

Planning Commission
Public Hearing
June 10, 2014

The meeting was called to order by Chairman Dennis Thomas and the secretary called the roll.

Present: Nixon Adams, Dennis Thomas, Simmie Fairley, Ren Clark, Rebecca Bush, Scott Quillin, and Michael Blache

Absent: None

Also present: Mayor Donald Villere

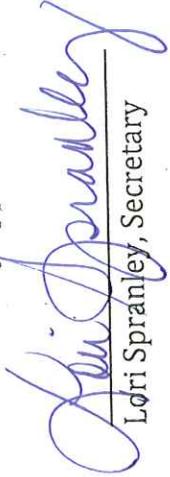
Ms. Bush moved to approve the minutes of September 24, 2014, seconded by Mr. Thomas and was unanimously approved.

Mr. Blache moved to approve the minutes of October 8, 2013, seconded by Mr. Quillin and was unanimously approved.

Mr. Fairley moved to approve the minutes of April 22, 2014, seconded by Mr. Thomas and was unanimously approved.

Ms. Kidd said the July 1st meeting to begin discussing Phase 2 CLURO amendments could be at either 6:00 or 7:00 p.m. because a meeting in the Court Room had been cancelled. The board decided to begin the meeting at 6:00 p.m.

Mr. Blache moved to adjourn the meeting, seconded by Mr. Thomas and was unanimously approved.


Lori Spranley, Secretary


Dennis Thomas, Chairman

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Mr. Adams announced that written notice of decisions regarding zoning variances will be filed in the Board's office the following day of this meeting at which time applicable appeal time will begin to run.

The first case discussed was V14-06-08 J. Flagg Flanagan/Rod Markovits requests a variance to Section 8.1.5, Supplemental Regulations for Accessory Structures and Section 7.5.12.3, O/R Site Development Regulations, 633 Village Lane North, zoned O/R

Upon receiving the requested information, Mr. Adams stated that it was determined not to be a case and should be removed from the agenda.

Mr. Quillin moved to remove the case from the agenda, seconded by Ms. Bush and was unanimously approved.

The second case discussed was A14-06-01 Miller, Freddie A. Ethux, care of d/b/a Doctors Chiropractic Group/F & G Miller LLC requests an appeal of the denial of a culvert/driveway permit application and related to cases V94-9-56 and Z94-7-16, 1796 West Causeway Approach, zoned O/R.

Ms. Kidd presented an appeal by F & G Miller, LLC of the culvert/driveway permit. The staff was in receipt of a letter dated May 21, 2014 appealing the denial of the culvert/driveway application to construct a driveway to access Garden Avenue. The appeal referenced the appeal of an administrative permit, and Ms. Kidd had spoken with the City Attorney who determined that there was no procedural difference with the correct CLURO Section of 4.3.4.1 so the case could proceed reflecting the correct section. Mr. Magee was in agreement with proceeding under the correct CLURO section being cited.

Mr. Magee had filed the appeal referencing CLURO Section 4.3.2.7, Appeal of an Administrative Permit to the Zoning Board, which was different than a permit issued administratively. It was noted that this was another section that should be reviewed for clarification. Ms. Kidd stated the correct section was CLURO Section 4.3.4, Procedures and Fees for Filing Appeals and Requests for Variances to the Zoning Board.

Ms. Kidd represented Mr. Magee had submitted the application dated May 8, 2014 and was received and date stamped by the Planning Department on May 8, 2014. The letter from the Planning Director was dated May 13, 2014 sent to Mr. Magee denying the application. The letter outlined the reasons for the denial having been based on the decision of the Zoning Board under Case Z94-7-16 to allow a doctor's office in an O/R zoning district. The zoning permit was approved in accordance with the Site/Landscape Plan prepared by Holly & Smith dated September 9, 1994 with a single two-way access driveway from West Causeway Approach.

In 1999, Doctor's Chiropractic Group requested to reopen the Zoning Permit case to amend the approved site plan to add an additional driveway, a one-way egress onto Garden Avenue and the Zoning Board denied this request at their

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regular monthly meeting held on November 16, 1999. Based on this denial in 1999 to allow an additional driveway access on Garden Avenue, the issuance of a Driveway/Culvert permit was denied. The landscape plan approved under case Z94-7-16 in conjunction with the approved site plan prepared by Holly & Smith continued to govern the site. Any requests to modify the site would follow CLURO Section 4.3.2.1, Modification of a Site Plan under the Zoning Permit Procedure. The applicant had not made a request to modify the site plan other than the one submitted in 1999, but instead applied for a culvert/driveway plan which would modify the site plan that was previously denied.

The only other information in the file that dealt with the public hearing of the Zoning Permit and the modification of the site plan in the hearing in 1999 was that the Beau Rivage residents were active and vocal in opposing the driveway cut onto Garden Avenue. The opposition was reflected in the minutes of those two cases. The site plan was approved in 1994 with a modification to the landscape plan in 1995 allowing the removal of a live oak tree and a replanting plan.

Mr. Adams stated that the request was for the placement of a culvert for a driveway that was not approved. Ms. Kidd said that was correct. Mr. Magee had made application for a culvert/driveway and that was denied by the Planning Department. Mr. Blache said if the owner had gotten approval for a zoning permit modification at that time, then the culvert could have been approved. Ms. Kidd said the staff would have issued that. Mr. Adams said there was no request for a change in the site plan, but there was a denial of a permit to place a culvert. Ms. Kidd said it was an appeal of a denial. Mr. Adams said the board was not going to discuss any change in the site plan. Ms. Kidd said they had not made that request through the procedures of modification of the Zoning Permit or the site plan approved under the Zoning Permit. Mr. Clark asked how did the board proceed? Mr. Adams said the board was to decide if Ms. Kidd's decision to deny the permit was correct.

Bill Magee, representing the LLC which was the applicant in this case, stated he was happy to hear how astute the board was. The problem was this was a request for a culvert permit. He provided a history that the appeal was to a denial of a permit application and not an amendment to the site plan. In July, 2013, representing his client, he had originally applied for a culvert. The applicant was not making an amendment request, but just a culvert permit request. On July 25, 2013, the application was denied request the same reasons as was currently denied. He filed a suit to force the City to issue the permit. His client's position was that they had complied with the culvert permit application process and should have been given the culvert permit. Earlier this spring, Ms. Laurie Pennison and he were going to court and at that time she pointed out that Mr. Magee had missed a step in the administrative remedies process, which was now before the board. He filed to dismiss the case without prejudice and started the process again. Mr. Magee asked the board to focus on CLURO Section 5.2.6.1, Culvert Installation, which stated "(1) Any person who desires to install or have installed culverts in any public drainageways or servitudes of drain shall make application to the City of Mandeville for permission to install such culverts, and (2) The Public Works Director shall determine the appropriate culvert size which may be installed by the applicant. The culvert shall be installed in accordance with the material specifications, depth and grade requirements established by the Public Works Director", which was straightforward. Mr. Adams said any person still needed permission from a City authority. Mr. Quillin said Mr. Magee referenced a culvert and it was specifically checked on the application as a driveway. Mr. Magee stated that was correct. It was contemplated by the regulations.

Mr. Magee said the first step was submitting the application and then having the Public Works Director determine the size. The regulation stated that any

person, not different classes, but any person could install a culvert and his client had a right to install a culvert. Mr. Adams said anything on a City right-of-way required permission. Disregarding it being a driveway, there could be any number of reasons to deny a permit. The City would not want just one section of culvert sitting in a ditch with it open on both sides as it would just be something to stop up. It could be an impediment to drainage. That was not what Ms. Kidd cited. There was no need because there was no reason for a driveway. Ms. Kidd said the proposed use was included on the application and it was stated for the installation of a new driveway. That driveway would be adverse to the approved site plan. Mr. Adams said this went back another step in the process. If the board voted to uphold the denial, then the next step was to go to court.

Ms. Bush asked why not just amend the site plan? Mr. Magee said he had seen the history of the case. When his client first filed to amend the site plan in 1999, he did not seek legal counsel and did it the way the City told him to do it. Mr. Magee had reviewed the culvert permit application and determined they could file an application and receive a permit. There were no restrictions or qualifications. In his opinion, there was no discretion in the City's part. Mr. Adams asked in issuing a culvert permit? Mr. Magee asked otherwise where would it be located in the regulations. Mr. Adams said he felt the City must approve anything that crossed the right-of-way or there would be legal ramifications. Mr. Blache said there were conditions of the property owner to be met in the Zoning Permit. Mr. Magee said Ms. Kidd pointed that out and what concerned him from a legal perspective was the denial to enter the public right-of-way back from the two times before the board that it was done from the popularity vote of the adjoining neighborhood. The board could not make decision of the popular vote. Mr. Adams was present and there were reasons given. Ms. Kidd said it was not a popularity vote and there were findings for the denial. Mr. Magee said there was nothing that he saw. Ms. Kidd stated there were concerns about vehicles traveling the wrong way toward Heavens Road because there was a median with a boulevard entry. Because of the angle of the driveway to force traffic toward West Causeway Approach would cause cars and delivery trucks difficulty in maneuvering the turn and could destroy the landscaping and sprinkler heads, potential of traffic using the driveway as a short cut to West Approach, entry to a neighborhood and keep the business traffic specific to West Causeway and not an entry of a subdivision which would exacerbate existing and increased traffic because of shopping center making a turn to get out of subdivision. There were other reasons stated by the Zoning Board.

Mr. Clark said the opportunity for someone to turn left was mayhem. Mr. Adams said that happened at the shopping center across the street instead of going around the loop like they were supposed to do. They turned left against traffic. Ms. Kidd said she read the reason into the record for the request in case there were any questions. Mr. Magee said he was not provided that. Mr. Adams asked why get a culvert permit if there was a chance you would not get permission to build a driveway. Mr. Magee said he would cross that bridge when he got to it. Mr. Magee's recommendation to Dr. Miller was the simplest way to get this done was to apply for a culvert permit because under the ordinance itself there were no discretionary matters that the City could use. Mr. Adams said Mr. Magee had applied for a permit, it was turned down and the board would rule whether the Planning Director had used good judgment in turning it down and we go from there.

Mr. Magee said under the CLURO anybody could apply and there were no conditions that you get a permit. You want to do it, you apply. You shall make an application. That was the only thing that the applicant was required to do, shall make an application. Then, the next step was that the Public Works Director shall determine the appropriate culvert size which may be installed by the applicant. The

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culvert shall be installed with materials, specs, depth and grade requirements established by the Public Works Director and then stated once you get your culvert in you have to maintain it so that it did not clog up the drainage. Nothing said the City had the right to deny the permit because it did not comply with the site plan from a previous zoning case. Mr. Adams said Mr. Magee was maintaining that anybody anywhere in Mandeville could get a culvert permit and cover the ditch in front of their house. They had an absolute right to get that. Mr. Magee said he did not say that, the ordinance said that. Mr. Clark said everyone in this was concerned about health, safety and welfare. Mr. Adams asked why get a permit if it was allowed by right. Mr. Magee said it was to make sure that it was done correctly and not to impede the flow of drainage. He had no unrealistic expectations of board approval. This was a step in the process. The court would make a decision on how this was interpreted. No one would know until the guy with the black robe made the decision.

Mr. Quillin asked if a culvert permit was granted, would Mr. Magee be changing his site and putting in a driveway. Mr. Magee that was the intent. Mr. Quillin said then he would be coming back to the board. Mr. Magee said the way he interpreted the regulation, and Mr. Quillin said there were two different questions. The application allowed the installation of a culvert and did not say anything about a specific driveway or site plan. Mr. Adams agreed that a site plan would have to be changed. Mr. Quillin said that was what he was getting at. Mr. Magee said there was a difference of opinion. He believed under the permit application there was right to do that as long as it was approved by the Building Inspector or his designee after review by Public Works or the Engineer. Mr. Quillin said but a site plan was something different. Mr. Magee said it was not a site plan. Mr. Quillin said it was changing the layout of the site. Mr. Magee said that was Mr. Quillin's position, not his position. Mr. Adams said it was agreed to by the owner. Ms. Bush asked what other reason would you want the culvert except for a driveway. Mr. Magee said that he had stated the driveway. He had a plan put together for his client that this was the best way to get an exit. He found the ordinance and read it. He applied and they should have gotten the permit. They did not get the permit and he moved forward.

Mr. Adams said what was before the board was not a change to the site plan, but a technical matter on the issuance of permit for a culvert.

Mark Goldstein, 320 Camellia Drive, asked if the original Zoning Permit was a variance on what was normally allowed. Ms. Kidd said it was a Zoning Permit and a landscaping variance was associated with it, but the condition of approval of the site plan ran with the Zoning Permit. The Zoning Permit required review and approval of the site plan tied to the Zoning Permit. It was approved specifically without access to Garden Avenue, and any amendment to that would go back through the Zoning Permit process to amend the site plan to provide access. The Zoning Permit review process authorized the board to review circulation, excessive access, and it was clearly within the purview of the commission to review any adverse impact. It was considered an adverse impact and it was limited to West Causeway Approach. Mr. Goldstein reiterated that there was a determination at this time and Ms. Kidd answered in agreement. Ms. Kidd stated that in 1999 there was a request for a modification to add a driveway to Garden Avenue and it was denied. Mr. Goldstein asked in 1994 with the original site plan approval, was a second driveway considered. Mr. Adams said he thought it was requested. Mr. Goldstein said that was what he was trying to clarify. Mr. Adams said it was specifically stipulated to have one driveway on West Causeway Approach. Mr. Goldstein said there was a reliance on the stipulation to the granting of the permit that permitted the construction in the first place. Mr. Adams said the Zoning Permit process was a different process to take away some of the impact, and the least onerous impact

possible, on surrounding development. The commission considered the facts and made their determination. Mr. Goldstein said he recalled neighborhood involvement. Mr. Adams said they spoke their mind. Mr. Goldstein said the neighborhood ultimately supported the Zoning Permit. Mr. Adams agreed and there were other issues like landscaping. Ms. Kidd said there was a discussion in 1994 about a driveway cut on Garden Avenue and it was approved without a driveway cut.

Mr. Clark moved to uphold the Planning Director's denial, seconded by Mr. Fairley. Mr. Quillin asked for a specific reading of the CLURO paragraphs dealing with this case. Ms. Kidd was referring to the appeal process and Mr. Magee was referring to the culvert application process. The Appeal process referred to as CLURO 4.3.2.7 in Mr. Magee's letter was an Appeal of the Administrative Permit to the Zoning Board. Ms. Kidd referred to CLURO Section 4.3.4, Procedures and Fees for Filing Appeal and Requests for Variances to the Zoning Board as the current section. That was the section that appealed ministerial permits. Mr. Magee said the only reason he used that citation of the CLURO ordinance was Laurie Pennison, City Attorney, cited that statute as the appropriate CLURO section to appeal. He took her word for it and did not check the CLURO. Ms. Kidd had spoken with Edward Deano, City Attorney, to amend the discussion to the correct section. Mr. Magee was in agreement to use the correct CLURO section.

Mr. Blache asked if the board granted the appeal and allowed the culvert, would that site development plan be violated if the owner began installing a driveway. He asked would the owner be entitled to it. Mr. Adams said anything on the public side would be violating what the board approved. Mr. Blache said that was the point he was trying to make. Mr. Adams said the board would decide to uphold or not if Ms. Kidd used good judgment on planning considerations for the denial. She turned it down because of the process under the CLURO, and he did not think Ms. Kidd needed to be in the process of every ditch permit since not everything had to do with planning. Some of it was roadwork, and she should not be involved in the process. Mr. Adams said Ms. Kidd was denying it because the applicant wanted to install a driveway. Ms. Kidd said the Zoning Permit clearly restricted driveway access to Garden Avenue and she felt the Zoning Permit process authorized the board to control access. She thought the next step would be to go back to the attorneys to see how to reconcile it.

Mayor Villere said he thought the permit process for culverts was well positioned in the Planning Department. The department dealt with use. While there can be a permit for a culvert, this designated use was a driveway at that location. It was appropriate to check the use to determine if it was allowed at that location before issuing a permit. If someone requested a permit to cover the ditch, they would not check off driveway. If the culvert was for drainage then it was different and it would be reviewed by the Public Works Department to determine size and depth and not worry about the use. A driveway designation on an application was well positioned in the Planning Department to verify if the property was an appropriate use.

Mr. Clark said the ad hoc installations of culverts had wider implications to the City regarding drainage. Several years ago one of his neighbors took his drainage into his own hands to the detriment of surface drainage throughout the neighborhood. It was important to look at who was doing the proposing and what was the basis of the proposal. The application was checked driveway, which meant they were laying the foundation for changing the site plan. This culvert was more than laying a 6' pipe for a driveway. It had implications throughout the City, and should be looked at. Mr. Adams said the board should review the CLURO for any

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language tweaks. It was clear from a private property point of view that Ms. Kidd denied the application for specific reasons.

The vote was taken and was unanimously approved to uphold the Planning Director's decision.

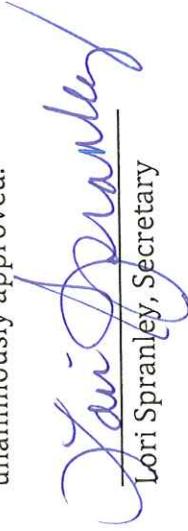
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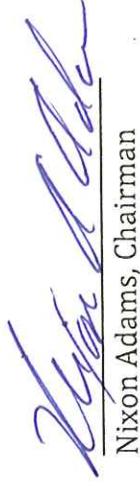
Mr. Blache moved to approve the minutes of October 8, 2013, seconded by Mr. Quillin and was unanimously approved.

Mr. Fairley moved to approve the minutes of April 22, 2014, seconded by Mr. Thomas and was unanimously approved.

Ms. Kidd said the July 1st meeting to begin discussing Phase 2 CLURO amendments could be at either 6:00 or 7:00 p.m. because a meeting in the Court Room had been cancelled. The board decided to begin the meeting at 6:00 p.m.

Mr. Blache moved to adjourn the meeting, seconded by Mr. Thomas and was unanimously approved.


Lori Spranley, Secretary


Nixon Adams, Chairman

