

**CITY OF DULUTH
ZONING BOARD OF APPEALS
OFFICIAL MINUTES**

April 28, 2010

PRESENT: Alana Moss, Vice-Chair
Marline Santiago-Cook
K. C. Callaway
Carey Fisher

ABSENT:

STAFF:

I. CALL TO ORDER The meeting was called to order by Ms. Moss at 7:00 p.m.

II. GENERAL BUSINESS Mr. Collins introduced Ms. Marline Santiago-Cook and K.C. Callaway, new ZBA members.

A. Introduction of staff reports and all other documents submitted to the Zoning Board of Appeals at the meeting into the official record. Ms. Moss called for a motion. Mr. Fisher made a motion to submit all documents. Seconded by Ms. Santiago-Cook. **Vote 4-0. Motion carries unanimously.**

III. OLD BUSINESS

None.

IV. NEW BUSINESS

A. AP 2010-003 CC 2010-036, Ms. Moss called for a presentation from staff.

Mr. Collins presented for staff. Noted that a new computer system has been adopted by the City, which causes case numbers to be different and they are now in sequential order.

Mr. Collins noted that this case is an appeal of the Director's determination to uphold a notice of violation of the zoning ordinance. Noted the subject site as 3055 Enfield Lane, which is a PRD, residential zoning district. Stated that there was a notice of allegation

sent to the appellant; notice was upheld by the Director and an appeal to the ZBA was filed. Stated that the issue is a commercial vehicle parked in a residential zoning district, which is prohibited by Section 902-G of the City zoning ordinance. Stated that it is important to note that this section of the zoning ordinance does provide one option for relief for the appellant, which is application for a Conditional Use Permit to allow parking of a truck. Stated that this has not been done and the applicant decided to appeal the Director's decision. Stated that there was not sufficient time for plan review and public notice periods, as required by the zoning ordinance and by state regulations for a Conditional Use Permit to have been filed before this meeting. Mr. Collins showed a photo of the violation. Staff presentation concluded.

Ms. Moss asked if there were any questions for staff. There were none. Asked for those wishing to speak in favor of the appeal to come forward.

The resident of the house/driver of the truck came forward to speak. Stated that he had that truck for nearly three years, since he built the house. Noted that he worked for Comcast and this was a company vehicle. Stated that before he built the house, neighbors told him to verify the covenant in the subdivision to avoid doing anything wrong. Stated that the covenant of the subdivision says nothing about commercial vehicles and only requires parking in a garage, driveway or designated area. Stated that he hasn't had a problem until now. Noted that he is on call quite often and he needs the truck, which is why he is asking for permission to park the truck in his driveway. Noted that this is his source of income.

Ms. Moss asked if he could park near the pool area, according to his covenant. Asked if that could be an option for him.

The applicant noted that he had equipment worth more than five thousand dollars in the truck, for which he was personally responsible. Stated that he didn't know about the city laws when he built the house.

Ms. Callaway asked if the applicant submitted a copy of the covenant.

The applicant stated that he had one, but not with him, as he had just come from work. Noted that the subdivision had a website on which it could be seen. Noted that the covenant was established in 1994.

Ms. Moss asked if there was anyone present wishing to speak against the appeal. Being no one, public discussion was closed.

Ms. Callaway stated that she felt a truck like that parked in the subdivision was an eyesore.

Mr. Fisher stated that what was being decided was on the appeal on whether or not the director made the right decision, based on the code. Stated that depending on what the Board finds, the applicant can come forward in the proper order and apply for a Conditional Use Permit according to the zoning code.

Ms. Callaway stated that she felt the director did make the right decision.

Mr. Collins asked new Board members to identify themselves before speaking for minute taking purposes.

Ms. Santiago-Cook stated that she felt there were some other questions, such as the covenants. Asked if when a subdivision files a covenant, do they have to come to the City and get approval and is there a process that they go through to make sure that they're in compliance.

Mr. Fisher noted that the covenants are filed with the County and run with the land.

Mr. Collins stated that there are some legal issues and the City is not allowed to require certain things in covenants. Noted that it is a completely private party land issue. Stated that he didn't have documentation with him, but he did know there are reasons why the City cannot require certain content in covenants so the City does not review.

Ms. Santiago-Cook asked if City law or ordinance supersedes the covenants.

Mr. Collins confirmed this.

Ms. Santiago-Cook stated that it seemed the applicant did his due diligence. Stated that she felt that there should have been an opportunity given to the applicant to show him how to request the permit before denying him the ability to have the vehicle. Stated that if there was a discrepancy between the covenant and the City law, he should have been given the opportunity to go through the process first.

Mr. Fisher stated that there was a process and the applicant attempted to initiate it by asking for a CUP, but it was too late. Noted that the process takes thirty days. Stated that if the Board finds that the Director was correct, the next step is for the applicant to submit a CUP. Stated that he assumes the enforcement would be suspended until that process has been completed.

Mr. Collins confirmed this.

Ms. Santiago-Cook stated that she felt that this would be the right thing to do.

Ms. Moss agreed. Asked for a motion. Mr. Fisher made a motion to agree with the Director's decision in this matter. Seconded by Ms. Callaway. **Vote 4-0. Motion carried unanimously.**

B. CUP 2010-001 Primitive Reformed Presbyterian Church

Ms. Moss called for a presentation from staff.

Mr. Collins presented for staff. Noted that this is an application for a CUP under Section 1211-C2 of the zoning ordinance, which allows the operation of a church within the M-1 zoning district upon the issuance of a Conditional Use Permit. Noted the subject site on 1795 Buford Hwy, currently zoned M-1 and the applicant requesting the permit is the Primitive Reformed Presbyterian Church. Stated the key issues with the CUP are the impact of requested use upon surrounding properties and property owners, compatibility with current traffic patterns and compatibility with surrounding area. Showed the map of existing land use around the area with the subject site highlighted. Noted that it is surrounded by light industrial uses. Stated that the area across the street is Gwinnett County jurisdiction and carries the M-1 zoning in the county and currently houses St. Monica's Catholic Church. Stated that to the north is a large railroad right of way and further is a planned residential community. Stated that there are two buildings on the site, one of which is currently occupied by Camp Bow Wow. Showed an aerial photo of the property. Stated that one of the things analyzed was the parking and site layout for transportation. Stated that on this site is a legally permitted and established commercial site. Stated that there is one kerb cut serving the two buildings and has a total of 46 parking spaces directly serving this building. Noted that there are more on site. Noted hours of operation as Wednesday and Friday at 8:30 p.m. and Sunday at 8:30 and 11:00 a.m. Stated that the estimated congregation is 50 members and while that would not fill the building, the entire building is being leased. Mr. Collins noted that an existing utility service and dumpster and refuse service area will be utilized. Noted that a church generates inversely related traffic patterns to office and other uses in an M-1 zoning district, which means that it will not add to a traffic problem with adjoining land uses. Stated that staff recommends the ZBA approve the request under Section 1211-C2 to operate a church based upon the following conditions:

1. Limitation of hours of operation—limiting Monday-Friday services to beginning after 7:00 p.m. to maintain the inverse

traffic pattern with no limitations on Saturday and Sunday services.

2. Utilize the existing dumpster on site.
3. All property maintenance violations be taken care of.
4. Parking be limited to the spaces directly adjoining and abutting Building A, which would meet all of the City's requirements for parking. Stated that this condition contains a caveat that the church can work out an agreement for overflow parking with the adjoining tenant in a legally recorded form, presented to the Planning Department
5. This CUP applies only to this applicant.

Ms. Moss asked for questions for staff.

Mr. Fisher asked what the Board's options were.

Mr. Collins noted the options as approval, approval with modified conditions, approve with no conditions, table for further review, or denial of application.

Ms. Moss asked for those wishing to speak in favor of the CUP.

Mr. Mark Rudolph, the owner of the building, came forward to speak. Stated that in terms of the parking, because this was under a commercial condominium association, there was already an agreement in place as to how parking is handled. Stated that he would not like to see the City come in and supersede an existing agreement.

Mr. Fisher asked Mr. Rudolph to describe the parking arrangement.

Mr. Rudolph stated that it was basically wide open and is worked out between the tenants and the areas are shared.

Ms. Moss asked for anyone else wishing to speak in favor.

Mr. Jeff Hahn, owner of the adjacent building, came forward to speak. Stated that he would not be in his building if not for the support of Mr. Rudolph. Stated that he wanted to clarify the hours of operation. Stated that his business hours on Sunday are 8-11:00 a.m. and is a big pick up and drop off day. Stated that he was concerned about customers being able to pick up and drop off and employee parking on Sunday morning. Noted the exit/entrance of the parking lot. Stated that he has

seen three accidents in front of the building, so he wanted to bring to light the need for something to be done in this area.

Ms. Moss asked Mr. Collins if the traffic situation can be looked at.

Mr. Collins stated that although Buford Hwy is out of the City's jurisdiction, he can look into what plans are in the works.

Ms. Moss asked for anyone else wishing to speak in favor of the application.

Mr. Paul [??] senior pastor of the church came forward to speak. Stated that he felt this was a perfect place for the church. Noted that there was already a church across the street and he didn't believe there was a traffic problem. Noted that his hours would not conflict with the adjacent building. Stated that Monday through Friday office space would be used, but there were not many people using that space. Noted the two services on Sunday morning. Stated that the 8:30 service is very small. Stated that their only main service is at 11:30. Stated that the Catholic church has policemen to help control the traffic, which will benefit the Presbyterian church.

Ms. Santiago-Cook noted that the church was currently operating at another facility. Asked what was the average number of vehicles at the present location for the service.

The pastor stated that about 30 people meet for the main service and about 15 or 20 for the other service.

Mr. Fisher asked what the pastor would do if Mr. Hahn has a problem on a Sunday if there is a problem with the drop off or pick up of pets.

The pastor stated that the first service is a very small meeting, just for the teachers, and from 8:30-11:00 there would be about 10 cars.

Mr. Fisher asked if the pastor expected the church to grow at all.

The pastor stated that even if the church grows, the 8:30 meeting would remain a small meeting.

Ms. Santiago-Cook noted her concern for the 11:00 service, that people would arrive around 10:45 or around the same time that people were trying to pick up pets and that would cause a problem with traffic.

The pastor stated that not many people come at that time—only those who are preparing for the worship. Stated that the majority of the people come at 11:00.

Ms. Callaway asked Mr. Rudolph what was the capacity of cars allowed to park in the condominium area.

Mr. Rudolph stated that he thought the total was 46, but there was additional parking in the back which added around 20 more spots. Stated that the total parking ability is roughly 43-45 at the building under discussion and the adjacent building has 20.

Ms. Callaway noted that those 20 spaces were for after 11:00.

The pastor stated that if the church grows, they will make plans for more parking. Noted that there was space behind the building which can be used for the future. Stated that the current parking was enough for a couple of years.

Ms. Santiago-Cook stated that the parking space is one issue, but there would be traffic generated at 11:00. Asked if the service time could be changed.

The pastor stated that he didn't think it was a problem to move the service to 11:30, but he felt that the Catholic church ran well with no traffic problem, so a small church like his should not generate a problem.

Ms. Santiago-Cook asked about the impact of the traffic from the Catholic church. Asked Mr. Hahn if that was a problem for him on a Sunday.

Mr. Hahn stated that when the Catholic church fills up, people park on the side of Buford Hwy where there is no designated parking. Stated that they have also parked on his side or Mr. Rudolph's side. Stated that he felt that changing the service time for the current applicant to 11:30 was not immediately necessary.

Ms. Santiago-Cook noted that there seemed to be a good working relationship among those using the buildings.

The pastor noted that there were members who helped direct traffic.

Mr. Hahn asked if they were people who legally controlled traffic or just volunteers. Asked if it had to be law enforcement or could anyone do that.

The pastor stated that they would not be in the street, but in the parking lot.

Ms. Moss asked if there was anyone present wishing to speak against. Being no one, public portion of the discussion was closed.

Mr. Fisher asked if there was a way to insert a provision for a potential future traffic problem.

Mr. Collins stated that he felt the conditions proposed by staff gives the two tenants an opportunity to work out something that benefits both of them if the need arises, as it limits the parking in the beginning to only parking adjoining the tenant's building and if the parking is not sufficient, then they would have to work out a legally recorded shared parking agreement, which would allow them to negotiate what works best for them.

Mr. Fisher noted that this provision didn't require them to do that, but allowed them to do that.

Mr. Collins confirmed this.

Ms. Moss asked if it would be acceptable to have two spaces in front of Camp Bow Wow to be designated as 'Camp Bow Wow Only' to aid with the parking issue. Stated that Mr. Collins' condition addressed this issue.

Ms. Callaway stated noted that she traveled Buford Hwy on Sunday mornings and that cars are parked on both sides of the street at 11:00 even with police help. Stated that this was a lot of traffic. Stated that she also saw cars parked in the Bow Wow facility.

Ms. Santiago-Cook asked if the current applicant should be held responsible for what the Catholic church does. Suggested that Gwinnett County be contacted to enforce any ordinance or the parking on the other side of Buford Hwy. Stated that the Catholic church is in violation if they are parking in another business.

Ms. Moss agreed with Ms. Santiago-Cook.

Mr. Hahn asked if it was possible to put up a sign that unauthorized parking is subject to towing.

Ms. Santiago-Cook stated that if it was private property, the owners can put up a sign.

Mr. Rudolph expressed his concern that he was being penalized because of the church across the street. Suggested that a tow sign be put up and enforced.

Ms. Santiago-Cook stated that she didn't think it would be fair to disallow this application because of the church across the street.

Ms. Moss called for a motion.

Mr. Fisher stated that he was looking at the zoning ordinance for the parking requirements. Noted Section 903 which states that a church have one space for each of four seats in the main auditorium. Asked how many seats were in the auditorium.

The pastor stated that there were about [106 or 160] (this part was difficult to hear).

There was general discussion about rewording the condition. Ms. Moss stated that the current condition should work.

Mr. Fisher noted that it is private property, so the tenant can put up a sign limiting the parking.

Ms. Santiago-Cook noted the service times on Wednesday and Friday and asked if they could be changed.

Mr. Fisher pointed out that the only problem area was on Sunday.

Ms. Santiago-Cook asked about the window of time between 7:00 and 8:30 on Monday-Friday.

Mr. Collins stated that this was to allow flexibility for the applicant.

Mr. Hahn asked if there were no limitations on the weekend, did that leave room for adding more services on the weekend. Noted that he had full dog day care on Saturday.

Mr. Fisher stated that he believed any parking issues would have to be handled as a private matter.

Mr. Collins stated that there was no reason why the Board could not investigate placing limitations on Saturday and Sunday hours.

Ms. Moss asked Mr. Hahn was busy on Saturday.

Mr. Hahn stated that Monday through Saturday is full boarding and day care and Sunday is just drop off and pick up. Stated that business is bigger on the weekend because of travel. Stated that he had no problem with the 8:30 time during the week, but the weekends were a concern for him.

Mr. Rudolph asked if he used the building as an office again and there were no restrictions on how he operated, and he used the building on Saturday, why was there an issue now.

Mr. Fisher noted that a church is a conditional use in an M-1, while his business was probably a permitted use without any discussion. Noted that since this is a conditional use, conditions can be placed.

Ms. Moss called for a motion. Mr. Fisher made a motion to approve the CUP as presented by planning staff. **Seconded by Ms. Santiago-Cook. Vote 3-1.** Ms. Callaway opposed. **Motion carries.**

V. OTHER BUSINESS/DISCUSSION

- A. Matters from the Director. None.
- B. Matters from the Board. None.
- C. Matters from Citizens. None.

VI. ADJOURNMENT

A motion was made by Ms. Callaway and seconded by Ms. Santiago-Cook. **Vote 4-0.** Motion passes unanimously. Being no further business the meeting was adjourned.

Approved this ____ day of _____, 2010.

Chairman

Secretary/Witness