neighborhood Service will serve just a neighborhood. The purpose of Neighborhood Service is more limited and intended to provide for office and retail services in proximity to neighborhood areas in which all principal uses are conducted indoors. If rezoned to District D it would be compliant. It's on a thoroughfare. It meets the Land Use Plan. But again, it is equally important to consider organized neighborhood opposition, so the Zoning Commission won't be wrong either way – to recommend either approval or denial of the request.

Ms. Golden stated that there has been one Letter of Opposition received citing the basis for their objection is heavy traffic – both automobile and foot, concern for the safety of two small children under the age of 6 years old. They reference two other gas stations within a half mile of this location stating there is no need for a third one. At the other gas stations they have witnessed loitering, loud music, arguments and the homeless lurking around. There is concern that the new gas station would also bring this to the neighborhood. The opposition letter states they already have an issue with speeding down their one-way street. The letter also mentions the lack of street widening and frequent sounds of firearms being fired near their location.

Chairman O'Brien then asked the applicant if he had anything to add to Ms. Golden's presentation. Mr. Jimmy Vo stated they are seeking to rezone the property for On Track III, LLC Fuel Station to help the neighbors and community and to also help the City of Texas City. They would like to open the convenience store and install a 10' fence around the property. They have measured the distance from the edge of the property to Opal Street and it measures 450'. He has also included in the presentation a copy of a map showing the distance between the properties. Chairman O'Brien asked if there was another piece of property between the applicant's property and Opal Street, to which Mr. Vo replied yes.

Chairman O'Brien asked if there were any additional questions. Co-Chairman Potter asked if there would be any retail space that would be rented out, to which Mr. Vo replied no. He replied that there would only be a convenience store with food service inside the building. The property owner, Mr. Rafique Ali, then replied that he chose this property because it is near the local hospital and college. Some of his family members are in the medical field and his son is attending college. Mr. Owens then stated that he was looking at the two submitted drawings and can see a proposed nail salon, to which Mr. Ali replied it was just a sample of the building. There will not be any retail stores or nail salon, there will only be a convenience store with an indoor restaurant.

Co-Chairman Potter then asked Ms. Golden if this request is approved and the application sits as it is right now, what flexibility does the applicant have as far as what he puts in to the building. Ms. Golden replied that if it is rezoned as Neighborhood Service then it would have to be compliant with that zoning, which includes some retail. It does not include the office concept where it is allowed with General Business or Office Professional zoning, but there is some leeway to put in some retail with Neighborhood Service. Once the rezoning request is approved, the applicant can operate within the limits of that entire

zone. She noted that the applicant is telling the board a convenience store, but again once the zoning is approved he can still go down the list of what's allowed and go forward with that. Chairman O'Brien stated that the conflict he is having is that on the application it states convenience store and retail, but he understands that the applicant is stating that he will only have a convenience store. He then asked why did it not go to the Planning Board first and is it not advantageous to do it that way – did it come to zoning first to see what the possibility of changing the zoning would be? Mr. Ali stated that if all goes well, his future plan is to speak with the neighboring owner about their property to perhaps build a medical office or something else.

Mr. Owens asked about the setbacks, to which Ms. Golden stated that it is on the Gateway Overlay District, but it would be part of the development plan that would go to the Planning Board. Chairman O'Brien stated that this might be the perfect item to discuss jointly with the Planning Board and to get some more details on the site plan. He added that if the zoning gets approved, then the applicant will have to comply with the Gateway requirements and it does not show that on the exhibit. He explained to the applicant, as an example, if they were to say yes, then City Commission would deny the request because there are not enough details. The applicant stated that if his zoning request is approved, then he will go back to his engineer and ensure that all of the setbacks are met. Chairman O'Brien stated again that he thinks this is something that should be discussed with the Planning Board with a good chance that when the applicant's request to rezone goes to City Commission again, there is a chance it could go through.

Ms. Golden stated this may be the kind of other side of the argument and getting the two volunteer boards together and putting some time into working something out. It is not going to make it through City Commission because of the lack of details, but because of the opposition. If the zoning request does go through City Commission, the staff will do their part with the Planning Board to ensure the plans meet all the requirements.

**There were no further questions, to which a motion was made by Co-Chairman Gary Potter/Aric Owens to open the Public Hearing. All other members voted aye.**

Chairman O'Brien stated he would like to hear from those in attendance that were against the zoning change request.

- Ms. Clementine Carter stated her address on Opal Avenue and added she has been down this road before. She does not understand the rezoning request and what it entails as far as Neighborhood Services. In past requests, the request came as commercial retail. She asked what defines Neighborhood Services compared to General Business. She is against both of them. She objects to any commercial or retail business at this site. She stated this is in her backyard. She believes her tax rates will increase, houses will decrease, that there will be more traffic, more crime and more loitering and the residents don't get anything out of this. She understands that the hospital is near, along with the apartments and medical buildings, and that is good. But the particular tract in question does not necessarily mean that those customers are going to come through there. She believes the neighborhoods will be affected. She understands that the city might get something out of this and the owner as well, but the residents won't and they are already there. Some as long as 50 years. Opal Avenue and Sapphire Court are the streets that will be mostly affected. Most of the residents have had to increase their

security and that is without a commercial or retail building. If this were residential or a duplex, they may have a different outlook, but they are not for a convenience store near them. She gets reports daily about all of the traffic, loitering and crime at the convenience store at Hwy 3 and FM 1765 and they just don't want that in their backyard. She also has a concern about the structure of the last request on the lot to the south of the applicant's and stated that she understood there would be no city services or a septic system. She added that the city does not monitor or regulate septic and this is a major concern as well. If something goes wrong, it is the residents that have to suffer through these types of things.

- Leon Harper stated his address and asked why do people come in from Houston to build projects in Texas City. He understands progress, but he lives on the corner along with some of the other residents that live alone. He stated the gas station around the corner already has women that are loitering behind the building and men behind the port-a-cans making a mess. They don't want that behind their neighborhood and the TCPD can only do so much. He stated that in a matter of 24 hours there will be crime at a new gas station and they don't want it. He then stated that there is a residential lot behind the neighborhood and asked how it could be turned into commercial, to which Chairman O'Brien replied because the property in question is located on a thoroughfare, they are allowed to apply for a zoning change.

Ms. Carter asked how to find out what the zones are, to which Chairman O'Brien stated it was all public knowledge and she could also reach out to staff and they could send the ordinance information. Ms. Veronica Carreon informed her that she would send her the link to the Zoning Ordinance.

Co-Chairman Potter stated that Ms. Carter raised a question about sewer, to which Ms. Golden replied that water is available and the city sewer system could be accessed from Opal Avenue. There would be no septic and although the city does not regulate the septic system, it is regulated by the Galveston County Health District.

Mr. Ali added that the store will have outdoor security cameras and believes crime will go down.

- Shelia Dixon stated that she lives closest to the property in question and agrees with what Ms. Carter and Mr. Harper stated.

Chairman O'Brien asked if there was anyone in attendance to speak in favor of the zoning change request.

**There were no questions or further discussion, to which a motion was made by Co-Chairman Gary Potter/Aric Owens to close the Public Hearing. All other members voted aye.**

Chairman O'Brien asked if there were any more questions for Ms. Golden. There were none. He then stated that they have heard all of these comments multiple times regarding this same stretch of road and the same pieces of properties. Again, it may be approved by the Zoning Commission and then the City Commission could deny it.

Mr. Owens recalled an issue with a connecting sewer, to which Ms. Golden replied that it is very shallow on Opal Avenue and the applicant may have to install an on-site canister lift station to get to it, but there would be sewer available. It was impossible for the larger tract to use it.

**After presentation, a motion was made by Aric Owens/Co-Chairman Gary Potter to approve the zoning change request from District "A-1" (Single Family Residential) and District "F" (Light Industrial) to District "D" (Neighborhood Service). All members present voted two in favor of the motion and one [O'Brien] opposed to the motion.**

**ITEM NO. 3 Other business. (Any conceptual development proposal requesting to come before the Planning Board)**

Chairman O'Brien asked if there was any other business to which there was none. **A motion was made by Co-Chairman Gary Potter/Aric Owens to adjourn. All members present voted aye.**

\_\_\_\_\_  
Kimberly Golden, Secretary

\_\_\_\_\_  
Date

Minutes approved by the Zoning Commission at its meeting on \_\_\_\_\_.