

BOARD OF ZONING ADJUSTMENT MINUTES
MEETING OF NOVEMBER 1, 2004 - 2:00 P.M.
MOBILE GOVERNMENT PLAZA, MULTI-PURPOSE ROOM

MEMBERS PRESENT

Reid Cummings, Chairman
Stephen J. Davitt, Jr.
William Guess
Rev. Clarence Cooke
Martha Collier
H. Lamar Lee

MEMBERS ABSENT

Horace Christian

STAFF PRESENT

Margaret Pappas, Planner II
Frank Palombo, Planner I
Mae Sciple, Secretary II

OTHERS PRESENT

David Roberts, Traffic Engineering
David Daughenbaugh, Urban Forestry
Wanda Cochran, 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 meeting of August 1, 2004, as submitted. The motion carried unanimously.

HOLDOVER:

#526

(Case #ZON2004-02020)

Robert S. Moore

4213 Halls Mill Road

(East side of Halls Mill Road, 410'± North of Alden Drive)

Parking and Access/Maneuvering Surface Variances to allow aggregate parking and access/maneuvering areas in an B-3, Community Business District; parking and access/maneuvering areas must be asphalt, concrete or an approved alternative paving surfaces in B-3, Community Business Districts

The plan illustrates the existing structures, parking, and drives, along with the proposed structure and shell driveway.

There was no one present to represent the application.

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A motion was made by Mr. Davitt and seconded by Mr. Cooke to deny this request for Parking and Access/Maneuvering Surface Variances to allow aggregate parking and access/maneuvering areas in a B-3, Community Business District at the above referenced location.

The motion carried unanimously.

The decision was based on the fact that no one was present to represent the application, and as such, no evidence was presented that the Zoning Ordinance caused an unnecessary hardship to the property.

PUBLIC HEARINGS:

#5269

(Case #ZON2004-01987)

George & Diann L. Ragazzo

323 Spring Hill Woods Drive West

(West side of Spring Hill Woods Drive West, 1,000'± West of Border Drive West)

Side Yard Setback Variance to allow the construction of an 10' x 12' storage building 2.4' from the side (North) property line; a minimum side yard setback of 8' is required for a lot that is 60' wide or wider at the front building setback line in an R-1, Single-Family Residential District

The plan illustrates the structures, paving and setbacks.

Doug Anderson was present representing the applicants. He submitted some letters from the neighbors regarding this application, and several drawings of the subject property. Mr. Anderson said the Ragazzos had lived on this property since December of 2000. He pointed out the driveway, which was constructed when the house was constructed. There was a concrete pad at the end of the driveway, which the Ragazzos intended to build a gazebo on. Instead of building a gazebo, however, they ended up purchasing a couple of motorcycles and decided they needed a small garage to house the motorcycles. Early in 2004 they constructed a 10' x 12' garage, and he showed a photo of the garage. The garage was professionally done and matched the house. Mr. Anderson said they did not get a building permit or a variance at that time because they did not know they needed one. They assumed that since the pad was already in place they could go ahead and construct the garage on top of it. They had no intention of violating or going around any procedures or rules. He noted that they had not had any complaints from the neighbors either during construction or after the garage was built. Mr. Anderson said it was not until an inspector came to their door and talked to them about it did they get cited for the situation and it was suggested that they obtain a variance. He pointed out that the garage was actually 2' 4" from the side property line. The setback requirement was 8', so they were asking for a setback variance of 5' 8". Mr. Anderson referred to the letter from Mr. Son Courtney, owner of property to the south, in which he stated he had no objection to this variance. In the letter from Mr. and Mrs. Bogen, who lived on the north side where the garage was actually built, they consented to the granting of this variance. Mr. Anderson referred to the letter from Mr. Bill Coffeen who lived directly across the street from the Ragazzos. He presented photos showing that the garage could not be seen from the Coffeen's front yard, and they had no objection. They were not even aware that the garage had been constructed. Mr. Anderson presented a letter from Mr. John Howard, whose company developed this subdivision

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and who lived in this subdivision, stating he had no objection to the variance. Lastly, he presented a letter from Billy Bedsole, local attorney, who was president of the property owner's association for Spring Hill Woods. Mr. Bedsole stated in his letter that the board of directors had not received any complaints concerning this garage either during construction, since it was built, or since they applied for the variance. At a board of directors meeting a few weeks ago the board voted not to object to this variance.

With reference to the staff report, Mr. Anderson said it stated that three of the primary concerns related to a side yard setback were the potential for the spread of fire from one property to another, water runoff onto adjacent properties, and the ability to properly maintain the proposed structure. He did not believe that this structure had a negative impact on any one of those three issues. He referred to the next sentence in the report which stated that other concerns related to privacy and adequate circulation of light and air. He said privacy was not an issue. If it was a problem with anyone it would be the Bogen's who were adjoining property owners to the north, and pursuant to their letter they did not have a problem with this. Mr. Anderson said the next paragraph of the staff report went on to state that the garage could easily be configured to comply with all setbacks by simply moving the garage 6' southward and grade the lot to acceptable levels to prohibit erosion. Mr. Anderson referred to photos 3, 5 and 6, which he said showed that this was not an option. Moving the garage to the south would block the entrance up to the stairs to the back entrance to the Ragazzo's home. The property severely slopes to the back of the lot, and if they tried to move the garage toward the rear of the lot not only would they remove several trees, landscaping and existing shrubbery, but they would have to do a lot of in-filling to make it an even grade to be able to pour a foundation. He felt that would have more of a negative impact on the drainage and the erosion than the current location of the garage. For reasonableness and financial reasons, and to avoid having to tear it down and move it somewhere else, Mr. Anderson respectfully requested that this variance be granted.

In discussion Mr. Guess asked if the neighborhood organization had any rules and ordinances already addressing the setbacks.

Mr. Cummings felt that most likely they did, but for the same reason that they didn't feel they needed a permit, they probably did not seek that approval. He questioned whether or not the covenants in the subdivision had anything to say about this.

Mr. Anderson did not think the restrictive covenants had any additional setback requirements.

Ms. Pappas stated that typically subdivision plats, unless it was a PUD, only had front setbacks shown.

After discussion Mr. Davitt made a motion to approve a side yard setback variance to allow the construction of a 10' x 12' storage building 2.4' from the side (North) property line. Mr. Lee seconded the motion.

In further discussion Ms. Collier stated that she worried about the Board setting a precedent.

Mr. Cummings said in similar cases the Board had set precedents both ways.

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Mr. Davitt felt that the biggest difference in this particular case was that there appeared to be no objections.

Mr. Guess asked if they had an experienced builder who should have known what the setbacks were.

Mr. Anderson said they were their own contractor.

Mr. Davitt asked if the structure was bolted to the concrete.

Mr. Ragazzo said it was. They had the dowels put in when they poured the concrete.

Ms. Pappas stated that if the variance was to be approved, the staff would ask for gutters and downspouts. While the eaves do not slant towards the property adjoining, the structure was 2' off the property line.

Mr. Cummings asked Mr. Davitt if he would like to amend his motion.

Mr. Davitt amended his motion, and Mr. Lee seconded the motion, to approve the request for a Side Yard Setback Variance to allow the construction of a 10' x 12' storage building 2.4' from the side (North) property line subject to the following condition:

- 1) the provision of gutters and downspouts.

The motion carried unanimously.

5270

(Case #ZON2004-02060)

Roy & Rebecca C. Burns and Cecil & Susan Gardner (Owners)

1160 Church Street & Lot 1 of Cloister Subdivision

(Northeast corner of Church Street and Rapier Avenue, extending 177'± along Rapier Avenue)

Front Yard and Side Yard Variances to allow the construction of a 6' solid wooden fence on the front property line (Lot 1 of Cloister Subdivision) and side property line (1160 Church Street) along Rapier Avenue; a 25' front yard setback is required from the front property line and a 4.34' side yard (street) setback for a wall or fence higher than 3-feet in a historic district where the site is zoned R-1, Single-Family Residential.

The site plan illustrates the existing buildings and drives along with the proposed fencing and setbacks.

Rebecca Burns, applicant, was present and stated that she had received permission for the proposed fence from the Historical Commission.

In discussion Mr. Davitt asked if the location had been approved by the Traffic Engineering Department.

Dave Roberts, Traffic Engineering, stated that they were okay with the location.

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A motion was made by Mr. Davitt and seconded by Mr. Guess to approve the request for Front Yard and Side Yard Variances to allow the construction of a 6' solid wooden fence on the front property line (Lot 1 of Cloister Subdivision) and side property line (1160 Church Street) along Rapier Avenue.

The motion carried unanimously.

#5271

(Case #ZON2004-02061)

The Mobile Medical Endowment Trust, Inc.

2701 Airport Boulevard

(South side of Airport Boulevard, 180'± West of Grant Street)

Buffer Protection Variance to allow no fence or wall to serve as a buffer protection; a minimum 6' high solid wooden fence is required in all commercially zoned districts that adjoin residentially zoned districts

The plan illustrates the proposed structure and parking.

Don Williams was present on behalf of Frank Dagley, representing the applicant. Mr. Williams concurred with the staff recommendations.

A motion was made by Mr. Davitt and seconded by Mr. Lee to approve the request for a Buffer Protection Variance to allow no fence or wall to serve as a buffer protection at the above referenced location subject to the following condition:

- 1) if the fire station property is ever developed residentially a buffer must be provided.

The motion carried unanimously.

#5272/3366/3139

(Case #ZON2004-02101)

Robert Matthew Shipp

1757 Government Street

(Northwest corner of Government Street and Weinacker Avenue)

Use, Front Yard Setback and Parking Ratio Variances to allow the expansion (1,330 square foot courtyard) of an existing (5,800 square foot) restaurant, 19' from the front property line with 59 parking spaces in a B-1, Buffer Business District; a restaurant requires a minimum B-2, Neighborhood Business District, 25-foot front yard setback and 72 parking spaces are required for a 7,130 square foot restaurant

The plan illustrates the existing and proposed structures and parking.

Mr. Davitt recused himself from discussion and voting in this matter.

Matthew Shipp, applicant, and president of Justine's Courtyard – the Pillars, stated that they were asking for a variance to build a courtyard near to the existing building around an existing fountain. They were currently operating under a variance, but when they applied for the building permit they were told they needed a new variance for expanding.

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Mr. Cummings said he noticed today a fountain out front and a set of 4' x 4's in concrete.

Mr. Shipp said that was correct. That was due to a misunderstanding when he went to get the building permit. The building inspector said he did not need an engineer and did not need a contractor, and he did not need a permit. But right before they poured the slab he called the inspector to confirm and the inspector said he misunderstood and that a permit would be required. When he came down to get a permit he was told he would need a new variance. But at that point they had already begun construction. They stopped to make sure they were in compliance before they built anything else.

Mr. Cummings said he understood the courtyard would accommodate 8-10 tables, which he assumed would equate to 8-10 additional cars. He was concerned that it would take up existing parking spaces.

Mr. Shipp assured him that it would not take up any existing parking. The only month that they were typically at capacity was December, and the courtyard would not be used during December because of the cold weather. They planned to utilize the courtyard typically when they were not at capacity, which would be the Spring and Fall months when there was never a parking problem. He said there were occasionally parking issues in December when they were at capacity and they typically park on the grass area adjacent to the proposed courtyard.

Ms. Collier expressed concern about the safety of the waiters and waitresses having to walk over the driveway to get from the kitchen to the courtyard.

Mr. Shipp said he did not see that as being a major issue.

Mr. Cummings said he understood that the courtyard would be surrounded by an iron fence.

Mr. Shipp said they had not yet determined what type of fencing they were going to have. They were actually looking to the historic district to determine which would be the best visual aspect for it, as well as whether they wanted privacy or not. Initially they were looking for an iron fence. He also noted that there was property to the west side that they were trying to purchase, but had not been able to agree on a price with the current owners. They would like to own the whole block and make one parcel, and at that point possibly rezone it as one unit instead of two parcels.

Mr. Cummings was curious about the purpose of the expansion, and asked if it was not to accommodate additional diners but to offer a different experience.

Mr. Shipp said that was correct. They do a lot of receptions and such and would like to have a place where guests could meet before going in for dinner. He did not think this would necessarily bring them to capacity.

Mr. Cummings asked if the piece of property the restaurant was on and the parking area were two separate parcels.

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Ms. Pappas said they were two separate parcels and the variance that was in place applied to both parcels. The parking was specifically referenced in the previously granted variance.

Mr. Cummings asked if they were to be in the future successful in acquiring that additional piece and bring it in all as one, would there be sufficient area to accommodate this expansion?

Ms. Pappas said there would be sufficient area to accommodate the additional parking that would be needed for the existing building and the courtyard.

Mr. Cummings asked if any trees would be affected this expansion.

Mr. Daughenbaugh stated that no trees would be affected.

Mr. Cummings asked if any additional sign would be necessary or requested.

Mr. Shipp replied no.

Parking was further discussed. Mr. Guess asked if they could expand their parking to the area northeast of this lot.

Mr. Cummings said yes. It could accommodate additional parking.

Mr. Shipp said that aesthetically they would prefer not to turn that grass area into a parking lot strictly because it ran the length of Government Street. They were also trying to avoid parking right next to the building. The occasional car would park on the grass area in December, but he felt it would not be beneficial to put a parking lot there.

Mr. Cummings asked if the alleyway that ran behind the building was dedicated or was it a vacated alley.

Ms. Pappas said it was not vacated, and there was no evidence that it was ever used.

Mr. Lee asked how many parking spaces they were lacking.

Mr. Palombo said they were lacking 13 spaces.

Mr. Guess asked if the Board should take into consideration the fact that when they have overflow, that they tend to park on the grass area.

Mr. Cummings said they should consider that. Looking at a survey showing the parking, Mr. Cummings suggested that by re-stripping the parking area they could get from 10-13 additional spaces.

Mr. Shipp pointed out an area on the survey that was handicapped parking. He said they didn't pick up but two spaces there because handicapped spaces were wider than a normal space. Asked if those two spaces were included in the count that was existing, Mr. Shipp said he did not know.

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Ms. Pappas said he could also petition for vacation and pick up a little more property from the alley.

Mr. Shipp said the neighbors were using the alley now to exit onto Weinacker Avenue. He also noted that when the parking lot is full they utilize all the spaces whether they are striped or not.

Mr. Roberts noted that the aisles in the parking lot should be 24 feet wide. The parking stall itself should be 9' x 18'.

After discussion a motion was made by Mr. Lee and seconded by Mr. Cooke to approve this request for Use, Front Yard Setback, and Parking Ratio Variances to allow the expansion (1,330 square foot courtyard) of an existing (5,800 square foot) restaurant, 19' from the front property line with 59 parking spaces in a B-1, buffer business district.

In further discussion Mr. Daughenbaugh asked if the Board could entertain the thought of frontage trees on Government and Weinacker to be coordinated with Forestry and Traffic Engineering. He suggested four evergreen trees.

Mr. Cummings was concerned that new trees added on Government would interfere with existing trees that were 100 or more years old.

Mr. Daughenbaugh said they could dictate that the trees were evergreen Oak trees to go with the existing streetscapes. Then there would be a better chance of continuing that canopy.

Mr. Cummings asked Mr. Lee if he would like to amend his motion to include a provision for frontage trees along Weinacker and Government that are reasonable given the number, size and location of the current frontage trees along Government Street.

Mr. Lee amended his motion to add that the number and location of trees to be coordinated with and approved by Urban Forestry, taking into account the existing tree canopy along Government Street.

Mr. Cooke seconded the amended motion.

The motion carried. (Mr. Davitt recused from voting in this matter.)

#5273

(Case #ZON2004-02107)

Steve Guerin

210 Rapier Avenue

(Northwest corner of Rapier Avenue and Palmetto Street)

Side Yard Setback Variance to allow the construction of a 6' wooden privacy fence with 8' columns along a side street property line in an R-1, Single-Family Residential District; an 8'4" side yard setback is required for a fence higher than 3', or a minimum side street setback of 8'4" is required for a 6' privacy fence, on a corner lot in a historic district where the site is zoned R-1, Single-Family Residential

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The site plan illustrates the existing building, fencing, and landscaping along with the proposed fencing, buildings, and drives.

Don Williams was present representing the applicant and stated that he concurred with the staff recommendations. He said they had already submitted this to the Architectural Review Board and they had approved a 6' high main body and 7' columns, rather than the 6'6" high main body and 8' high columns that they had originally requested. He said they were okay with that, and therefore they amended their request for a 6' high main body, and 7' columns. Mr. Williams said the Architectural Review Board had also approved the carport, which would be to the rear of the property facing Palmetto. They were 8' from the Palmetto Street right-of-way, 8' from the neighbor and 8' from the side yard for the carport.

Ms. Pappas noted that there were two nice size crepe myrtles that were in the right-of-way that the applicant was proposing to have removed. That request would have to go to the Tree Commission for permitting prior to their removal.

Mr. Cummings noted that there was no one in the audience to speak in favor or against this application.

A motion was made by Ms. Collier and seconded by Mr. Davitt to approve this modified request for a Side Yard Setback Variance to allow the construction of a 6' privacy fence with 7' columns along a side street property line in an R-1, Single-Family Residential District at the above referenced location subject to the following conditions:

- 1) the approval from the Architectural Review Board prior to the issuance of any permits; and
- 2) the fence location to be approved by the Traffic Engineering Department.

The motion carried unanimously.

#5274

(Case #ZON2004-02109)

MLK Avenue Redevelopment Corporation

Lot 6, Block 4, Fisher Tract

(North side of Dr. Martin Luther King, Jr. Avenue, 100'± West of Maple Street)

Front Yard Setback Variance to allow a new dwelling unit to be constructed 12' from the front property line in an R-1, Single-Family Residential District; a minimum front yard setback of 25' is required in an R-1, Single-Family Residential District

The plan illustrates the proposed structure, along with the proposed setback.

Michael Pierce was present representing the MLK Redevelopment Corporation and presented this request.

A motion was made by Mr. Davitt and seconded by Ms. Collier to approve this request for a Front Yard Setback Variance to allow a new dwelling unit to be constructed 12' from the front property line in an R-1, Single-Family Residential District at the above referenced location.

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The motion carried unanimously.

#5275

(Case #ZON2004-02110)

MLK Avenue Redevelopment Corporation

Lot 7, Block 4, Fisher Tract

(North side of Dr. Martin Luther King, Jr. Avenue, 50'± West of Maple Street)

Front Yard Setback Variance to allow a new dwelling unit to be constructed 12' from the front property line in an R-1, Single-Family Residential District; a minimum front yard setback of 25' is required in an R-1, Single-Family Residential District

The plan illustrates the proposed structure, along with the proposed setback.

Michael Pierce was present representing the MLK Redevelopment Corporation and presented this request.

A motion was made by Mr. Davitt and seconded by Ms. Collier to approve this request for a Front Yard Setback Variance to allow a new dwelling unit to be constructed 12' from the front property line in an R-1, Single-Family Residential District at the above referenced location.

The motion carried unanimously.

#5276

(Case #ZON2004-02111)

MLK Avenue Redevelopment Corporation

Lot 8, Block 4, Fisher Tract

(Northwest corner of Dr. Martin Luther King, Jr. Avenue and Maple Street)

Front Yard Setback and Side Yard Setback Variances to allow a new dwelling unit to be constructed 12' from the front property line and 12' from the side (street) property line in an R-1, Single-Family Residential District; a minimum front yard setback of 25' and a minimum side (street) yard of 12.86' is required in an R-1, Single-Family Residential District.

The plan illustrates the proposed structure, along with the proposed setback.

Michael Pierce was present representing the MLK Redevelopment Corporation and presented this request.

A motion was made by Mr. Davitt and seconded by Ms. Collier to approve this request for a Front Yard Setback Variance to allow a new dwelling unit to be constructed 12' from the front property line and 12' from the side (street) property line in an R-1, Single-Family Residential District at the above referenced location.

The motion carried unanimously.

#5277

(Case #ZON2004-02112)

MLK Avenue Redevelopment Corporation

November 1, 2004

Lot 9, Block 4, Fisher Tract

(West side of Maple Street, 110'+ North of Dr. Martin Luther King, Jr. Avenue)

Front Yard Setback Variance to allow a new dwelling unit to be constructed 12' from the front property line in an R-1, Single-Family Residential District; a minimum front yard setback of 25' is required in an R-2, Two-Family Residential District

The plan illustrates the proposed structure, along with the proposed setback.

Michael Pierce was present representing the MLK Redevelopment Corporation and presented this request.

A motion was made by Mr. Davitt and seconded by Ms. Collier to approve this request for a Front Yard Setback Variance to allow a new dwelling unit to be constructed 12' from the front property line in an R-1, Single-Family Residential District at the above referenced location.

OTHER BUSINESS:

Mr. Cummings brought up the matter of the continued absence of Mr. Christian from the meetings. He had not been present since the June meeting, and all attempts to contact him had failed. Mr. Cummings felt it was unfair to the rest of the people who sit on this Board to come down here on a monthly basis and be saddled with having to make decisions that require at least four votes one way or the other. It was unfair for a member of the Board to consistently fail to show up for the meetings and to not even give the courtesy of a return phone call stating whether or not they would attend the meeting.

After brief discussion Mr. Cummings asked Ms. Cochran to draft a resolution to Councilman Johnson to the effect that if his appointee is unable to attend, then maybe he should go ahead and re-appoint someone else to the Board.

Ms. Cochran agreed.

There being no further business, the meeting was adjourned.

APPROVED: December 6, 2004

/s/ Chairman of the Board

/ms