

BOARD OF ZONING ADJUSTMENT MINUTES
MEETING OF OCTOBER 4, 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.

HOLDOVER:

#5265

(Case #ZON2004-01746)

Herbert Hollings

280 Magnolia Drive

(South side of Magnolia Drive, 470± East of St. Stephen's Road

Use, Parking Ratio, Parking Surface and Access/Maneuvering Variances to allow three apartments, five on-site parking spaces, aggregate surface parking and a substandard (9.3') width driveway in a R-1, Single-Family Residential District; the Zoning Ordinance requires a minimum of R-3, Multi-Family Residential for apartments, a minimum of six parking spaces, all parking must be asphalt, concrete or an approved alternative paving surface, and a 24' wide drive is required for two-way access in a R-1, Single-Family Residential District

The plan illustrates the existing structure and proposed parking.

Dion Hollings, applicant, was present and presented photographs showing that there was no internal access from the first floor unit to the second floor unit. Photographs also showed there were two separate kitchens. Regarding utility history, Mr. Hollings, said that neither Alabama Power nor the Water and Sewer System were able to provide him with information as to who resided at the property prior to his purchasing it.

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Mr. Lee asked if Mr. Hollings had installed the kitchens in his renovations.

Mr. Hollings said he put it back like it was.

Ms. Collier asked if there had ever been a stairwell inside, or could there be a stairwell put in place, for access to the second floor.

Mr. Hollings replied that there was not a stairwell prior to his purchasing the property, and he did not think an inside stairwell could be installed, as the various photos of the hallways reflect.

Mr. Cumming asked if anyone wished to speak in opposition.

Rhonda Gamble, a resident of 313 Magnolia Drive, said she had conducted her own research of the utilities. Because of the Privacy Act, she was unable to get anything in writing, but she talked to someone at each utility company. She was told by Alabama Power that currently there was one meter at this address. In 2002 there were two meters, but there had never been three meters. Mobile Water Service System also said there was only one water meter since 2001, but there had never been three meters there. Mobile Gas did not have any record of service for this address since 1988. As of today there was one gas meter there. Ms. Gamble noted that 90 percent of the neighbors were long-time property owners. Many were elderly and there were some children. They were concerned about the different clientele that would be in and out of apartments there. She also said that when they originally built that house there was an access to the upstairs from the inside. She felt an inside access to the upstairs could be added to the structure.

Mr. Cummings asked when Mr. Hollings purchased the property, and how many people had lived there for the last three years at any given time.

Mr. Hollings said he purchased the property in 1991, and he alone had lived there in the last three years. Regarding Ms. Gamble's statement, Mr. Hollings contended that because she had no sworn affidavits from any of the utility companies, her statement did not hold up. He agreed, however, that there was only one electric meter. He had a photograph showing that there had been two gas meters, as there were two gas lines still there. He said the reason he was before this Board today was to get it rezoned for a multi-family dwelling to obtain other electric meters.

Mr. Cummings asked Mr. Hollings if he knew what the property was zoned in 1991 when he bought it.

Mr. Hollings replied that he did not know.

Ms. Pappas stated that in 1991 the property was zoned R-1, Single-Family Residential.

Mr. Cummings asked Mr. Hollings if, when he bought the property, there had been anybody living in that house other than one person or one family for any period of time prior to his buying it.

Mr. Hollings said he would say yes, but he didn't have a sworn affidavit from Mr. Carson who he had purchased the property from. He said Mr. Carson had tenants on each.

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Mr. Cummings asked if Mr. Hollings moved into the property when he bought it in 1991.

Mr. Hollings replied that he could not because the house had burned and had been abandoned. He had to re-gut it , put a new roof on it, and re-do the wiring.

Mr. Cummings asked Mr. Hollings if he had inquired at the City when he went to pull his permits whether his end goal, to have a building that could accommodate more than one tenant, was going to be possible.

Mr. Hollings said he did inquire, and was told that he would have to come before the zoning board to determine whether or not they would grant permission to make it a multi-family dwelling.

Ms. Pappas pointed out that there were two permits issued to Mr. Hollings for this property, one in 1998 and one in 2000. Both of them were issued for renovations for a single-family residence.

Mr. Cummings commented that if Mr. Hollings pulled the permits to do the work, if it had been his intention to create an apartment house and he had made that information known, he felt that he should have been taken this into account when he got the permits. As it was, on two different occasions he bought permits to do work on making repairs to a single-family home. Now, four years later, he was here with the most recent permit that was issued, and he was not looking for a single-family home, but for apartments.

Ms. Pappas noted that Gail Ambrose, the zoning inspector, inspected the housed and did not see any evidence of a former stairwell inside the house.

Mr. Cummings said the property was zoned R-1, and whether it was physically capable of being an apartment house or not, it hadn't been one for some period of time that they could prove.

Mr. Davitt commented that at one time it probably was an apartment with more than one family living there, however, the non-conforming use period had expired. Based on the way the law is written, he could not see them approving the request to allow three apartments.

After discussion a motion was made by Mr. Davitt and seconded by Mr. Guess to deny the Use, Parking Surface and Access/Maneuvering Variances to allow three apartments, five on-site parking spaces, aggregate surface parking and a substandard (9.3') width driveway in a R-1, Single-Family Residential District.

The motion carried unanimously.

#5266

(Case #ZON2004-01748)

Mary Campbell

1936 Summer Place Drive West

(East side of Summer Place Drive West, 575'± South of Summer Place Drive North)

Side Yard and Total Combined Side Yard Setback Variances to allow a carport within 3.5' of a side property line and to allow a combined side yard total of 15.6' in a R-1, Single-

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Family Residential District; the Zoning Ordinance requires an 8' minimum side yard and a total combined side yard of 20' in a R-1, Single-Family Residential District

The plan illustrates the existing and proposed structures.

Mary Campbell, applicant, was present, as well as her contractor.

Mr. Cummings stated that this application was held over from the last meeting due to a question regarding the setback. Additional information was requested regarding the setback from the property line to the support column for the carport roof.

The contractor submitted a copy of the actual survey dated June 3, 2004.

Mr. Cummings asked if that was the information he used when he took out the permit.

The contractor said no.

In discussion there was a question as to where the property line was and whether the fence was on the property line. The contractor submitted a survey that was done when Mrs. Campbell bought the property. There was further discussion about the survey.

The Board asked Mr. Martin how far along he was with the construction. Mr. Martin said the carport was built and wired. It just needed the shingles on the roof.

After discussion a motion was made by Mr. Davitt and seconded by Mr. Collier to deny the request for a Side Yard and Total Combined Side Yard Setback Variances to allow a carport within 3.5' of a side property line and to allow a combined side yard total of 15.6' in a R-1, Single-Family Residential District.

In further discussion Mr. Guess asked about the dimensions of the carport.

Ms. Pappas said it was 13' wide and 20' deep.

There being no further discussion Mr. Cummings called for a vote. The motion carried unanimously.

PUBLIC HEARINGS:

#5267

(Case #ZON2004-01978)

Michael & Constance Dial

309 Pinehill Drive

(East side of Pinehill Drive, 170'± South of Airport Boulevard)

Parking Ratio Variance to allow a 540 square foot, one-story addition (1 teaching station) to an existing day care facility (6 teaching stations) providing seven (7) on-site parking spaces; a minimum eleven (11) on-site parking spaces are required for a day care facility with seven (7) teaching stations.

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The plan illustrates the existing and proposed structures and paving.

Don Williams, Williams Engineering, was present on behalf of the applicant. Mr. Williams noted that the staff recommendation was that the applicant formalize the off-site parking agreement. He was referring to the parking spaces on the property next door, Etc. They had parked there for a long time and neither the tenants nor the owner of the building, Stanley Ellis, had a problem with them continuing to park there. Mr. Ellis, however, was planning on selling the property and he would have a problem signing something that would commit four of those parking spaces and have that go on as a lien or a cloud on the property. He felt that would jeopardize his sale. He has 40 or so parking spaces and only needs 20. Mr. Williams said they have had an informal agreement with Mr. Ellis for the last two years. Also, Mrs. Dial has an informal parking agreement with Chief Hargrove to use three or four spaces in the Police Department's parking lot across the street. She has done this for several years. To formalize that she would have to go before the City Council. Further, Mrs. Dial had an informal agreement with Colony Plumbing next door which has six parking spaces. They only have one truck that parks there and no cars. Mr. Williams said their difficulty is that they cannot get anyone to officially write a letter to say they may park there on a permanent basis.

Mr. Cummings stated that since Mrs. Dial has owned this building for three years and operated a day care there since she bought it, and it always had seven parking spaces for six teachers, according to City regulations they had essentially been operating under a variance for three years.

Mr. Williams said it was probably just not recognized. There was a day care there before that for nine years.

Ms. Pappas said she thought it went back to the initial day care and at that time it complied.

Mr. Williams said it was vacant for one year. Because it was not vacant for two years, it was never really picked up.

Mr. Cummings said he understood that with the addition of this building it would just increase the number of square footage per child without actually increasing the number of children.

Mr. Williams said that was correct. The day care association had increased the number of spaces per child under the day care regulations. This building would keep Mrs. Dial at the same 56 children that she has always had. If she did not get this building, she will go backwards in her enrollment. She will continue to keep the six teachers she has now.

Mr. Cummings asked if the building as proposed could go in an area that was not currently housing any parking spaces or any maneuvering area.

Mr. Williams replied that it was actually a space where Mrs. Dial parked her van. The van will have to be relocated to one of the other parking lots.

Mr. Cummings said if Mrs. Dial hadn't been operating under a variance, she should have been.

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Mr. Williams said they had PUD and Planning Approval applications before the Planning Commission now to allow her to expand this use in a B-1 district.

Ms. Pappas pointed out that they had initially looked at expanding onto the existing building to the south. But there was a large tree there that Urban Forestry was recommending be preserved, so for that reason they had to put the addition on the north side of the property.

Mr. Williams said Traffic Engineering had noted that they have a 16' wide driveway entrance from way back, and it was insufficient for two-way traffic. So they were creating a new entrance off Pinehill Drive so they would have one way in and one way out.

Mrs. Constance Dial, applicant, was present and said she was just trying to get everything legal so she would be able to maintain her business and stay in operation.

Mr. Cummings pointed out to Mrs. Dial that if the Board did decide to grant the variance and they do so without a written agreement for off-site parking, and they go to sell the property, then the variance for less parking than was required for a day care was pretty much going to be there. The use would dictate the number of parking spaces required.

Mr. Davitt asked counsel what was meant by "long-term lease agreement".

Ms. Cochran said it depends on who you are. The written agreement was only significant because in the law there are certain contracts that are only enforceable if they are in writing. Just because a contract was verbal, it doesn't mean its any less a contract than a written contract, so the fact that Mrs. Dial's agreement was not in writing was not troubling because at some point a lease has a termination point. Ms. Cochran said she did not know how anybody could grant an "in perpetuity" right to park. She was not aware of the Regulations specifying time frame on parking agreements.

Mr. Davitt asked if Mr. Ellis had a problem with a one-year lease.

Mr. Williams said that Mr. Ellis had told him that morning that he would be uncomfortable with it.

After discussion a motion was made by Mr. Lee and seconded by Mr. Cooke to grant a Parking Ratio Variance to allow a 540 square foot, one-story addition (1 teaching station) to an existing day care facility (6 teaching stations) providing seven (7) on-site parking spaces at the above-referenced location.

The motion carried unanimously.

#5268

(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 a B-3, Community Business District; parking and

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access/maneuvering areas must be asphalt, concrete or an approved alternative paving surfaces in B-3, Community Business Districts.

The Chairman stated that the applicant had requested that this application be held over until the November 1, 2004 meeting.

A motion was made by Mr. Davitt and seconded by Mr. Lee to hold this application over until the November 1, 2004 meeting.

The motion carried unanimously.

There being no further business, the meeting was adjourned.

APPROVED: December 6, 2004

/s/ Chairman of the Board

/ms