Planning Commission
Public Hearing
April 5, 2016

The meeting was called to order by Zoning Chairman Nixon Adams and the secretary called the roll.

Present: Michael Blache, Rebecca Bush, Ren Clark, Dennis Thomas, and Nixon Adams

Absent: Scott Quillin and Simmie Fairley

Also Present: Louisette Kidd, Planning Director; Mayor Donald Villere and Council Elect Mike Pulaski and Laure' Sica

Mr. Clark moved to adopt the minutes of March 15, 2016, seconded by Mr. Blache and was unanimously approved.

Mr. Adams moved to adopt the minutes of March 22, 2016, seconded by Mr. Blache and was unanimously approved.

Ms. Bush 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 V16-04-11 Corliss C. Aguillard, Administrator of the Successions of Evelyn C. Carrier Williams /Charles J. Neyrey requests a variance to Section 4.2.4.5, Provisions for Legally Non-Conforming Lots of Record, and Section 7.5.1.3, R-1 Site Development Regulations, parcel of land, square 68, 420 Jackson Avenue, zoned R-1

Ms. Scott presented a request to provisions for legally non-conforming lots of record to allow the separation of the property into two development sites and a variance to the R-1 setbacks because the existing structure was only 5' from the property line. The applicant had a purchase agreement for the vacant lot with both lots being part of a succession. Both lots exceed the total square footage and lot depth. The frontage of the vacant lot was 58.59' and the lot containing the house had a frontage of 63.95', which was a typical plat for this area. There was a fence encroachment on the vacant lot which reduced the size to 58.59' and the legal description indicated a total of the two lots as127' frontage. The board had requested the neighborhood lot sizes of which there were a few double lots, but most of the properties were 63' frontage.

Mr. Adams said there were several neighbors at the work session that had spoken against the lot separation. Mr. Clark asked if the land was sold prior to a resubdivision. Ms. Scott said it was still in the same ownership. Mr. Clark asked if the lot with the house was listed on the historic study. Ms. Scott said the house was listed as non-contributing on the current survey. There was a discussion that the house was constructed prior to 1941 and was listed on the previous survey. The board had previously been told if there were two owners assigned to the lots in the succession, the judge could split the property and there would not be a case before the board. There was a discussion about what would be good for the neighborhood and the 90' frontage was designed more for subdivisions. There was a mix of lot sizes in this area. Mr. Clark felt two non-conforming lots were an offset problem and not a hardship. Mr. Blache felt the lots were in keeping with the neighborhood.

Mayor Villere believed the board should consider the hardship since the ordinance required a 90' frontage. Mr. Clark said there had been discussion about keeping Mandeville available for a range of people, but if the whole lot frontage was a larger lot then he suggested keeping the size. Mr. Thomas said the proposed house would be elevated which would be different than the other houses in the neighborhood. Mr. Adams said it could be a large house and still be 10' from the property lines.

Peggy Baldwin, 1647 Lakeshore Drive, agreed with Mayor Villere. The CLURO was prepared for this type of growth and variances destroyed the structure of why the regulations were adopted. Ms. Scott clarified that if the variance was not approved, it would only be one development site.

Charles and Sherry Neyrey, purchasers and applicants, said they wanted to be part of the community in building this for their personal residence. Their budget was not enough to purchase both lots and the property was larger than the regulations with the exception of the frontage. Mr. Clark asked if they knew about the deficiency prior to the review. Ms. Neyrey said the property was listed as either one or two separate lots. They had prepared a survey and during the Design Review approval they were notified of the issue. Mr. Neyrey said the neighbor at 432 Jackson Avenue was in agreement with their request, and the neighbor on the north side was not in favor with their request. The house would be located 40' from the front property line with a12' setback on each side. The ground elevation was approximately 9' and would be elevated.

Gwen Peel, listing agent, said there was opposition. The daughter of one of the neighbors that was not in favor had requested to purchase the property three times and the price was rejected. This could be a reason for their opposition. She stated that she had not been aware that the lots needed to be separated through a variance. She asked to consider the reasons for some of the neighbor opposition.

Glen Philips, 416 Jackson Avenue, said the 1951 survey showed all of the lots to be equal size. There was no iron found to indicate it was two lots. Everything being equal on the old survey, it would be down the center of the lots. If the lot was not 58.59', the house would not meet the 5' setback. The house was built on the lot as one development site because it was more toward the middle of the lots. Ms. Scott said the recent survey showed the fence encroachment reducing the lot frontage to 58.59'. The Judgment of Possession described the two lots as a total frontage. Ms. Bush said the Judgment of Possession referred back to 1911 and it did not say it was one lot. Ms. Scott said it was described as two lots.

Mr. Philips said Jackson Avenue was a well-used street, and one block was small lots but either way on their block was over 100'. He felt the 90' frontage should remain. He understood that the house was a "tear down" and it would not be a hardship to sell it as one site. He would like to see the proposed house built in the center of the lot with his vested interest. Mr. Adams said it did not matter the size of the lot because a house could be built anywhere on the lot as long as it met the side yard setback. Mr. Philips said it would not improve the neighborhood and no just cause was shown.

Marcia Bacino, 416 Jackson Avenue, said of the 24 properties in the immediate area only 4 were 60' wide. The remainder of the lots were 75', 100' and above. She spoke to 14 neighbors who signed a petition against the separation.

Mr. Blache moved to grant the separation and variance to the side yard setback, seconded by Mr. Adams. The motion failed 2-3.

The next case discussed was V16-04-12 Jack and Cathy Fischbein requests a variance to Section 9.2.5.7, Live Oak Protection Requirements, lot 3-A, square 29B, Lafayette Street, zoned R-1.

Ms. Scott presented a request to remove two live oak trees in the center of lot 3A, which was adjacent to the residence located at 240 Lafayette Street. There were 22", 42", 34", 32" and 30" trees on the lot. With the size of the trees, it created a limited area for construction. A plan was submitted by the applicant to create a building footprint within the buildable area of the lot with the tree removal. The CLURO allowed an encroachment to within 82% of the dripline. The board had requested Dr. Guidry and Ms. Casanova evaluate the site. It was bad weather and they could not get onto the site, but they had already been to the site several times and re-evaluated a larger footprint of 25' x 65' for a 1,600 square foot structure on one level that would require a rear yard variance. Other discussions from neighbors at the work session was that the house on the corner had received a variance

and the staff found that a variance was also granted in 1997 to allow the removal of one live oak tree in a similar situation of eight live oak trees on the lot.

Mr. Thomas said in the case of the two variances that were approved, there was a site plan on the lot of the house to be constructed. In this case, there was only a hypothetical situation of construction.

Ms. Scott said when Ms. Casanova evaluated the site; she identified the best live oak for removal being the one to the rear.

Mr. Blache said there was no hardship shown without a design of a house, and felt the request was the cart before the horse. Mr. Adams said he would rather see tree pruning than removal.

Scott Discon, Chairman of the Parks and Parkways Commission, agreed there could be a house constructed in the outlined area. He thought with the Goodwin's selling their home that a prospective purchaser may also want to buy the Fischbein's lot. He felt it appeared to be a personal hardship since there was an area outlined for construction.

Ann Haveman, 550 Colbert Street, was the original owner. She thought the live oak trees should be protected and was against the granting of the variance request.

Mayor Villere said he had been to the site and discussed the issue with the Fischbein's. He thought it would be better for someone to buy both parcels and keep it together.

Mr. Thomas said there was not a viable blueprint so it was all a hypothetical discussion. Mr. Adams said the board did not usually receive building plans, but there was a report from the City Arborist of a buildable area. He did not see why a tree should be removed for the Fischbein's to market the property. Mr. Clark said this was not an issue of build ability, but a quality of value enhancement. He felt the purchaser should market the property and the prospective purchaser present the board with a plan.

Carolyn Monthieth, 321 Coffee Street, requested the board deny the request and consider the value of the trees as a whole. They absorbed water, were a benefit for the entire community, and cleaned the air.

Anne Marie Fargason, 347 East Street, said Mandeville was a Tree City USA and as a Parks and Parkways Commission member they were dedicated to saving the trees and ambiance of Old Mandeville. There was a live oak tree on Lakeshore Drive with a chain-link fence growing into the bark that the board had denied the request to remove the tree. She requested the board stop granting variances and deny any side yard variances because it was the law.

Cathy Fischbein, 240 Lafayette Street, said the board had requested at the last meeting that they meet with the arborist to look at the site. It did not happen because the Monday after Easter they received a telephone call to meet with notice and there had been rain and the area was flooded. She understood Dr. Guidry had surgery and asked how a plan could have been prepared when they were supposed to meet about the driplines. She had received Dr. Guidry's letter two days before the meeting. The board gave instructions that were not followed. Their previous purchaser was told by the City that it was not a buildable lot so that was a hardship. Dr. Guidry stated that one tree could be removed for a buildable area. Their arborist had told them that pruning could provide a buildable area. She cared about the trees, but when the lots were originally sold there were no restrictions. There were two variances that were previously granted and she should get the same considerations.

Mr. Adams said the board was discussing a variance to get a buildable area and he would have liked to have a discussion with Dr. Guidry. Ms. Scott said there was considerable rain during this time and Dr. Guidry had limited time. She understood from Dr. Guidry and Ms. Casanova that they were prohibited from going on the property at all. She had been out to the site with Dr. Guidry two or three times and he felt comfortable with creating the report.

Jack Fischbein, 240 Lafayette Street, said he did not deny access on that Monday. He was called around 9 a.m. and he told Ms. Casanova that there was about a foot of water under the trees. He was told that Dr. Guidry could only meet that date because of his surgery date. Ms. Casanova had suggested standing in the driveway and looking at the trees, but he thought they could not see the canopy. He had hired Mr. Bonneau to survey the property with the tree and canopy sizes. The staff had worked with Mr. Fischbein to establish a footprint, but he felt that the original proposal of 22' x 35' was too small and the staff was trying to identify a buildable area outside of the canopy.

Mr. Clark asked what was stopping Mr. Fischbein from selling the property. Mr. Fischbein said it was not buildable with the tree placement. Mr. Clark said that was up to the buyer. Mr. Adams said the board would not take the lot out of commerce and the arborist identified an area that could be a building footprint. Mr. Clark felt it was not Mr. Fischbein's concern once it was sold. Mr. Fischbein said it could not be sold as is because the other trees behind it were not being shown. There was also a tree on the rear property line that was not being considered. Mr. Clark said it was not the board's job to make the lot more sellable. Mr. Fischbein suggested Dr. Guidry come to the site and properly look under the tree when he was recovered.

Mr. Discon said with the tree trimming, the house could be larger than 25' x 65'. In other cities, the limbs were trimmed up to allow construction under it.

Mr. Adams said the general consensus of Dr. Guidry's letter was the location of an optimum box for a house and the existing driveway could remain. Mr. Clark said Dr. Guidry said the lot was buildable and could be marketed. Ms. Bush asked about the previous variance having submitted buildable plans and the answer was yes. Mr. Blache asked if the variance was denied, would that preclude Mr. Fischbein or a purchaser from returning to the board. Ms. Scott said they could come back to the board at any time. Mr. Clark said he would want to see the purchaser with a plan request the variance.

Roger Shales, Jr., 2521 Claiborne Street, said it was his tree on the property line which had been trimmed back several times. His lot was 300' deep. He thought the trees should not be removed.

Mr. Blache moved to deny the variance, seconded by Mr. Clark and was unanimously approved. The board invited a purchaser to bring forward a plan for a variance consideration.

The last case discussed was Teamwork Construction LLC/Justin Jacob requests a variance to Section 5.2.3.3.1.A, Fill Sub-Area B Grading and Fill and Section 5.2.3.3.3, Slabs for Non-Habitable Areas, lot 23A, square 82, 1249 Montgomery Street, zoned R-1

At the work session discussion, it was deemed not to be a variance.

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

Mr. Clark moved to adopt the minutes of March 15, 2016, seconded by Mr. Blache and was unanimously approved.

Mr. Adams moved to adopt the minutes of March 22, 2016, seconded by Mr. Blache and was unanimously approved.

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

Lori Spranley, Secretary

Dennis Thomas, Chairman

Zoning Commission
Work Session
April 5, 2016

The meeting was called to order by Zoning Chairman Nixon Adams and the secretary called the roll.

Present: Michael Blache, Rebecca Bush, Ren Clark, Dennis Thomas, and Nixon Adams

Absent: Scott Quillin and Simmie Fairley

Also Present: Louisette Kidd, Planning Director; Mayor Donald Villere and Council Elect Mike Pulaski and Laure' Sica

Mr. Adams announced that any additional information determined to be needed by the Commission in order to make a decision regarding a case shall be required to be submitted to the Planning Department by the end of business on the Friday following the meeting at which the additional information was requested or the case will automatically be tabled at the next meeting.

The only case discussed was V16-04-14 A. J. Burmaster II requests a variance to Section 7.5.1.3, R-1 Site Development Regulations and Section 8.1.1.4, Allowed Setbacks Encroachment (4) Mechanical Equipment, lot 140, Woodstone Subdivision, Phase 2-B, 30 Bretton Way, zoned R-1.

Ms. Scott presented a variance request to the mechanical equipment encroachment into the side yard setback. The applicant was issued a building permit and in the plan review there was a note that no mechanical plans were included for review and they must comply with the building regulations. The location of the condensing unit was discussed with the applicant in March, 2016 because of a failure of the inspection. The CLURO stated that mechanical equipment should not encroach into the front or side yard setback. The applicant had submitted a letter dated March 21st listing six reasons for the variance request. There was a letter of no objection was provided by the Public Works Department. There were discussions about a rear location, but the rear of the house was all windows.

Mr. Thomas asked about the 5' side yard setback since the regulations had changed. Ms. Scott said she did not know if it was permitted prior to the regulation change.

Mr. Burmaster said he was not aware of the change in the regulations until he had failed his inspection and was willing to move the lines wherever the board decided. The staff had been helping to determine a solution.

Mr. Adams said the regulation was changed because of noise. Mr. Burmaster said he understood the change was also changed because it was difficult to install drainage within a 5' setback. Mr. Burmaster said it was a blanket system which was quieter. He also understood the change was to allow emergency personnel to have access to the rear. The Public Works Department was agreeable to the condenser placement on the 10' setback side of the building. The hardship was there were so many houses with condensers in the side yard setback with large houses and small lots. He would agree to place the condensers on one corner of the house because there was a patio and a wall of windows. The homeowners also wanted space for a future pool.

Mr. Clark asked about the subdivision restrictive covenants. Ms. Bush asked about a structure and it was stated that it would be located behind the fence. Mr. Burmaster said at this time the wires were stubbed out on the 5' setback side and they would have to move it to the 10' side. Mr. Clark said it sounded like the homeowner wanted to enjoy their future pool and not listen to the condensers. Mr. Burmaster said the homeowner would still be hearing their condensers.

Trey Lape, 22 Bretton Way, said he was located on the 5' setback side of the property. There was fill brought in and he started accumulating water. There were emails between he and Mr. Burmaster requesting that the fill was in violation and asking to remove the noncompliant fill. Because of no response, Mr. Lape had filed a lawsuit to remove the fill in the future. His concern was that the condenser would be 5' from the property line. Mr. Burmaster said he needed 4' for the unit which only allowed 1' for drainage. He stated that Mr. Lape's compressor was also on that side of the lot so his concern was not the noise but the fill. Mr. Lape stated that he was opposed to the variance request.

Ross Trenadeau, 18 Bretton Way, said he was not in agreement with placing the condensers on his side of the property because of the noise. He felt that his unit had enough noise and he did not need three more units next to his bedroom window. Mr. Clark asked about the noise being to the rear. Mr. Trenadeau said that was not his concern.

Mr. Burmaster said he and Mr. Lape would work out their issues. There were two swales for drainage and a berm built to keep his water from Mr. Lape's property. He would also install gutters on the building and a catch basin underground to the front tied into the gutters.

Mr. Thomas asked to verify the permit date versus the side yard setback change.

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

Lori Spranley, Secretary

Nixon Adams, Chairman