

BOARD OF ZONING ADJUSTMENT MINUTES
MEETING OF JUNE 4, 2007 - 2:00 P.M.
AUDITORIUM - MOBILE GOVERNMENT PLAZA

MEMBERS PRESENT

Reid Cummings, Chairman
Vernon Coleman
Martha Collier *
William Guess
J. Tyler Turner

MEMBERS ABSENT

Stephen J. Davitt, Jr.

*supernumerary voting in Mr. Davitt's absence.

STAFF PRESENT

Frank Palombo, Planner II
Caldwell Whistler, Planner I
Mae Sciple, Secretary II

OTHERS PRESENT

John Lawler, Assistant City Attorney
David Roberts, Traffic Engineer

Chairman Cummings 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.

PUBLIC HEARINGS:

#5418

(Case #ZON2007-01128)

Mikell Taylor

2469 Bragdon Avenue

Northwest corner of Burden Lane and Mobile Street, extending West to the Illinois Central Gulf Railroad right-of-way and North to Bragdon Avenue.

Parking Surface Variance request to allow aggregate parking and access in an I-1, Light Industry District; the Zoning Ordinance requires all parking to be asphalt, concrete, or an approved alternative surface in an I-1, Light Industry District.

Doug Anderson of Bowron, Latta and Wasden Law Firm was present, representing Mr. Taylor, who was also present, and Mr. Taylor's company, Mobile Rosin regarding the above-referenced variance request.

Mr. Anderson advised the Board members regarding the physical address and location of the above-referenced site. He also stated that the company had been in that location for over 80 year as an industrial site. He went on to remind the Board that in May of 2007, they had to go through the zoning process as the company plans to add a little office space. This would not mean the addition of more employees, simply the addition of a new building. It is this addition that has created the requirement of going through the zoning process, as there was an issue with split

zoning as Bragdon Street was zoned R1. This has been done successfully, but the new zoning requires a paved parking lot. Mr. Anderson stated that it was their desire to keep the lot in the same condition it has been in for the past 80 year, which is that of a shell/limestone type parking lot. At this time, Mr. Anderson stated that he had provided the Board members with a packet of information. He stated that the first few pages could be ignored as they dealt with the part of the staff report that discussed the Board's jurisdiction over the matter, in as much as if the Board ruled in favor of the variance, it would require that the applicant return to the Planning Commission and the City Council for final approval. Mr. Anderson also stated that Mr. Palombo had confirmed the City's willingness to go ahead with this process. Mr. Anderson then directed the members' attentions to pictures located in the packet. The first was an aerial photograph with showed the entire site in question, including the locations of Mobile Street, Bragdon Avenue, and Burden Lane. The photograph showed the entire block which is also their entire site. Mr. Anderson also drew the Board's attention to a photograph that showed the referenced parking lot in its current condition and stated the owners would like to keep it in that condition. He went on to state that the only third parties who would be able to view this parking lot are those individuals living in the two residences across the street. Mr. Anderson expressed the opinion that, if allowed to be kept in its current condition, there would be no negative impact on the neighborhood. He stated that it is a typical industrial type site with a big piece of property with railroad tracks near it. He continued by advising the Board that one side of the property was also very wooded, which would, again, buffer visibility of the site. Mr. Anderson noted to the Board that the City road, Burden Lane which is adjacent to their property, was also of the same materials as the parking lot for Mobile Rosin. Mr. Anderson went on to express the concern of the owner over the issue of storm water run off as calculated by Engineering, if the property owner was required to pave said parking lot. Paving would require the creation of a retention pond, which would create the need to cut down trees on the property, thus removing some of the natural buffer between the plant and Mobile Street. He finished by stating the site was virtually the same as it had been over the past 80 years and that there would probably be no more than 12 to 15 cars in the lot at any give time.

Mr. Cummings asked if there were any questions by the Board. He then asked if all of the tree area shown in the photo and depicted on the overall site plan were owned by the applicant?

Mr. Anderson responded by stating that was correct. That the entire block from Mobile Street to the railroad tracks is owned by Mobile Rosin, except for a couple of residences on Bragdon Avenue, and possibly a church and a residence between the plant entrance and Mobile Street.

Mr. Cummings stated that Mr. Anderson was indeed correct in that the Board has been asked on many occasions to grant surface variances for industrial type uses. He then went on to comment on the conditions as imposed by the Planning Commission and City Council as related to the PUD.

Mr. Anderson responded that he had been talking with Mr. Palombo earlier in the day and had agreed at that time with there being a condition for approval would be to require the applicant to return to the Planning Commission with an amended PUD, and garner approval of same from that entity.

Mr. Cummings asked Mr. Palombo if what Mr. Anderson had stated was correct and was advised that it indeed was correct.

Mr. Cummings again stated that in recent years the Board did have a history of approving surface variances for industrial and heavier uses. He also said the area seemed to be a large, isolated piece of property bounded by trees towards Mobile Street. All of this information, combined with the applicant's willingness to amend the PUD, Mr. Cummings said, personally made him feel the Board should approve the variance, allowing the applicant to continue the process with the City of Mobile. He then asked for questions and/or comments from the Board.

Ms. Collier asked if the staff was agreeable that this was the process to be used.

Mr. Palombo said yes, that if the Board wished to approve it to do so on condition of its gaining Planning Commission approval.

Mr. Coleman moved to accept the recommendations of staff and approve the application.

Mr. Cummings re-stated the motion as approval subject to the applicant going back to the Planning Commission and obtaining approval for an amended Planned Unit Development.

Mr. Coleman stated that was indeed his motion.

Mr. Cummings asked if there was a second?

Mr. Davis seconded.

Mr. Cummings called for the vote, which carried unanimously.

Mr. Cummings then called for the next case.

#5419/5412

(Case #ZON2007-001335)

Helean I. Shatto

312 North Conception Street

East side of North Conception Street, 65'± South of Adams Street.

Rear and Side Yard Setback Variances to allow a 16.6' x 19.0' storage cottage setback 0.1' off the rear (East) property line and 0.25' off the side (South) property line in an R-B, Residential-Business District; the Zoning Ordinance requires a zero or 5'+ rear and side yard setback in an R-B, Residential-Business District.

Mr. Doug Anderson was present, this time representing Ms. Shatto. He reminded the Board that a couple of months before, Ms. Shatto had come before the Board for a Use, Setback, and Parking variance. At the time, she was operating a small wedding/reception type business at the location. Those requests were denied. She is no longer pursuing that business, however, due to the construction of the storage building, she wishes to pursue the Setback variance. Mr. Anderson went on to state that the building could indeed be removed and a metal storage building be put back in its place. The usage of that building would be the same, however, the current building is much more attractive. Mr. Anderson advised the Board that as Ms. Shatto is a stewardess and out of town a great deal, her boyfriend had started the construction on the building in question without securing the necessary permits. However, once contacted by the

City and advised of this, construction was stopped and she pursued getting a building permit. It was in getting this permit, Ms. Shatto found out about the “zero setback on one side and 5 foot on the other” requirement, however, the building had already been constructed and was not in compliance with those requirements. This is why she was present today requesting a variance with regard to it. Mr. Anderson then offered pictures of the home, which is a historic courtyard type home, the courtyard, and the base of the building in question. It was with this picture that Mr. Anderson remarked upon the actual location of the building with regards to the lot line. He stated that although their survey and application state they had .1 or .1 five feet from the south and east property line, the actual base of the building goes against the privacy fence which they believe to be on the property line. Because of this, Mr. Anderson was requesting a zero lot line type variance. Mr. Anderson went on to state that it would cost the applicant \$4500 to \$4800 to have this structure removed. Mr. Anderson said that the next door neighbor had no objections to the building in its current form and place. Mr. Anderson brought up other examples of out-buildings in the area ranging from metal buildings to similar type, nice out-building type structures, many located on the fence line, as well as commenting on the fact that within the historic areas, there are a lot of setback variances granted. That, indeed, such variances and zero lot line buildings are in character for historic neighborhoods. Mr. Anderson admitted that the hardship was self-imposed on Ms. Shatto as the building had been built by her representative without verifying the ordinance requirements but still asked that the variance be granted after the fact.

Mr. Cummings addressed the issue of Ms. Shatto coming to the Board approximately three months prior regarding her proposed business venture and that the Board had denied her requests based on there not being enough parking available in the area and the out-building being so close to the other large two-story structure next to it. Mr. Cummings recalled this issue was perceived as a fire safety issue.

Mr. Anderson addressed those concerns by saying there were 8 feet between the end of the rear of the house next door and the front of her out-building. He also re-stated that the building would not be occupied, it would simply be used as a tool shed and that Ms. Shatto has given up on the wedding business.

Mr. Guess asked about whether or not there were gutters and downspouts on the side of the out-building which faces the adjacent properties.

Ms. Shatto was asked about this and stated they had been installed in the rear of the building.

Mr. Guess then asked about their presences on the side closest to the neighboring home.

Ms. Shatto stated that there were none there. She also stated she was under the impression their presences would not qualify historically, so she had not had them installed.

Mr. Anderson also commented that there was approximately a foot difference between the roof line and the fence; that the roof stops 12 to 15 inches inside the property line, but if the code requires gutters on that side, they would be installed.

Mr. Cummings asked Mr. Palombo to refresh his memory with regards to the DeTonti Square ARB has said about this structure.

Mr. Palombo advised that the setbacks ought to be either zero footage or 5 feet. He advised the Board that the variance is asking for .25 feet, which is three inches.

Mr. Anderson said their contention is with the base.

Mr. Palombo advised that a 24 inch eave overhang is allowed per the zoning ordinance. He conceded that, from the photographs, it looks, conceivably, that from the edge of the building to the fence is 3 feet.

Mr. Anderson agreed with Mr. Palombo on this point, and said they would like to ask for a 3 feet variance.

Mr. Cummings asked Ms. Shatto directly if she was out of the wedding and reception business.

Ms. Shatto stated yes, that she had closed that business.

Mr. Cummings asked again for assurance that she had no plan whatsoever to pursue that business in this location if the variance was granted.

Ms. Shatto again answered no.

Mr. Cummings commented that there could be a serious problem if down the road all of a sudden somebody came by and a wedding reception business was there.

At that point, Mr. Anderson stated he had advised Ms. Shatto that he didn't do criminal defense law.

Mr. Cummings said the earlier variances had been denied based upon insufficient parking in the area for the proposed business and the concern of fire hazard regarding the out-building and people coming in and out of it. This variance, however, is to allow the structure to remain on its current site for use as a very pretty storage shed. Mr. Cummings then asked the Board's pleasure in this matter.

Mr. Coleman moved for approval.

Mr. Cummings stated there was a motion to approve the variance request and asked if there was a second.

Mr. Palombo asked Mr. Coleman if he would entertain adding a condition regarding gutters and downspouts.

Mr. Coleman stated he was open to the modification.

Mr. Cummings asked where the gutters and downspouts would be required.

Mr. Palombo stated they would need to go along the east side and rear.

Mr. Cummings expressed some concern regarding specifics, as no one would want a downspout going toward the backyard of the neighbor's house, creating a rut, and wondered if there was any way to steer the water towards the street?

Mr. Palombo stated they would come somewhere in the middle of her yard and that she could possibly use a French drain.

Mr. Cummings asked Mr. Coleman if he would amend his motion to include gutters and downspouts and on-site drainage so as to avert and divert rain water directly across the applicant's property to the storm system on Conception Street and that this drainage system would in no way flow across and adjacent properties.

Mr. Anderson stated he was fine with the amended motion.

Mr. Coleman agreed with the amended version of the original motion.

Mr. Cummings asked if there were a second.

Mr. Guess seconded the amended motion.

Mr. Anderson then asked if the applicant could verbally amend their application so the record stated that the actual variance given is a 3 foot variance on each side.

Mr. Palombo asked what the actual survey showed the footage to be.

Mr. Cummings advised that shows the foot of the building to be 2.1 feet from the property line.

Mr. Palombo stated he was okay with leaving it at that.

Mr. Cummings then called for the vote, which carried unanimously, after which the next case was called.

#5420

(Case #ZON2007-01342)

Ben Cummings

2325 Boykin Boulevard

South side of Boykin Boulevard, 200'± East of Alba Club Road.
Use Variance to allow a shelter for women and children in an R-1, Single-Family Residential District; the Zoning Ordinance requires a minimum R-3, Multi-Family Residential District for a shelter for women and children.

Ben Cummings, architect for the Salvation Army, stated he was in agreement with the staff recommendations and conditions. He then offered a little history on the property. He stated the property, located on Boykin Boulevard, had been owned by the Salvation Army since 1992, having been purchased at that time from the Mulherin Custodial Home, who he believed used it as a home for persons with mental retardation. The Salvation Army has been using it as a home for homeless women and children since 1992. The site currently has a number of uninhabitable buildings on it as a result of flooding from Hurricane Katrina. It has also been vacant since that

time. The Salvation Army is seeking a use variance to allow this home as the property is currently zoned R1. The proposed building will be from 10,000 square feet to 11,000 square feet and used as a home for homeless women and children.

Mr. Coleman asked if the structure would be built on piers.

Mr. B. Cummings stated yes, as it is in the flood plain the structure must be raised above the flood plain. He said the current thinking on the project is that of a single story building up on piers above the flood plain, and residential in appearance.

Mr. R Cummings said okay and asked if there were other persons there who wished to speak in favor or in opposition to this.

Jamie Praytor with the Salvation Army spoke saying they had been successfully working with women and children on this site in the past and were seen as good neighbors. Ms. Praytor stated that in actuality the need was for the variance to continue as it had been in place when the property was operated as the Mulherin Home. The variance was lost due to delays in construction. Ms. Praytor hoped that the variance will be approved as the new building will be a really be a beautiful structure and something that serve our women and children well.

Mr. R. Cummings thanked Ms. Praytor for her comments.

Major David Waite spoke on behalf of the project stating that it was very important and that after Katrina the City was able to get more HUD funding and they were invited to participate in a grant because the need in the community was so great for a shelter for women and children. The City already has a shelter for battered women, but this one would be for homeless women and children. It will be with this funding that this project will be built.

Mr. R. Cummings thanked the major and asked if there were any others who wished to speak either for or against the requested variance.

Mr. Art Maurin spoke in favor of the variance stating he lived exactly next door to the Old Mulherin Home. He said there had never been a problem since they had been there and that it served a great purpose. He did ask that they be requested to keep the fence in place.

Mr. R. Cummings thanked Mr. Maurin for his support of the variance. He then advised that one of the requirements, if approved, is the provision of a buffer where the portion of the site adjoins residential property, therefore it would need a fence. He also commented that based upon his personal knowledge of the Salvation Army that it would be done well, and once complete, maintain it well in the future. At that point, Mr. R. Cummings asked if there were further questions from the Board or he would entertain a motion.

Mr. Davis stated that in light that the next door neighbor is in support of this continuing and that they had no problems in the past and the need for this in the community and the willingness of them to keep the fence up because of the children being there, he would like the honor of offering a motion based upon the conditions of the staff.

Mr. R. Cummings said the honor was Mr. Davis' and accepted the motion, asking for a second.

Mr. Coleman seconded the motion.

Mr. R. Cummings called the vote, which passed unanimously.

OTHER BUSINESS:

There being no further business, the meeting was adjourned in regular fashion.

APPROVED: June 2, 2008

William Guess, Chairman

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