

MINUTES OF PLANNING COMMISSION MEETING
CITY OF KENNESAW
Council Chambers
October 4, 2023
6:30 PM

1. Call to Order / Roll Call

- Meeting called to order at 6:30 p.m. by Don Bergwall.
- Roll Call: Phillip Jackson, Todd Vande Zande, Trey Bodenhamer, and Carolyn Greenall
- Absent: Rebecca Patterson and Lacey Ragus
- Staff present: Darryl Simmons (Zoning Administrator) and Natalie Faustine (Community Development Administrative Assistant)
- Applicants present: Mark Jackson (Representing applicant Ali Jackson)

2. Announcements

- A. This public meeting is being conducted via the use of real-time telephonic technology, allowing the public simultaneous access to the public meeting. The meeting may be accessed using Facebook Live via the following link: [www.Facebook.com/City of Kennesaw/](https://www.facebook.com/CityofKennesaw/). However, comments made on Facebook Live will not be visible by City staff. If you would like to provide public comment on a specific agenda item, you can email kennesawcouncil@kennesaw-ga.gov no later than 6:00 p.m. the night of the regular meeting. Your comment will be read aloud or grouped into categories for the record. All interested parties may attend the meeting in person with limited seating available at the City Hall Council Chambers and the Ben Robertson Community Center, if needed. Please note that the Planning Commission serves as an advisory board that makes recommendations to the Mayor and Council unless otherwise noted.
- B. Pending zoning applications may be viewed on an interactive map via the Planning & Zoning webpage or using the following link: <https://arcg.is/1q1ubX0>.
- C. New business items on this agenda will be heard by the Mayor and Council on October 16th, 2023.

3. Approval of the Meeting Minutes

- A. Meeting minutes from September 6th, 2023

- Motion to approve the September 9, 2022 Meeting Minutes by Commissioner Greenall.
- Second the motion by Commissioner Jackson.
- **Vote taken, motion approved 3-0. Endorsed by Chairman Bergwall, Commissioner Bodenhamer abstains.**

4. New Business

A. Consideration to approve a Land Use Permit application for the property located at 2800 Dominion Ln submitted by applicant Ali Jackson. Case #LU2023-02

- Chairman Bergwall introduces the first new business item.
- Mr. Darryl Simmons comes to the podium and states “This land use application submitted by Ali Jackson for the residential occupancy for a home-based business that is primarily for the creation and baking of cookies using the kitchen that’s located within the residential unit at the subject location. The existing building square footage is 1,740 square feet as per our ordinance is required to have for a land use permit. The different examples of the baked cookies that would be created at the location of the applicant can be seen in the staff analysis, provided by the applicant. The applicant also submitted photos showing the area that will be used, which is the kitchen in the townhouse unit, as well as the regular kitchen noncommercial grade equipment used to create these cookies. They also submitted the floor plan or a schematic showing the location of the kitchen and the area where the preparation would be conducted. You should have two documents in your packet, one is a letter from the Dominion of Kennesaw HOA board as well as a detailed e-mail which spells out the board directors approving the baking goods and cookies at 2800 Dominion Lane. The location again is an established townhome community located off of Paulding, which connects Jiles Road and N Main St. Dominion Lane is the main drive through the development.”
- Mr. Simmons proceeds with staff recommendation “we hereby recommend approval of the land use application for a period of 24 months with the following three conditions that shall be stated for the record. 1. The land use permit is limited to exclusive for and only valid for the current applicant and the life of this particular business in use, and it is not transferable. Any changes would require additional review and approval by the City of Kennesaw. 2. There shall be no clients, customers or employees at this location, nor shall there be any evidence of a home based business visible from the public right-of-way. 3. The land use permit is valid for 24 months after the date of approval. Those are the three conditions by planning and zoning staff. We recommend approval, and if there's any questions or staff will be happy to answer them during this proceeding.”
- Chairman Bergwall invites the applicant to the podium.
- Mr. Mark Jackson (representative of applicant Ali Jackson) states that the only

business that would occur in the property of interest would be part-time decorating the cookies, as they are baked elsewhere. He states their advertising is limited so the customer base is small. All of the cookies are delivered, so there will be no traffic or obvious evidence that was decorating and selling cookies.

- Chairman Bergwall opens the floor for public comment.
- Mr. Emilio Gonzalez (2801 Dominion Ln) goes to the podium and explains that he is against changing the classification of the neighborhood because of his concerns regarding limited parking and the future of the neighborhood.
- Chairman Bergwall asks him to clarify his main concerns.
- Mr. Gonzalez claims he is concerned about the neighborhood becoming more commercial.
- Chairman Bergwall acknowledges his concerns and asks if anyone else has comments.
- Dr. Barry Leath (2808 Dominion Ln) comes to the podium and states "Good evening everyone, my name is Doctor Barry Leath and I'm a resident in the area. I think that the proposal presented really wasn't disseminated throughout the Community properly by the HOA. I just looked and saw where they went ahead and approved it, but there was never a meeting conducted by or invitation to a meeting prior to this being presented to the Commissioners, so I feel blindsided by the fact that, OK, the HOA is conducting business and making decisions, but no one in the Community was properly informed of their approval of this action. Truly, I have nothing against my neighbor. She's wonderful. It absolutely has nothing to do with her. It's the protocol that wasn't followed, or the protocol that you would expect from an HOA. Whenever we have other situations in the Community, we go to the HOA and they and they govern, and I mean strongly govern how we conduct our business in there, like to eliminate parking for the residents. They go out and paint red areas where you cannot even park in front of your own home. To say that this is treated so cavalier and just with open arms is really a huge conflict, and I would ask that the commission table the item until the HOA comes back and informs us and allows us to speak on it, as opposed to just going ahead and approving it without consulting the community."
- Chairman Bergwall asks if it was the management association or the board of directors of the HOA that provided the approval and Dr. Leath claims that he believes it was the property management company, but the property management is responsible for communicating with the president of the board of directors of the HOA.
- Chairman Bergwall explains "Generally with an HOA, there are covenants, bylaws, and any other design standards, or rules and regulations that are the governing documents for the HOA. As long as the board has felt that they are in compliance with those, then they can make the approval. It doesn't require a vote of the entire community. Generally only things like a change to the bylaws or covenants would require the whole community to vote, and those require a 2/3 majority. If the management company made the approval without consulting the HOA, then either they were delegated to or based their review on the covenants and bylaws. That I guess maybe is an unknown at this point."
- Chairman Bergwall acknowledges Dr. Leath's concerns and asks if there are any

more comments.

- Renee Ellison (2806 Dominion Ln) comes to the podium and explains that she objects the land use permit because she is concerned that the lot will be considered commercial, which may increase the taxes in the community. She also notes that other people are cooking commercially in the neighborhood and it is a fire hazard.
- Chairman Bergwall responds that would be a separate issue of concern and should be addressed.
- Ms. Ellison goes on to explain that she believes if we give this house the permit, the other houses will too and it will be a continuous effect.
- Chairman Bergwall clarifies "For right now, let's say that every application that is made is an individual consideration for the request made by that individual for the particular type of activity that they're going to do. Now, if this individual was saying I'm going to be roasting chickens out in the driveway, which could be considered nuisance to the community because of smoke and smell and all that. Sort of thing, you know. This is confined to the kitchen area. And it even sounds like they're not even baking the cookies there. They're just decorating the cookies there."
- Ms. Ellison asks if her taxes will increase since there will be commercial activity.
- Chairman Bergwall responds they will not, because this is a land use permit in a multifamily townhouse area.
- Mr. Simmons takes the podium to further answer the questions raised. He explains that the property in question is residentially zoned, and the land use permit is only for a limited period of time for a specific activity that has to be approved by Mayor and Council. He noted some of the other concerns the citizens voiced, and explained that those will have to be handled individually. He restates the terms of this land use permit and adds that if any conditions are violated the city has the right to void the business license.
- Commissioner Bodenhamer clarifies that this is a land use permit, not an application for rezoning.
- Chairman Bergwall adds that comments regarding traffic and parking are covered in the stipulations that go with the permit.
- Mr. Simmons advises that the issues with the internal protocol for the neighborhood should be addressed internally.
- Chairman Bergwall responds that approval by the HOA board or Management Company is outside our jurisdiction. All comments by citizens were addressed by the stipulations.
- Chairman Bergwall opens the floor for comment.
- Mr. Gonzalez comes to the podium and asks that if there is no stipulation in the bylaws of Dominion in terms of trying to get a permit as a business and the HOA approved it, is it right for the Commission to approve something that's not in the community bylaws. He goes on to claim that the citizens of the community should have the opportunity to examine and discuss the case before the commission makes a decision.
- Chairman Bergwall reiterates that is an internal issue.

- Mr. Gonzalez asks if this permit will be approved on October 16th at the Mayor and Council meeting.
- Chairman Bergwall advises “We serve as a body that makes recommendations to the mayor and the City Council. You'll have your opportunity to go to the City Council meeting and register your same concerns with the mayor and City Council. They could agree or they might disagree with whatever recommendation that we would make. I have probably read covenants and bylaws from over 100 communities in the experience that I've had here in Georgia and in Ohio on planning commissions and I have not seen one that says that you can't work from home. Most say that you can't work from home if it is noticeable to the community as far as having employees come to your house, having large amounts of material coming in and out of your house, or having commercial vehicles that you can't get in your garage that are left in the driveway. All of those types of things are covered, but for somebody to just work out of their house and that be transparent to the community, I've never seen covenants or bylaws that restrict that.”
- Mr. Gonzalez and Chairman Bergwall discuss the Commission's obligation on the matter and the responsibilities and interests of the HOA.
- Commissioner Bergwall asks if there are any other comments.
- Mr. Jackson comes back to the podium to claim his daughter, the applicant, is just trying to do the right thing and restates her purpose. He ensures the commission that the business is transparent from the outside of the home and it will not generate traffic.
- Sheri Kelly Leath (2802 Dominion Ln) comes to the podium and requests more transparency in the communication from the city regarding the stipulations and conditions. She states that she felt the only way to get additional information was to attend the Commission meeting.
- Mr. Simmons responds that everything that was submitted to the City is available on our website, and recommends that the citizens present have a community meeting with their HOA and the management company. He reiterates that the applicant did her due diligence and followed the City's public notification process.
- Chairman Bergwall agrees that if there is something in the community management's bylaws that is different than the City's covenants, it should be brought to the Mayor and Council at the October 16th meeting.
- Chairman Bergwall opens the floor for comments by commissioners.
- Commissioner Jackson comments that Mr. Simmons did a great job with the stipulations, and points out the stipulation where the business cannot be noticeable from the street.
- Motion to approve the land use permit application by Commissioner Vande Zande with the following:
 - All staff conditions as outlined within the staff report.
- Second the motion by Commissioner Bodenhamer.
- Vote taken, motion unanimously approved 4-0. Motion carried.

B. Approval of an ORDINANCE to amend the Unified Development Code, Appendix A, Chapters 4 and 5. Case #MISC2023-08

- Chairman Bergwall introduces the next agenda item.
- Mr. Simmons informs the Commission that the intent of this code amendment is to add clarification and more definition and depth to the home occupation ordinance.
- Mr. Simmons gives further detail on the item, explaining “To start off, there are two basic types. There's type A and Type B home occupation permits. Type A is only referred to as a limited home occupation, which is very limited to administrative office functions such as using your computer, filing, making calls, sending out correspondence, what you're doing at your home office. Type B is similar to the process of what we went through tonight, which is anything that is beyond a regular home office administration process, whether it's producing or putting together a product or creating something that's being consumed or will be sold to the general public. What we found is through review of our codes that post COVID a lot of folks decided that they want to work from home and we looked at our codes and we did not specifically define what we call a virtual office. A virtual office is a home office where you're using a computer and related accessories for business use.”
- Mr. Simmons outlines the notable changes to the general provisions and prohibited uses for all home occupation permits, including:
 1. Incorporating standards to not allow employees, customers, or clients at the property and to limit the delivery of goods and services that is beyond what is normally done in a residential area.
 2. Clarifying the responsibilities of the Planning and Zoning department, the Business License Department and Code Enforcement
 3. Address potential nuisances.
 4. Clarify that only people living in the dwelling can be employed in such occupation, and that all such use must be conducted within the dwelling.
- Mr. Simmons continues to explain the changes to section D, specific criteria for type A home occupations,
 1. More details on the allowance of delivery personnel for business use.
 2. Only one type A land use permit is allowed per dwelling in order to prohibit multiple businesses in one location.
- Mr. Simmons goes on to explain the changes to section E, specific criteria for type B home occupations,
 1. Adding the public notification process that is used for rezoning and variances from Chapter 10 of the UDC
 2. Add more details on how business should be conducted in a residential area
 3. A 24 month time period was instated that requires re-application, re-advertisement, and another public hearing of the case.
- Mr. Simmons points out the checks and balances in this process in order to protect the integrity of the neighborhood. The standards for decisions were

added to the ordinance to ensure that the safety, health, welfare, and concerns of the surrounding neighborhood are considered in the decision making process. These standards include

1. parking and traffic considerations
 2. number of nonrelated employees
 3. Number of commercial and business deliveries
 4. The city's general presumption that residential neighborhoods should not allow non-compatible business uses, compatibility of the business use to the neighborhood
 5. Hours of operation
 6. Existing business uses in the vicinity
 7. Effect on property values of surrounding property, circumstances surrounding neighborhood complaints
 8. Intensity of the proposed business use
 9. Location of use within the neighborhood.
- Mr. Simmons clarifies that these standards do not limit the additional questions that the Planning Commission or Mayor and Council may raise through the proceeding
 - Mr. Simmons explains item H, which states that in order to address the matter of type A land use applications submitted from multifamily apartment complexes, the city staff sent letters to all of the property management companies in the city stating our intentions with this ordinance amendment. It is clearly stated that if an HOA or a property management company are against this type of use, either through their rental agreement or their conditions, that the city would not override that in order to preserve the property rights of the management company. Therefore, if we do not have a written agreement from the apartment complex we are not going to approve a home-based business.
 - Mr. Simmons states that the ordinance amendment has been reviewed by the city attorney and continues to recommend approval and states he is happy to answer any questions.
 - Chairman Bergwall responds asking "On page two, under item D1, it says no clients, nonresident employees, customers, or delivery personnel are allowed on the premises. And how is it that you're going to be able to distinguish delivery personnel as relative to the business versus relative to the personal needs of the occupant of the residence?" He also points out item E, which states no deliveries of supplies for the use of the home occupation or pickups of the items produced. He acknowledges the importance of pickups not being allowed, but again he points out that it is difficult for the city to determine what deliveries are for personal use and which are for business.
 - Mr. Simmons responds that what we would determine as a gauge is not necessarily what is inside the packages, but rather the intensity and the capacity or amount of deliveries and what we feel is excess to a residential home.
 - Chairman Bergwall and Mr. Simmons discuss how the code could be more explicit, but the business license manager and their staff as well as zoning code enforcement do periodic inspections of every business, so it will not go unchecked.

- Chairman Bergwall states “it seems like that needs a little bit of rewording to be enforceable.” And continues that section E item 6 states that customers may only visit the site between the hours of 8 am and 8 pm, but this contradicts some previous ordinance items.
- Mr. Simmons clarifies that section refers to home occupation uses for people who require clients to come to their property by appointment such as counselors or tutors. Chairman Bergwall requests the code to be clearer on that matter. Mr. Simmons responds that they tried to make the code more generalized so it could apply to everyone, but he will look into the issue further with the city attorney.
- Mr. Simmons and Chairman Bergwall converse about the difference between type A and type B home occupation for customer visitation.
- Chairman Bergwall opens the floor for public comment.
- Mary Whitlock (2927 Larry St) asks about the limitations of equipment storage under this ordinance.
- Mr. Simmons answers that if it is a type A home occupation it is recommended that the business owner keeps storage off-site. In the case of type B home occupations, questions regarding the appropriateness and safety of equipment storage at the home would be addressed in the public hearings on the case.
- Commissioner Jackson asked Mr. Simmons about how this will be applied to people who are working from home for an existing company, and Mr. Simmons responds that the home occupation permit is only necessary for people who are operating an independent business from their home.
- Commissioner Bodenhamer reiterates the intent of the amendment.
- Motion to approve the ordinance by Commisioner Bodenhamer with the following:
 - Understanding of potential changes to items E2 and E6.
- Second the motion by Commissioner Greenall.
- Vote taken, motion unanimously approved 4-0. Motion carried.

5. Staff Comment

6. Adjourn

- Adjourned at 7:43 p.m. by Chairman Bergwall