

BOARD OF ZONING ADJUSTMENT MINUTES
MEETING OF JUNE 5, 2006 - 2:00 P.M.
MOBILE GOVERNMENT PLAZA, MULTI-PURPOSE ROOM

MEMBERS PRESENT

Reid Cummings, Chairman
Stephen J. Davitt, Jr.
William Guess
Martha Collier
Vernon Coleman
Sanford Davis
J. Tyler Turner

MEMBERS ABSENT

STAFF PRESENT

Frank Palombo, Planner II
Caldwell Whistler, Planning Technician
Mae Sciple, Secretary II

OTHERS PRESENT

David Daughenbaugh, Urban Forestry
John Lawler, Assistant City Attorney

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.

APPROVAL OF MINUTES:

A motion was made, seconded and so ordered to approve the minutes of the meetings of March 6, 2006, April 3, 2006, and May 8, 2006, as submitted. The motion carried unanimously.

HOLDOVERS

#5352

(Case #ZON2006-00752)

Pete J. Vallas, A.I.A. (Mr. & Mrs. Christopher B. White, Owners)

159 Hillwood Road

(Southwest corner of Old Shell Road and Hillwood Road)

Fence Height Variance to allow the construction of an eight foot tall masonry wall setback a minimum of ten feet from the Old Shell Road (side street) and Hillwood Road (front) property lines; a 20-foot side yard setback is required along a side street (Old Shell Road), and a 25-foot front yard setback is required along Hillwood Road in an R-1, Single-Family Residential District.

Pete Vallas, architect, was present representing the applicants. Mr. Vallas stated that a variance to allow the construction of an eight-foot wall set back 10 feet from the property line at this location was granted last year prior to Hurricane Katrina. Due to the storm, their project was

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delayed and the variance expired. They were now requesting the same variance. Mr. Vallas pointed out that the wall would not be seen or affect anything along Old Shell Road because there was an existing 20-foot tall hedge on the property line.

Mr. Cummings stated that the staff had recommended approval of this variance subject to conditions, including: (1) the protection of the existing historic wall during and after construction; (2) removal or substantial trimming of the hedges along Old Shell Road at Hillwood Road within 30 days of final completion of the wall; (3) any new plantings outside the wall must be in compliance with the Zoning Ordinance as required by Traffic Engineering; (4) the existing driveway onto Old Shell Road be gated and used on a limited basis for service purposes; and, (5) the property remain as one lot of record and the three-lot subdivision not be finalized.

Mr. Vallas said the applicants were in agreement with the conditions as stated.

There being no one else to speak in favor of this application, Mr. Cummings asked if there was anyone present who wished to speak in opposition.

There was no one present to speak in opposition.

Mr. Cummings asked if anyone on the Board or the staff had any questions.

Mr. Daughenbaugh asked Mr. Vallas how they planned to construct the fence around the existing live oak tree adjacent to Old Shell Road.

Mr. Vallas said they would have a continuous concrete footing. The wall, however, would be over 10 feet away from the oak tree.

Mr. Daughenbaugh asked that in addition to the conditions noted by Mr. Cummings, that a condition be included stating that the wall should be constructed in accordance with Urban Forestry.

After discussion a motion was made by Mr. Coleman and seconded by Mr. Davis to approve this request for a Fence Height Variance to allow the construction of an eight-foot tall masonry wall setback a minimum of ten feet from the Old Shell Road (side street) and Hillwood Road (front) property lines at this location, subject to the following conditions:

- (1) protection of the existing historic wall during and after construction;
- (2) removal or substantial trimming of the hedges along Old Shell Road and Hillwood Road within 30 days following completion of the wall to correct the visibility issues stated by Traffic Engineering, and in compliance with Section IV.4. of the Zoning Ordinance;
- (3) any new plantings outside the wall be in compliance with Section IV.4. of the Zoning Ordinance as required by Traffic Engineering;
- (4) the existing driveway onto Old Shell Road be gated and used only on a limited basis for service purposes;
- (5) the property remain as one lot of record and the three-lot subdivision not be finalized; and

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- (6) provision that the construction of the brick wall be coordinated with Urban Forestry within the drip line of the existing Live Oak tree that is located adjacent to Old Shell Road.

The motion carried. (Ms. Collier voted against the motion.)

PUBLIC HEARINGS:

#5353

(Case #ZON2006-00968)

Brooke E. Beard

4360 The Cedars

(North side of The Cedars, 370'± East of McGregor Avenue)

Side Yard Setback Variance to allow a (13.25' x 36') addition to a residential structure within 5-feet of a side property line; an 8-foot side yard setback is required for residential structures on a lot 56-feet wide in a R-1, Single-Family Residential District.

Robby Montgomery with T.E. Montgomery Construction, 5594 River Landing Drive, was present on behalf of the applicant. Mr. Montgomery said the applicant was proposing a master bedroom addition to the existing structure on this property. The house was sitting within about three feet of the property line. A minimum setback of five feet was required. He said they could meet the five-foot setback, but if they were required to set back any further there was an oak tree in the way and they did not want to damage the root system. Mr. Montgomery noted that currently they had seven existing houses with a three-foot setback.

There being no one else to speak in favor of this application, Mr. Cummings asked if there was anyone present who wished to speak in opposition.

There was no one to speak in opposition.

Mr. Cummings noted that the staff had recommended approval subject to (1) the provision of gutters and downspouts on the East side of the addition; and (2) the addition be limited to pier foundation.

Mr. Montgomery said that would be no problem, because the existing house was on piers.

Mr. Cummings noted that according to the plat submitted they would be 3.3 feet off of the East property line. The addition would not necessarily be in line with that, but they would provide five feet as proposed.

After discussion a motion was made by Mr. Guess and seconded by Mr. Turner to approve a Side Yard Setback Variance to allow a (13.25' x 36') addition to a residential structure within 5-feet of a side property line at this location subject to the following conditions:

- (1) the provision of gutters and downspouts on the East side of the addition; and
- (2) the addition be limited to pier foundation.

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The motion carried unanimously.

#5354

(Case #ZON2006-00973)

Rester and Coleman Engineers, Inc. (as agent for Tim & Susan Fuller)

1000 Wildwood Avenue

(Southwest corner of Wildwood Avenue and Chandler Street)

Side Yard Setback and Combined Side Yard Variances to allow an existing (20.13' x 20.13') garage to remain within 0.39-feet of a side property line, to allow an existing dwelling within 5.27-feet of a side property line, and to allow a total combined side yard of 15.98-feet; a 7.2-foot minimum side yard setback is required from a side property line, and a total combined side yard of 16.6-feet is required for structures on a lot 50-feet wide in a R-1, Single-Family Residential District.

Tim Fuller of 1004 Wildwood, applicant, stated that he purchased four lots in Pinehurst which had an existing house on it built in 1968, and a detached double garage on lot 1. The house was built across lots 2, 3 and 4. He built a new house on lot 1 and wanted to include the 20' x 20' garage, which was on the property, on that lot. The garage was built in 1977. Mr. Fuller said he lived on the lot next door to it, and it did not bother him at all. He said the garage was a sturdy building that was built to today's construction techniques. He was requesting a variance on the side line between lots 1 and 2.

There being no one else to speak in favor of this application, Mr. Cummings asked if there was anyone who wished to in opposition.

There was no one.

Mr. Cummings asked for questions by anyone on the Board or the staff.

Mr. Coleman asked if he understood correctly that the existing house was on lot 2.

Mr. Fuller said the house was constructed across lots 2, 3 and 4.

Mr. Palombo explained that the house was situated on four legal lots of record. At some point several years ago a building permit was released for this house. The site plan submitted showed the required setbacks, however, the garage, which was located on the south property line, was not shown on the plat. The closest to this five-foot required setback was 7.1 feet at one point, and the building permit was approved with a 7.1-foot setback. Upon inspection by the Zoning Inspector, it was found that this structure was in fact on the property line. The "as-built" survey reflects a five-foot side yard setback on the house.

Mr. Cummings asked when the current residential structure on the corner of lot 1 was completed.

Mr. Palombo said it was completed last year. The survey submitted, however, did not show the existing garage.

Mr. Cummings asked if he understood correctly that the garage existed in conjunction with the beginning initial construction of the larger house on lots 1, 2 and 3.

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Mr. Palombo said that was correct. The owner, however, was selling off legal lots, and setbacks must comply. Even though it was an existing building, it must comply with the setbacks because it was no longer one lot. There were two individual lots.

Mr. Cummings said the problem gets more compounded if in the future the owner wanted to tear down the structure on lots 1, 2 and 3, and since they are individually platted lots of record, conceivably just by pulling a permit they could build three new houses, in which case you would have a structure that is effectively right on the property line for what would then be lot 3, with presumably a new house on it.

Mr. Palombo said that was correct.

Mr. Cummings asked Mr. Fuller if he had any plans to eventually tear down the house that was currently situated on lots 1, 2 and 3 and effectively build three new structures there.

Mr. Fuller said that it could possibly be done at some point in time, but he had no plans for that right now.

Mr. Davitt noted that the staff report indicated that a simple solution suggested to the applicant was the submission of a two-lot subdivision application to the Planning Commission to shift the South property line further south enough to meet the required setbacks of the garage and dwelling. That suggestion was rejected by the applicant because the intent was to remove the existing dwelling on lots 2, 3 and 4 and sell each lot. Mr. Davitt asked if that was Mr. Fuller's intent.

Mr. Fuller said he looked at moving the house, but it was not feasible as far as price. Also, the traffic circles within the intersections of the road would prevent them from moving the house out of the subdivision, so that was not an option at this time.

Mr. Davitt asked about the possibility of shifting four or five feet off of the other lot so that this one was more in compliance.

Mr. Cummings suggested doing a resubdivision and give five feet of lot 3 to lot 4, and then combine lots 1, 2 and the remainder of lot 3 into one lot. He asked Mr. Fuller if that was something he would consider.

Mr. Fuller said that was his first suggestion, but the City had a 50-foot minimum lot size.

Mr. Palombo stated that if Mr. Fuller had four 50-foot wide lots, he would be allowed four 50-foot lots with that resubdivision of this lot and lot 3. He could do a two-lot subdivision; one lot for the house where the existing house was now, and the other lot for the remainder.

Mr. Cummings explained that the difficulty was that even though Mr. Fuller may not currently have a plan to destroy the structure on lots 1, 2 and 3 and build new ones, he could decide in the future to sell these three lots and the house that sits on them. When they come down to pull a permit for three new houses, which they would be entitled to do because technically there were three lots of record, and the Board had approved this variance, then the eventual lot owner of the

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structure on lot 3 would have to deal with the fact that a garage was located inches away from his property line.

Mr. Fuller said they would handle this any feasible way the Board saw fit. He said they knew they had to do this, and he did submit the survey when he got his permit. He had a permit to change the building cosmetically as far as the roof and putting a new door on it. Mr. Fuller said they were not trying to hide anything from the Board.

Mr. Cummings said the Board was not suggesting that.

Mr. Cummings asked Mr. Lawler if the Board should proceed further with making a decision in this matter one way or the other, or should they suggest that the applicant simply withdraw his request and then attempt to do a resubdivision.

Mr. Lawler suggested that the applicant may want to consider taking a pie-shaped section off and have five feet between the property and the building.

Mr. Cummings further explained that the applicant could take some of the southern property line on lot 4 and shift it five feet more to the south, or take a pie-shaped piece of it off on the southwest corner of lot 4, or square it up and have a rectangle, and combine it with lot 3. That could be done through a resubdivision. That way it would be of record, and the variance is moot because no variance would ever have been issued. Mr. Cummings suggested this would make it easier for Mr. Fuller to deal with construction-wise down the road, as well as to sell it because there would not be the issue of a variance that restricted the use of the property. Further, he pointed out that if the Board denied this application today, Mr. Fuller would not be able to come back to request a variance for one year.

Mr. Fuller said he would rather do the resubdivision.

Mr. Palombo noted, however, that they were not going to make lot 3 smaller than what it actually was since it was a substandard 50-foot wide lot. The applicant would end up with two lots of record. Lots 1, 2 and 3 would be lot 1, and lot 4 would be lot 2. Mr. Palombo said that if the applicant at some time in the future wanted to subdivide that lot 1, which was the three lots, into some form of two or three lots, he would have to come before the Planning Commission.

Mr. Cummings asked about the minimum lot size.

Mr. Palombo said the minimum lot size was 7200 square feet.

Mr. Cummings said if the applicant took 300 square feet off of the rear of lot 4 and gave it to lot 3, that would make lot 3 a 7200-square foot lot.

Mr. Palombo said that was correct. That **could** be, but he could still end up with lots 1, 2 3, and 4.

Mr. Fuller said he would be willing to give the property up for lot 1 to be able to keep this garage.

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Mr. Cummings suggested that Mr. Fuller withdraw his application.

Mr. Fuller said he wished to withdraw the application at this time.

The Chair entertained a motion to accept the applicant's withdrawal of this application.

Such motion was made by Mr. Davis and seconded by Mr. Coleman.

The motion carried unanimously.

#5355

(Case #ZON2006-00976)

Frederick W. & Leigh M. Rowell

(South side of Government Street, 60'± East of Breamwood Avenue)

Side Yard Setback and Combined Side Yard Variances to allow the construction of a residence within 6-feet of the side (West) property line, and to allow a total combined side yard of 18-feet; an 8-foot side yard setback is required from a side property line, and a total combined side yard of 19.6-feet is required for residential structures on a lot 59-feet wide in a R-1, Single-Family Residential District.

Fred Rowell, 256 McDonald Avenue, stated that they acquired this property with the intention of building their primary residence there. To build a home in keeping with that area of Government Street, Mr. Rowell said they would have a house designed with a 39 ½-foot width. The lot was only 57 ½ feet, so to meet the R-1 setback requirements they would have to reduce the footprint of the house by two feet. They were requesting a side yard setback to allow construction of the residence within six feet of the side (West) property line.

There being no one else to speak in favor of this application, Mr. Cummings asked if there was anyone present who wished to speak in opposition.

There was no one to speak in opposition.

Mr. Cummings noted that the staff had recommended approval of this request subject to the provision of gutters and downspouts on the West side of the property.

Mr. Rowell said he had no problem with that requirement.

After discussion a motion was made by Mr. Davitt and seconded by Mr. Coleman to approve this request for Side Yard Setback and Combined Side Yard Variances to allow the construction of a residence within six (6) feet of the side (West) property line, and to allow a total combined side yard of 18 feet at this location subject to the following conditions:

- (1) the provision of gutters and downspouts on the East and West property lines.

The motion carried unanimously.

#5356

(Case #ZON2006-

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Volunteers of America Southeast

City-wide.

Administrative Appeal of a staff determination classifying a facility that provides housing under the Homeless Veterans Grant and Per Diem Program as an emergency shelter, and requesting that it be classified as a domiciliary.

For the benefit of some of the newer members of the Board, Mr. Cummings explained that from time to time the Board is asked to give a decision based on whether or not a decision that was made by the staff in interpreting the use on a particular piece of property was accurate or not. That is what this application is about. This is an administrative appeal of a staff determination classifying the facility that provides housing under the Homeless Veterans Grant Per Diem Program as an emergency shelter, and requesting that it be classified as a domiciliary. Locations are multiple locations city-wide.

Cecily Kaffer, a lawyer with Jackson-Myrick, LLP, was present representing the Volunteers of America Southeast. Ms. Kaffer said that this process started with respect to trying to classify a particular facility. Due to community and neighborhood opposition to locating the facility at that particular site, the VOA withdrew the application for that building and withdrew from their purchase contract. Ms. Kaffer stated that even though the staff report recommended approving their application at that time, it did so based on a classification that they think is the wrong classification. It was classified as a homeless shelter based on the mistaken assumption that it was an emergency facility. Ms. Kaffer said it was not. They believe it is a domiciliary care facility for a number of reasons. She said some of the confusion might have come from the fact that this was a new program and a new kind of facility for the gulf coast. At the time of their initial application there was one other facility on the gulf coast, which was in New Orleans. Now there was no facility on the gulf coast, which makes this a pressing problem in light of the fact that there are approximately 1600 disabled veterans on the gulf coast who need this kind of facility.

Ms. Kaffer stated that the Volunteers of America was a not-for-profit, faith-based organization, which handles quite a few programs. This particular program was modeled on a program in Cleveland, also run by the VOA, which has had a 78 percent success rate in turning people around. Since the program works in conjunction with the Veterans Administration, it will be a federally funded program. The Volunteers of America had gotten a capital and per diem grant for the program. The "capital" part means that they could buy and invest in a building. The "per diem" part would apply to their daily funding. The program was designed to help disabled veterans, who for whatever reason lost their sense of functioning, to be able to get back to living on their own, working and contributing to the community. The goal was to help them learn through life management skills, stress management skills, alcohol treatment, drug abuse treatment, educational skills, work skills and budgeting, to put their lives back together. When the veterans leave this facility, they would go into permanent housing that they pay for and are able to maintain on their own.

Ms. Kaffer explained that this was different from a homeless shelter for a number of reasons. First of all, it was not for walk-ins. A person would have to be referred, typically from the VA. A VA hospital in-patient facility might send a candidate over to this program. A person has to be an appropriate candidate for the facility, which means he has to be committed to working through the problems that have led him to be in this situation. Also, it has to be someone the

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staff has assessed as having the skills or the tools to benefit from the program. Ms. Kaffer said that with the overwhelming need, they were going to have to be offering their services to the people who can be successful with it. In this program the veteran would have a lease on his room. The lease would be subject to him fulfilling the conditions of the program, and if he were to become non-compliant, that would be grounds for termination of his lease.

Ms. Kaffer again stressed that this was vastly different from the shelters where people walk up on a cold night and need a bed for that night. This was not an emergency shelter. It would be staffed 24 hours a day. The model of the program was called a “therapeutic community treatment approach” in which each veteran is encouraged to function as part of this group, and as the larger community. Each veteran has an obligation to himself and to the others in the group, and to the community as a whole. It was a step-by-step, five-phase program. During the first phase there would be an assessment and an individual plan made for that veteran to determine what kind of support services he needed, with the goal for all the veterans to help them access some of the services that existed through the government programs and otherwise. The average stay in the program was two years, but there was no outside end. If one particular veteran needed a little longer, he could stay. There would be follow-up care. The veteran would always have access to the support services to help support his success. Ms. Kaffer said that because this was a federally-funded program, there was a very thick grant application – which was submitted with part of the initial proposal - and the Board could refer to that for the details of the program. She pointed out that the goal was that by the time a veteran left the program he would, through his work or income, have saved up enough money to pay the start of expenses on his apartment and have a month’s worth in the bank for rent and utilities, which would put him in a vastly different situation coming out than when he was coming in. Ms. Kaffer said this showed the difference between the homeless shelter and the emergency kind of shelter. They think it is a very necessary program. Of the 1600 homeless veterans estimated to be on the gulf coast, this program could end up serving 10 or 11 percent by the third year. It could make a substantial difference in giving a service back to veterans who had given a very great service to their country. Ms. Kaffer asked if the Board had any questions.

Mr. Cummings asked if administrative appeal was being requested because of different zoning classifications that were required for this type of domiciliary versus an emergency shelter, and if so, what types of zoning districts were they trying to locate this facility in.

Mr. Palombo said that was correct. This would be considered a shelter for the homeless. It was allowed with Planning Approval in B-1, B-2, B-3 and B-4 districts, whereas a domiciliary care facility was considered a step-down nursing home and was allowed in R-3 with Planning Approval and in B-1 by Right. The VOA’s program wants the Board to allow the domiciliary care facility with Planning Approval in R-3 and by Right in B-1. That was the basis for this appeal. They did not agree with the staff’s decision that this type of facility requires B-1, B-2, B-3, or B-4 with Planning Approval.

Mr. Cummings asked if that was because the ultimate location they hoped to land was in an R-3 district.

Mr. Palombo said no. They could have a location in a B-2 zone and it would still have to come before the Planning Commission. If it was listed as a domiciliary care facility, it would be

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allowed by Right in B-1, B-2, B-3, and B-4, and would not have to go before the Planning Commission for approval.

Ms. Kaffer stated that the definition for “emergency shelter facility”, which was the designation that was applied in the staff recommendation, was a facility providing temporary residential housing for persons who were otherwise homeless or who seek shelter from abuse. Whereas a “domiciliary care facility”, which they felt was more akin to the step-down nursing home than to the homeless shelter, was a residential facility whose primary purpose was to furnish rooms, board, laundry, personal care and other non-medical services for not less than 24 hours a week. This kind of care implies shelter protection and a supervised environment for persons who, because of disabilities, are incapable of living independently in their own homes or a commercial room and board situation, yet who do not require the medical and nursing services provided in a nursing home. For the reasons she had stated in more detail, they think it fits more appropriately in this domiciliary care category. She noted that the prior application was in a B-2 and B-3 district.

Mr. Cummings asked about the size of facility proposed facility.

Ms. Kaffer said they were proposing a 36-bed facility.

Mr. Cummings asked if that was their plan for each of the facilities they hoped to open.

Ms. Kaffer said she did not know that they had come that far, this being the first facility proposed. She said Sherry Atchison from Volunteers of America was present and could speak to that.

Sherry Atchison with Volunteers of America, 600 Azalea Road, stated that this would be one location. Ms. Atchison stated there were only two other projects like this in the State of Alabama, but they were per diem only projects, meaning that they did not receive the capital side of this grant. One of the projects – Lathea House - was in Birmingham. In order to avoid zoning, because of the zoning issues that you have any time you talk about emergency homeless, which is extremely inflammatory, they chose to go into an apartment complex. They did not violate any kind of zoning rules because they had no more than two people per unit. Ms. Atchison said they could do that here, but they wanted to make sure they were doing it right on the front end. The other program was in Dothan, and was actually part of a homeless shelter. They just had beds that were designated for homeless veterans. Ms. Atchison said they were only doing one facility right now, and did not have a particular site in mind. They wanted to get this clarified so they could start looking again.

Mr. Cummings raised a question about parking requirements for a domiciliary with 36 beds in a B-1 zone. He asked if the parking ratios that were applicable to an office space use inside B-1 would be different for the proposed use. Mr. Cummings said he was envisioning future trips to the Board of Zoning Adjustment to ask for parking variances.

Mr. Palombo said he was not clear on the administrative appeal. They were asking for approval for a program or a grant with no location in mind. Mr. Palombo said the staff had to go by the definitions of “emergency shelter facility” and “domiciliary care facility” as outlined in the Zoning Ordinance. They consider a domiciliary care facility like a step-down nursing home.

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There was nothing secluding some group of people from this care. In this case, a veteran. They could not segregate the other population from a domiciliary care, and this was what this would be doing. Mr. Palombo said the staff felt that this was more of a shelter facility which should receive Planning Approval in all business districts, B-1 through B-4, and not allowed by Right in B-1, which allows professional offices.

Mr. Turner expressed concern that it was not clear exactly what type of facility they were dealing with. He felt that changing the definition for the proposed use would basically give the applicant a blanket policy, and then every site, wherever they chose to go within those classifications, they could legally go and there would be no recourse to say yes or no.

Mr. Cummings said that was correct. But, if they had to go on a case-by-case basis to the Planning Commission to seek Planning Approval, part of that process would be to evaluate things such as parking, egress, ingress, deliveries, etc. Further, Mr. Cummings contended that if this use were allowed in B-1 through B-4 districts by Right, and the applicant could find a 20,000-square foot or 15,000-square foot building that was suitable to house 36 people plus the attendant staff, there would not be enough parking to meet the requirements, primarily in B-1 and B-2 locations. The applicant would then have to come to the Board of Zoning Adjustment for a variance for parking. Mr. Cummings said that was probably the reason the staff made their decision so these things could be looked at on a case-by-case basis. Mr. Cummings suggested that the applicant did not want to have to go through Planning Approval each time they submitted a site, and were trying to deal with this on the front end and not have to go through that inconvenience. Mr. Cummings suggested that it was very possible that the applicant would have to deal with that anyway. If the appeal was in their favor today, they were going to find themselves either back at the Planning Commission or here before this Board seeking variances.

Ms. Kaffer said they might have mis-spoke. They did not think they could deal with all the issues on the front end, simply this issue as to whether the program described in the extensive documentation submitted more properly falls under the definition of "emergency shelter facility", or whether it more properly falls under the "domiciliary care facility" definition. Ms. Kaffer said they were certainly not asking the Commission to rule on parking or any other issues like that, just the initial questions, because that impacts where they can look.

Mr. Cummings said he understood what they were asking for, but he was just letting them know that if the appeal was granted, they may find that they might have complicated things for themselves.

Ms. Kaffer said they felt a little bit hand-tied in terms of even going out to negotiate for a building without having this resolved. She said they had certainly considered the issues that were raised by the Board. They felt the best thing for the VOA and this program would be to get this issue resolved and then, obviously, if they chose a site where there was a question about the parking or whatever the issue might be, they would have to come back. Ms. Kaffer said they had provided pretty extensive documentation about what the nature of this facility would be. If there was anymore information they could give to address the Board's concern about the kind of facility they were planning, she would be happy to supplement with anything that they could.

Mr. Lawler commented that, typically, the Board of Zoning Adjustment rules on requests for variance, special exceptions, or questions of interpretation, but all related to a piece of property.

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In this instance, the Board was being asked to interpret the Ordinance without notification of those in the community where this facility would be located. They would have no opportunity to come and speak to the group and allow any comment about whether or not this had merit. Mr. Lawler said he saw that as a problem. He said he was curious that the applicant did not have any idea where they were going to locate a facility such as proposed.

Mr. Cummings said he did not disagree with Mr. Lawler. Mr. Cummings noted the four reasons given by Ms. Kaffer why the type of facility proposed not be classified as an emergency shelter, namely: (1) there are no walk-ins; (2) the participants in this program have to be appropriate candidates who are committed to getting help through this type of program; (3) that these veterans do have leases on the rooms, of course subject to the rules they wish to adhere to; and (4) that it is staffed 24 hours a day. Mr. Cummings asked Mr. Palombo how, in the staff's view, these four permanent type of criteria differed from the criteria that the Zoning Ordinance defined as being applicable to an emergency shelter.

Mr. Palombo said he could not answer that right now.

Mr. Cummings said an emergency shelter typically would not be something where, if you were homeless and it was raining and needed somewhere to stay for the night, you could typically walk in.

Mr. Palombo said that was correct. He said there probably were emergency shelters in Mobile and other areas that do provide a stay for more than one or two nights, but not two weeks.

Mr. Cummings asked if anyone else on the Board had any further questions, thoughts or comments.

Mr. Turner asked if the Board could possibly take this matter and give it to a higher committee, either the Planning Commission or maybe the City Council. He felt there was too much uncertainty with no specific site given. He agreed with Mr. Lawler that ruling in the applicant's favor would be a blanket policy on any piece of property, and he did not feel he was qualified to make that decision.

Mr. Cummings said that, unfortunately, the next higher level was the circuit court. If the Board approved it, the City had the right to appeal it. Or, if the Board denied it, the applicant had the right to appeal.

Mr. Lawler further stated that it was his opinion that the Board did not have the authority, generally speaking, to determine anything except an appeal from a decision made by the Zoning Administrator with regard to some particular piece of property. In this case, the applicant had asked the zoning administration for an opinion, generally, on what the Zoning Ordinance means, but had not been asked to make a decision about a particular piece of property. This was like having a hearing on an amendment to the Zoning Ordinance without having given any notice. Mr. Lawler said that for those types of amendments, persons who live within so many feet of the subject property are given notice, and a notice of the hearing is published in the newspaper and there is an opportunity to be heard. Mr. Lawler said he was not saying there was not some merit in what the applicant was proposing, but, again, he felt the Board needed to be dealing with a specific piece of property.

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Mr. Cummings said the point was, the Board was being asked to okay the proposed use in any B-1, B-2, B-3 or B-4 district in the city without the right of the affected parties, the neighbors and surrounding property owners, being allowed to have a say as to whether or not they would agree with the Board's or the staff's interpretation, or even the applicant's interpretation of what could or could not go there.

Ms. Kaffer said she appreciated that point, but was of the opinion that the rules allow for an administrative appeal of this nature, and the fact that it might not be done often might not be a reason to rule against them in this instance. She said certainly once they acquired a piece of property and started to locate a facility there, she felt that anybody who wanted to make a challenge that they do not, in fact, have the kind of facility they say they do, could come forward and be heard at that time. Ms. Kaffer said, as Mr. Cummings pointed out, it was not as though all the issues were going to be resolved today. This was just the very threshold question of whether the one designation was more appropriate for the facility described in the very detailed application they submitted, or whether the other designation applied. Ms. Kaffer said she left out one of the factors that does speak to more of the permanent shelter, which is that at a certain point in this program, the veterans pay rent on their rooms on which they have leases. Again, they think this distinguishes this from the typical emergency shelter.

Mr. Cummings agreed that in that one thing alone, there was probably not a lot of question that there was a distinction between the two uses. Mr. Cummings asked Ms. Kaffer if their plan was to acquire by purchase or by lease.

Ms. Kaffer said they would purchase the property. They have a capital grant from the VA.

Mr. Cummings asked if it could be then, that any potential property that fit within one or two or three of these zoning classifications that the applicant deemed, might fit the program. He asked if it could be that the applicant had gotten contracts subject to approval from the necessary planning authorities. In that event, Mr. Cummings said the applicant would either have to come to this Board, or the Planning Commission to get approval. That way there would be no mystery. As far as this Board was concerned, they would be dealing with a specific property, looking at a use variance and/or a parking ratio variance, and/or perhaps an aggregate versus paved surface issue. Traffic would have some say in terms of ingress and egress for delivery trucks. Mr. Cummings said he agreed with what Mr. Lawler was saying, that as far as this Board was concerned, at that point the Board had specific things that they typically looked at on a variance basis.

Ms. Kaffer said that certainly they were proceeding under the belief that this type of administrative appeal was permitted under the rules. They had made a decision that they would prefer to handle it this way.

In the event the Board decided today to uphold the ruling of the staff and not grant this appeal in the applicant's favor, Mr. Cummings asked Mr. Lawler what that would do in terms of affecting the applicant's rights to come before this Board for specific variances related to specific properties.

Mr. Lawler said it would not affect it at all.

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Mr. Lawler again stated that it was his opinion that the Board did not have the authority to rule on anything without a particular piece of property in mind. To rule in the applicant's favor in this matter would be more or less amending the Zoning Ordinance.

Ms. Kaffer said she disagreed with Mr. Lawler. She said they were asking for a clarification, or explanation of the Ordinance, not for a change.

Mr. Cummings said he tended to agree with counsel, in that by just kind of creating a blanket policy city-wide across the Ordinance as relates to these uses, essentially sets up a case where individuals who were affected by future locations had no initial right to come down and voice their opinions.

Mr. Guess said it appeared to him that this may be a topic the City Council would consider, and asked if this matter should be referred to them.

Mr. Lawler said this could be dealt with in two ways. An application could be filed by someone for an amendment to the Zoning Ordinance. The City of Mobile could apply for such an amendment to clarify, or the applicant could get someone to file such an application. That would be one way. Or, the applicant could locate a piece of property that they were interested in purchasing and come before the Board with that particular piece of property and a request to operate what they think is a domiciliary facility. They would present the information on the proposed use and how it would operate, the number of people that would be in it, the parking arrangement, and ask if the Board agreed with them that it was more like a domiciliary than like an emergency shelter. The Board would then vote on it. Mr. Lawler further stated that he did not think an appeal from the Board's denial of this would stand up in court.

There being no further comments from the applicant, Mr. Cummings asked if the Board had any further comments or questions.

Mr. Davis stated that he was a bit perplexed as to how they got to this point with something blanket like this. The issue had been discussed on both sides, and he respected what the counsel for the VOA had said. It seemed to him that they would just try to get a green light or nod from this Board, not necessarily on a piece of property, but on the concept of what they were trying to do. Mr. Davis said he was perplexed as to how they could resolve this issue.

Mr. Lawler suggested that the Board may want to continue this matter for a period of time to allow the applicant to amend their application to relate to a specific piece of property, and then the Board could hear it. Otherwise, Mr. Lawler suggested that the Board deny the appeal.

Mr. Palombo clarified that, basically, the VOA was appealing the staff's determination that the program they were proposing was an emergency shelter program, not a domiciliary care facility.

Mr. Cummings commented that the applicant had the opportunity to come down today and say what they needed to say. They heard the discussion, and when they left the podium they did not request that this matter be withdrawn. He further stated that the Board very infrequently had occasion where they attempted to interpret the staff interpretations of the Zoning Ordinance, and

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he could not remember in his twelve years on this Board whether there was one they had dealt with that had nothing to do with a specific property.

Ms. Kaffer asked that this matter be held over for a period of 90 days.

Mr. Cummings suggested that within that time period the applicant find one or two properties that may work for that piece of property in terms of what they were asking the Board to determine today, and at that time they would also know what else they were going to need.

In further discussion Mr. Palombo asked Ms. Kaffer if the address – 1507 Springhill Avenue – stated in the application was a potential address for a facility of the type proposed.

Ms. Kaffer replied that that was the address on the prior application. Due to community objection to that location, they withdrew that application.

Mr. Palombo said that address was also shown on the grant procedure they submitted with their application.

Ms. Kaffer stated that at the time of the first application to the VA they did give the 1507 Springhill Avenue address because that was the property under consideration at that time. The VA had now been informed that that property was no longer under discussion. Again, Ms. Kaffer said they held the belief that it was appropriate to take an administrative appeal on just the general issue, and that was the reason they were here today.

Mr. Cummings entertained a motion to hold this matter over for 90 days.

Mr. Davis so moved.

Mr. Coleman seconded the motion.

The motion carried. (Mr. Davitt recused from voting.)

OTHER BUSINESS

There being no further business, the meeting was adjourned.

Approved: July 10, 2006

Reid Cummings
Chairman

ms

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