

BOARD OF ZONING ADJUSTMENT MINUTES
MEETING OF OCTOBER 3, 2005, 2:00 P.M.
MOBILE GOVERNMENT PLAZA, MULTI-PURPOSE ROOM

MEMBERS PRESENT

Stephen J. Davitt, Jr., Vice-Chairman
H. Lamar Lee
William Guess
Martha Collier
Vernon Coleman

MEMBERS ABSENT

Reid Cummings, Chairman
Sanford Davis

STAFF PRESENT

Margaret Pappas, Deputy Director of
Permitting and Development
Mae Sciple, Secretary II

OTHERS PRESENT

David Roberts, Traffic Engineering
David Daughenbaugh, Urban Forestry
John Lawler, Assistant City Attorney

Mr. Davitt noted the number of members present constituted a quorum and called the meeting to order.

The notation *motion carried unanimously* indicates a consensus, with the Chairman voting.

APPROVAL OF MINUTES:

A motion was made by Mr. Coleman and seconded by Mr. Guess to approve the minutes of the meeting of August 1, 2005, as submitted.

The motion carried unanimously.

PUBLIC HEARINGS:

#5323

(Case #ZON2005-01778)

Conlon & Deupree, LLC

351 George Street

(Southeast corner of George Street and Savannah Street)

Use, Parking Ratio and Parking Surface Variances to reopen previous variances to allow the expansion of 553 square feet to an existing 4,100square feet restaurant in a R-1, Single-Family Residential District with 29 aggregate parking spaces; the Zoning Ordinance requires a minimum of B-2, Neighborhood Business District with 47 on-site parking spaces, and that parking be asphalt, concrete or an approved alternative paving surface.

Kristopher Conlon, applicant, was present in this matter. Mr. Conlon referred to the staff report containing a recommendation to the Board, some of the pertinent points of which he said were incorrect. He noted that the total interior space currently existing for both public and private

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uses was 2856 square feet, not 4100 square feet stated in the prior application that was approved by the Board in 1998. Mr. Conlon said they were a new entity, having been in business since December 8, 2003, and came in under an existing variance. He said he had researched the prior variance and contended a good bit of the material on that variance was incorrect. According to the Zoning Ordinance, they need to provide one parking space per 100 square feet of area. That does not take into account empty spaces, i.e. 6-inch walls on a building that was some 4000 square feet in its total. The square footage to be added was 533 square feet.

Mr. Conlon said they were not contesting this. The existing 4100 square foot variance was an error in that it was a gross measurement, i.e. the exterior dimension times exterior dimension and not a true indication of the interior square footage. If measured individually the total square footage of the rooms was 2856 square feet. Mr. Conlon noted that they currently have 29 parking spaces, not 27 spaces as dictated by the original site plan. They were requesting that they be allowed to use the street parking for the difference in what they have and what was dictated by code. Mr. Conlon pointed out that the documentation provided by the staff indicating that they have 4100 square feet of existing variance and were adding 533 square feet and would have a need for 47 spaces was in error. They feel the disparity between needed parking for the current variance and what they have was actually six spaces. This was based on complete usable square footage of the building, multiplied by the current code requirements. According to their calculation, at one space per 100 square feet, they needed 34 parking spaces. They were asking for five more than they currently had, which was less than the erroneous amount which this Board or a prior Board had already approved.

According to the paperwork provided at the 1998 meeting, Mr. Conlon said they were negative 12 spaces. Upon re-figuring the actual square footage of everything in the building that is used publicly and privately, not including duct work and electrical, they were only lacking five spaces. Mr. Conlon said if the Board, therefore, approved a negative 12 spaces, and they were actually only negative five spaces by adding 533 more square feet of restaurant, he did not see how they could be denied.

He further pointed out that in paragraph 4 of the staff report the use of the upstairs was denied based upon concerns about parking. He felt these concerns were unwarranted and were now moot. In regard to the last paragraph of the staff report, Mr. Conlon said at no time in the application process were they asked to illustrate that there was a hardship associated with this property. He said they were asked to provide specific documentation, which they did. He said it was their desire to add 25 seats for possible private dining in the restaurant, so they could attempt to have small, private parties where they could increase their revenue and also increase the tax base generated from revenue, because a lot of these parties book elsewhere, i.e. the causeway, which is in Spanish Fort.

Mr. Conlon further stated that to his knowledge there had been no traffic complaints, noise or any other complaints to do with the restaurant made to himself or his partner. Lastly, regarding the statement that the applicant failed to illustrate that there was a hardship associated with the property, and it was simply the applicant's desire to expand the variance, Mr. Conlon said yes, they would like to expand the existing variance. He said it was trite to him for someone in Zoning to make a comment based solely on incorrect evidence they had without even having been in the restaurant and asking him specific questions about what they were actually going to

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do with the upstairs and how it was going to effect the restaurant. Mr. Conlon felt the recommendation sent to the Board was not true in its entirety.

Mr. Guess asked about the current occupancy rating of the building.

Mr. Conlon said the current occupancy rating was 125.

Ms. Collier asked if the applicant had received any complaints from residents of the houses surrounding them about people parking on the street, blocking driveways, etc.

Mr. Conlon said they had received no complaints, nor had the City, to his knowledge. He named some residents in the immediate vicinity of the restaurant who frequented the restaurant and had not complained. He said a tremendous number of their patrons of all ages resided in Oakleigh and walked or rode their bicycles to the restaurant. He said they had a vested interest not only in Oakleigh, but in the property, and that their business succeed. Mr. Conlon said they did want to increase the size of the business, but there were so many things they could do to improve the restaurant and the amount of business it does without necessarily increasing the size of the automobile traffic.

For the record, Mr. Davitt stated that recommendations made by the staff were simply recommendations based on their understanding and interpretation of the Zoning Ordinance. Assuming that the net rentable space in the building was 3400 square feet and there was one parking space per 100 square feet, that would be 34 spaces. With 29 spaces currently provided in the back yard, Mr. Davitt asked if the other five spaces would be on the street.

Mr. Conlon said that was correct.

Mr. Davitt asked if Traffic Engineering had any comments about visibility problems.

Mr. Roberts said they would have no problem as long as parking was 30 feet back from the intersection of George Street to allow for proper line-of-sight. He was not aware of any complaints as far as the parking.

Mr. Conlon commented that they had parking both on George and Savannah, both of which have a 50' right-of-way. He said he would not have a problem with some sort of signage restricting parking from a certain point forward, or whatever the City deemed necessary.

Mr. Coleman asked if the street was marked off for parking.

Mr. Roberts said it was not, but the City could work with the applicant to designate parking spaces.

Mr. Davitt asked if there was anyone to speak in opposition.

Inez C. Green said she was a resident of New Jersey Street, but her daughter lived at 405 George Street and was concerned as to how this would affect her. Her residence was a block and a half further south of the restaurant.

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Ms. Pappas stated that the actual building itself would remain the same, and the existing parking lot would remain the same. The only possible impact on the residents nearby would be that there may be additional parking along the street.

There being no one else to speak in this matter, the Board went into discussion session. Mr. Davitt asked if there were any comments.

Ms. Collier commented that she always thought this to be smart growth because the neighborhood really does use that restaurant.

Mr. Davitt said he could go along with 3400 square feet if they limited it to five parking spaces. Several other members said they did not see any problem with it.

Mr. Roberts asked Mr. Conlon how the parking spaces were designated.

Mr. Conlon said they were concrete bumpers that had been tied down with rebar. The surface was chipped marble aggregate, which the Historic Development Commission recommended in the historic district. When the parking lot was put in they put the concrete boundaries around the aprons both coming in and exiting, and put in drainage so there would be no problem with flooding.

After discussion a motion was made by Mr. Lee and seconded by Ms. Collier to approve the Use, Parking Ratio and Parking Surface Variances to reopen previous variances to allow the expansion of 553 square feet to an existing 4,100 square foot restaurant in a R-1, Single-Family Residential District with 29 aggregate parking spaces at the above referenced location.

In further discussion Mr. Roberts said Traffic Engineering would like to see something on their on-street parking plan.

Mr. Lee amended his motion and Ms. Collier her second to condition the approval upon coordination with Traffic Engineering to delineate on-street parking.

The motion carried unanimously.

#5324

(Case #ZON2005-01804)

Kellie Faulk & Lisa Wrighter (M. D. Price, Owner)

5920 Grelot Road, Suite C-2

(North side of Grelot Road, 445' ± East of Sutton Court)

Use Variance to allow a beauty shop in a B-1, Buffer Business district; the Zoning Ordinance requires a minimum of B-2, Neighborhood Business District.

Mr. Davitt stated that this application had been withdrawn at the request of the applicant.

#5325

(Case #ZON2005-01817)

Thomas Thames (Georgia T. Beckham, Owner)

360 Rapier Avenue

(Northwest corner of Rapier Avenue and Texas Street)

Use, Parking Ratio, Landscaping and Tree Planting Variances to allow an existing 3,255 square foot building as a furniture, antique and collectable shop in a R-1, Single-Family Residential district with no on-site parking and no landscaping and trees; the Zoning Ordinance requires a minimum B-2, Neighborhood Business district for a furniture store, eleven on-site parking spaces, that 12% of the site be landscaped with 60% landscaping within the front of the building line, and the planting of five overstory trees and two understory trees.

Thomas Thames, applicant, stated his desire to improve the existing building for a furniture, antiques and collectibles store. He felt it would be an improvement to the neighborhood. Although there were only six parallel parking spaces along the street, he felt that would be adequate for the proposed operation. Regarding the landscaping requirements, he noted that the building itself took up most of the lot and there was really no room for landscaping. Mr. Thames said the building was originally a grocery store and had a lot more customers than a furniture store would have and there were no parking problems back then. Mr. Thames felt an attractive building housing a furniture store would be a deterrent to activities that were going on there now, and would be a betterment to the community.

Mr. Coleman asked the staff if, the way the building was now configured, there was any possibility of any commercial venture occupying that space based upon the existing rules of the Zoning Ordinance.

Mr. Pappas said no, as it had been vacant for over two years and had lost its non-conforming status.

Mr. Thames commented that he felt consideration should be given to the fact that this was a commercial venture from the time it was built up until a few years ago when it went vacant. He did not feel it was in the best interest of the neighborhood to have the building vacant and unsightly. Mr. Thames said that Ms. Beckham, owner of the building, was present and would like to address the Board.

Georgia Beckham, owner of the subject building, said she lived out of town and would come to town on a Saturday and clean the property, but by Wednesday or Thursday someone had brought a washing machine or a piece of furniture or some other item and discarded it on the property. She said the basic problem was that the property needed to be inhabited. Ms. Beckham said over the years a number of people had approached her about buying the property, but they wanted to do things that would not be allowed once they approached the Zoning Board. Mr. Thames was the first person who had approached her recently wanting to do something that would not draw a large crowd or cause complaints from the residents in the area. She said naturally she would like to sell the property to someone who was going to be there to take care of the property and see that junk was not deposited there. It was her opinion that a furniture and antique store would be something that would be an improvement instead of having a vacant building. Ms. Beckham said she would appreciate the Board approving this request.

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Mr. Thames further stated that the roof of the building sustained substantial damage from the recent hurricane, and if the building was not attended to almost immediately it was going to be beyond repair and would deteriorate so much that it would be a terrible fixture for the community.

Ms. Collier asked if there was a second floor or an attic space.

Ms. Beckham said no, it was just a one-story building.

Ms. Collier further asked if Ms. Beckham envisioned anyone living there.

Ms. Beckham said she had three or four contractors look at the building to see if residential living would be feasible there. She was told that two apartments could be put in, but then she was told it had to be single-family dwellings, which she could not envision.

Mr. Thames added that the construction of the building was cement block with a cement slab floor and a flat roof. He did not think it would be practical at all to have any kind of residential dwelling made there.

In discussion session Mr. Davitt said that obviously there was a hardship with this property in terms of the physical condition, but there would be problems with parking.

Mr. Coleman agreed that parking was a real concern because Texas Street was really narrow there. Any on-site parking would have to be on Rapier Street since it was wide enough to permit parking.

Mr. Roberts said that with parking on the street, and this being a residential area, they would probably start getting complaints about people parking in front of residences.

Mr. Coleman further commented that parking was already a problem because of Crawford Park, but he did not think the proposed use would have any immediate impact on the area.

Mr. Davitt stated that the Board had to differentiate between a physical hardship, as pertains to the character of the real estate, versus the economics. The subject property was located in a R-1 district, and the proposed use was B-2.

Mr. Thames said he was proposing that the best interest of the community be a part of the consideration.

Ms. Collier asked what the possibilities were of this space being used by someone who might want to purchase that lot, tear the building down and build a home.

Ms. Beckham asked about a comment made about tearing the building down. She said that would really present a financial hardship.

Mr. Davitt said the Board was just saying that that was an option.

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Noting that this structure was located in a R-1 district when it should be in a B-2 district, Mr. Lee asked if the hardship could still apply to this particular building.

Mr. Lawler stated that although the use the applicant was proposing would be something suitable for a B-2 district, the specific request was that this be allowed for a small furniture store and antique shop in a R-1 district. If the Board decided to grant the variance, it would be granted for that limited purpose. Other B-2 uses, many of which would require a lot more parking, would not be allowed. Mr. Lawler said the Board should consider this in terms of the specific request that was made and approval should be just for that use only. The Board would not be rezoning the property. Consideration should be given as to whether allowing the requested use might burden the community somewhat, but in so doing would it be worthwhile to put the building back into use.

Regarding the question of parking, Mr. Thames said there was a vacant lot across the street that could be used for parking, and the Board may want to specify that he look into buying that property if that was a technicality that could cause his application to be denied. He did not know who owned the property, but assumed it was one of the homeowners next door to it.

Mr. Davitt asked Ms. Pappas to comment.

Ms. Pappas said that requiring the applicant to buy additional property for parking would not be feasible. The Board would have to act on the current application at this time. She did, however, see that the Board was struggling with more than just the use, but also with the question of parking. If the Board wanted to allow the applicant to lay it over to pursue parking in the area, that was within the Boards' purview. The Board, however, would need to either approve the application today, deny the application today, or hold it over for the applicant to pursue some possible off-site parking in the area.

Mr. Lee commented that he personally felt it was a hardship on the property for the furniture store and would be willing to consider a variance specifically for that.

Ms. Collier said she personally felt it would put at jeopardy all those other people who lived in single-family dwellings in the neighborhood.

Mr. Thames said if the Board would like to postpone this he would be glad to go through the immediate neighborhood and ask the residents if they were opposed.

Mr. Davitt said a sign should have been put up on the property prior to the meeting and the residents should have been notified, so they have had ample opportunity to reply.

On the question of traffic, Mr. Coleman further stated that traffic in the area was minimal. This was strictly a residential area and the only thing that comes through there that was commercial was the Texas Street bus. Other traffic was very, very limited on Texas Street. He did not think parking on the street would be a deterrent because the curb was cut in this area.

Mr. Guess asked Mr. Coleman if there was a lot of traffic in the area years ago when the grocery store occupied that site. Mr. Coleman said there was not, because then most people walked.

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Ms. Collier contended that more people were likely to walk to a grocery store than they would be to an antique store.

Mr. Coleman disagreed. With the character of the neighborhood, the way it was configured with older houses from Savannah Street over to Ann Street, he felt more people would walk to an antique store rather than drive. He did not see traffic coming from way off to come to this area. Mr. Coleman further stated that he felt this would be a definite improvement to the neighborhood, because if the property was not occupied there would be drugs and everything else going on there.

Ms. Collier said if they were going to be futuristic though, they could also say that someone might buy this property and do something else with it.

Mr. Coleman contended no one would want to buy the property if it was deteriorating.

After discussion a motion was made by Mr. Lee and seconded by Mr. Guess to approve this request for Use, Parking Ratio, Landscaping and Tree Planting Variances to allow an existing 3,255 square foot building as a furniture, antique and collectable shop in a R-1, Single-Family Residential district with no on-site parking and no landscaping and trees at the above referenced location.

In further discussion Mr. Daughenbaugh noted that Urban Forestry would normally ask for trees for landscaping in accordance with the Zoning Ordinance, however, it was quite apparent that there was no place to put trees on this site. Therefore, trees and landscaping would not be required.

There being no further discussion, Mr. Davitt called the question.

The vote was 4 to 1 in favor of the motion.

OTHER BUSINESS:

Mr. Davitt stated that Ms. Wanda Cochran would not be with the Board any longer. She was now in private practice.

Ms. Pappas introduced John Lawler, Assistant City Attorney, to the newer members of the Board. Mr. Lawler will serve as the Board's new legal counsel. He previously represented the Board for quite a few years, and has also represented the Planning Commission for many years.

There being no further business, the meeting was adjourned.

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APPROVED: November 7, 2005

Stephen J. Davitt, Jr., Vice-Chairman

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