

SAVANNAH ZONING BOARD OF APPEALS

ARTHUR A. MENDONSA HEARING ROOM

112 EAST STATE STREET

June 23, 2009

2:30 P.M.

REGULAR MEETING

MINUTES

MEMBERS PRESENT:

**Timothy Mackey, Chairman
Paul Robinson, Vice - Chairman
Stephanie Bock
John P. Jones**

TECHNICAL STAFF PRESENT:

Randolph Scott, City Zoning Administrator

MPC STAFF PRESENT:

**Jack Butler, Assistant Secretary
Jessica Mayfield, Administrative Assistant**

RE: Called to Order

Mr. Mackey called the June 23, 2009 meeting of the Savannah Zoning Board of Appeals to order at 2:35 p.m.

RE: MINUTES

1. Approval of SZBA Minutes – May 26, 2009.

SZBA Action: Ms. Robinson made a motion that the Savannah Zoning Board of Appeals approve the minutes of May 26, 2009 as submitted. Ms. Bock seconded the motion and it was unanimously passed.

RE: Consent Agenda

**RE: Petition of Ameir Mustafa
B-090527-31553-2
606 Abercorn Street**

Mr. Butler gave the following Staff Report.

The petitioner is requesting approval of an increase in the allowable area of a sign by 5.5 square feet to 17.5 square feet.

Findings

1. The subject property is a restaurant (Leocis’s Tattoria) located on a 2,500-square foot lot at 606 Abercorn Street on the east side of the street between Hall and Huntington streets.
2. The property is zoned RIP-D (Residential, Institutional, Professional – Transitional).
3. The petitioner seeks to install a sign for the restaurant business that is 17.5 square feet in area, which exceeds the allowable sign area for the zone by 5.5 square feet.
4. The Zoning Board of Appeals may authorize a variance in an individual case upon finding that:

- a. **There are extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape, or topography.**

There are no extraordinary or exceptional conditions pertaining to the particular piece of property.

- b. **The application of this chapter to this particular piece of property would create an unnecessary hardship.**

The application of this chapter to this particular piece of property would not create an unnecessary hardship.

- c. **Such conditions are peculiar to the particular piece of property involved.**

Such conditions are not peculiar to the particular piece of property involved.

- d. **Relief, if granted, would not cause substantial detriment to the public good, or impair the purposes and intent of the Savannah Zoning Ordinance.**

Relief, if granted, would not cause substantial detriment to the public good or impair the purposes and intent of the Savannah Zoning Ordinance.

Staff Recommendation

Staff recommends approval of the requested additional sign area. The proposed sign is an un-lit projecting sign (shingle) of modest proportions.

SZBA Action: Mr. Jones made a motion that the Savannah Zoning Board of Appeals approve the petition as submitted. Ms. Bock seconded the motion and it was unanimously passed.

RE: Regular Agenda

**RE: Petition of Robert Reeves, for
Hutchinson Island Development Co.
B-090330-39995-2
123 Hutchinson Island Road**

Present for the petition was Mr. McCorkle.

Mr. Butler gave the following Staff Report.

The petitioner for Hutchinson Island Development Company is requesting Board of Appeals approval in order to re-activate the use of an existing dock and industrial facility on the property (silos) as nonconforming uses.

The case was continued at the April 28th meeting and at the May 26th meeting at the petitioner's request.

Findings

1. The subject property is a 21.53-acre parcel located at 123 Hutchinson Island Road on the north bank of the Savannah River. Though currently zoned RIP-C (Residential-Medium Density), the site is surrounded on all sides by lands zoned for industrial use.
2. The property, formerly used by the Bluebird Concrete Company, is occupied by a single-story office building, 16 connected silos with an awning/loading area, and a dock facility in the Savannah River.
3. In June 2005, the owners of the subject property petitioned the city to rezone their land to a RIP-C (Residential-Medium Density) classification from the existing IH (Heavy Industrial) classification. The stated purpose of the rezoning was to allow the ability to construct a residential condominium community on the site. The change in zoning was approved by the city in September 2005.
4. The residential development has not taken place and the industrial structures on the site remain structurally intact.
5. The petitioner is requesting permission to re-activate and continue using the existing facilities for industrial use. The petitioner has stated intent to utilize the site for industrial purposes for a “temporary” period of time, and once the economy supports the RIP-C development, to cease the industrial uses. However, once re-activated, there is no time limit to the continuing non-conforming industrial use. (The term temporary is not and has not been defined.)
6. The petitioner intends to use the silo facilities for a similar use to that originally in place at the site: the storage and shipment of construction materials (concrete, aggregate, etc.) and/or wood-based fuel pellets or chips.
7. Section 8-3133(c) of the Savannah Zoning Ordinance states:

“When a building was designed and constructed to house a nonconforming use, then there shall be no time limit for reoccupying such building with a nonconforming use. However, when such building was last occupied by a **nonconforming** use, it may be occupied by a nonconforming use only with the approval of the board of appeals.”

Although the petitioner's structures and use were conforming prior to rezoning, the act of rezoning rendered the structures and use non-conforming under the new zoning classification. According to a sworn affidavit submitted by the petitioner, however, these uses continued after rezoning.

8. The petitioner's attorney has submitted documentation to staff and the City Attorney that shows that the current ordinance language was adopted inconsistent with the supporting documentation.

In 1997, the City Council considered a recommendation from the Metropolitan Planning Commission that would have allowed purpose-built structures that had not been used for conforming uses to be reactivated, regardless of the intervening length of dormancy without approval of the Zoning Board of Appeals. As stated in the 1997 staff report, Section 8-3093(c) Limitation on use of land or building by nonconforming uses read as follows:

“When a building was designed and constructed to house a nonconforming use, then there shall be no time limit for reoccupying such building with a nonconforming use. However, when such building was last occupied by a **conforming** use, it may be occupied by a nonconforming use only with the approval of the Board of Appeals.”

As indicated, no change to Section 8-3093(c) was proposed. However, as reflected in the minutes of the City Council, the Ordinance was actually adopted as stated above in Finding 7, indicating “nonconforming” instead of “conforming”.

9. A change to the ordinance would require a text amendment, a procedure which could take several months. Therefore, though adopted perhaps inadvertently with the wrong wording, nonconforming versus conforming, the ordinance is fully applicable as it stands.
10. As currently adopted and in force, Section 8-3133(c) requires Zoning Board of Appeals approval, therefore, the petitioner has chosen to proceed with the petition before the Zoning Board of Appeals.

Staff Recommendation

Staff finds that the site is appropriate for the former industrial use and recommends approval of the request to make use of the structures and the site in the manner for which they were originally designed and used.

Mr. Butler read a few letters from surrounding property owners.

Mr. McCorkle stated due to the error found in the ordinance and by no fault by himself or his client the petition should be approved as requested.

Mr. Robinson stated that the staff report referred to “temporary period of time”, how long would that be?

Mr. McCorkle stated two or three years.

Mr. Robinson asked if there was a renter ready to occupy the building.

Mr. McCorkle stated that there are two vendors looking into the building.

Mr. McCloskey stated that he has spoken with several property owners and some of the concerns were the trucking traffic coming on and off the Island and also the decline in their property value.

Mr. Foster stated that he felt that if the property zoning was changed back to Heavy Industrial that it would devalue the surrounding properties.

Mr. James stated that he was opposed to the petition because when he bought his lot the zoning was changed to residential for a reason and now it would not be fair to all the people that have bought property.

Mr. Smith stated that he felt the Heavy Industrial would not suite the Island therefore he is in opposition.

Mr. Braun stated that his client is in opposition to the request because he has been working on a master plan for the past few years and has spent thousands of dollars for Hutchinson Island to be a commercial and high end residential Island not industrial.

Mr. Brown, City Manager, stated the development decisions for Hutchinson Island are consistent with the approved Comprehensive Plan Use. He stated the requested appeal would indeed cause harm to the adjacent properties.

SZBA Action: Mr. Robinson made a motion that the Savannah Zoning Board of Appeals deny the petition as submitted. Ms. Bock seconded the motion and it was unanimously passed.

**RE: Petition of Patricia Dempsey
B-090527-31298-2
3329 Hazel Street**

Present for the petition was Ms. Dempsey.

Mr. Butler gave the following Staff Report.

The petitioner is requesting an appeal of the Zoning Administrator's denial of a use (22(b) – Child care center) and a waiver of the requirement (b) that such uses be located only on a collector street or higher. The ordinance requires that in-home day care be an adjunct to the principal use, which must be occupied by the operator.

Findings

1. The subject property is a 12,000 square foot residential property located at 3329 Hazel Street.

2. The property is zoned R-6 (Single-family Residential).
3. The subject property is located at the corner of Hazel and Countryside, 850 feet east of Skidaway Road.
4. Section 8-3025 of the Savannah Zoning Ordinance requires Board of Appeals approval to establish a child care center in an R-6 zoning district. The requirements for establishing a child care center per Use 22b include:

- a. **that not less than 100 square feet of outdoor play space be provided for each child;**

The petitioner has not provided dimension for the playground, however there appears to be adequate space available for the maximum number of children at this site (18).

- b. **that the center be located on a collector or arterial street;**

The center will be located on local street, but will be within 850 feet of a major (Skidaway Road).

- c. **that the architectural character shall be characteristic of the neighborhood;**

The structure on the property is a typical residence for the neighborhood.

- d. **that the use provide off-street parking in conformance with the requirements of Section 8-3089;**

There appears to be ample space available for off-street parking

- e. **that visual buffers (opaque fence a minimum of six feet in height) be provided to shield parking areas, play areas and outdoor activity areas from abutting property;**

There is a planned six-foot privacy fence for the property (see site plan).

- f. **that a sign not to exceed three square feet may be permitted; and**

One 3-foot square sign is indicated in the presented plans.

- g. **that the primary use of the structure shall be for a residence and said residence shall be occupied.**

There does not appear to be any space available for sleeping quarters for a resident. As such, it appears that the use will not be residential in character, but rather commercial.

All requirements, with the exception of (g), appear to be met. The failure to meet this condition, however, changes the character of the proposed activity.

4. In accordance with Section 8-3163 of the Savannah Zoning Ordinance, the Board of Appeals shall hear and decide upon requests for permission to establish uses upon which the Board of Appeals is required to pass under the terms of this chapter. The application to establish such use shall be approved on a finding by the Board of Appeals that:

- a. The proposed use does not affect adversely the general plans for the physical development of the City, as embodied in this chapter, and in any master plan or portion thereof adopted by the Mayor and Aldermen.**

The proposed use will not affect adversely general plans for the physical development of the City.

- b. The proposed use will not be contrary to the purposes stated for this chapter.**

The proposed use is contrary to the stated purposes of this chapter. It is not an “in home” day care in that the structure will not be occupied as a residence.

- c. The proposed use will not affect adversely the health and safety of residents and workers in the City.**

The proposed will not affect adversely the health and safety of residents and workers.

- d. The proposed use will not be detrimental to the use or development of adjacent properties or the general neighborhood.**

The subject property is located on a local residential street within 850 feet of Skidaway Road. The resulting traffic and potential congestion associated would probably not be detrimental to the use or development of adjacent properties.

- e. The proposed use will not be affected adversely by the existing uses.**

The proposed use, subject to approval, can be compatible with the character of the existing area.

- f. The proposed use will be placed on a lot of sufficient size to satisfy the space requirements of such use.**

A minimum of 100 square feet of outdoor play space is required for each child. The petitioner’s site plan is not sufficient to ensure ample space for the number of children requested. It appears that sufficient space is available, however, the proposed drop-off arrangement and curb cuts will have to be approved by the City Traffic Engineering Department.

- g. The proposed use will not constitute a nuisance or hazard because of the number of persons who will attend or use such facility, vehicular movement, noise or fume generation, or type of physical activity.**

Increased vehicular movement and noise generation could be a nuisance to the surrounding area.

- h. The standards set forth for each particular use for which a permit may be granted have been met.**

Standards as discussed above appear not to be met. The property is not located directly on a collector or arterial street and it appears that the petitioner is planning a commercial, rather than a residential in-home day care as defined by the ordinance.

- 5. Relief, if granted, could cause substantial detriment to the public good, and impair the purposes and intent of the Savannah Zoning Ordinance.

Staff Recommendation

The request for a waiver of the requirement that the facility be located on a collector street or higher may be waived. However, there is no provision that allows the Zoning Board of Appeals to waive the requirement that the use be occupied by the operator as a residence.

Staff recommends upholding the Zoning Administrator’s denial of the proposed use as presented.

Ms. Dempsey stated that they would like to have a commercial group use instead of “in-home” day care center with no more than 18 children. The hours of operation will be from 6:00 a.m. to 12:00 a.m. in order to help accommodate people that work second shift.

SZBA Action: Ms. Bock made a motion that the Savannah Zoning Board of Appeals approve the petition as submitted. Mr. Robinson seconded the motion. Opposed to the motion was Mr. Jones. Motion passed 2 – 1.

**RE: Petition of Tyhesha Johnson
B-090527-31428-2
5219 Skidaway Road**

Present for the petition was Ms. Johnson.

Mr. Butler gave the following Staff Report.

The petitioner is requesting an appeal of the Zoning Administrator’s decision to deny an increase in a use (child care) which must be approved by the Board of Appeals pursuant to the requirements of Section 8-3025(a)(22b) of the Savannah Zoning Ordinance. The ordinance allows a maximum of 18 children in a home-based daycare center.

Findings

1. The petitioner’s property is a 21,780 square foot (approximately 0.5 acre) parcel located on Skidaway Road just north of DeRenne Avenue.
2. The subject property is in an R-6 (Single-Family Residential) zoning district.
3. The petitioner is operating a permitted in-home day-care center for up to 18 children from this location.
4. The petitioner is requesting an increase in the capacity of the in-home facility from 18 to 25 children.
5. The City Council has amended the Zoning Ordinance to set a maximum occupancy for in-home day-care facilities of 18 children.
6. Relief, if granted, would cause substantial detriment to the public good, and impair the purposes and intent of the Savannah Zoning Ordinance.

Staff Recommendation

The number of children permitted in an in-home day-care is a limit set by the City and may not be varied by the Zoning Board of Appeals. The petitioner may seek to change the classification of the day care facility from “in-home” to commercial through petition through the MPC to the City Council.

Staff concurs with the Zoning Administrator’s interpretation of the ordinance and recommends denial of the requested expansion of the use beyond 18 children.

Ms. Johnson stated due to the high demand on child care she would like to increase the number of children from 18 to 25.

Mr. Butler stated that as MPC staff the limit constitutes the definition of the use. The limits are set by the City Council and can’t be changed.

SZBA Action: **Mr. Jones made a motion that the Savannah Zoning Board of Appeals continue this petition until the next regular schedule meeting July 28, 2009. Mr. Robinson seconded the motion. Opposed to the motion was Ms. Bock. Motion passed 2 – 1.**

**RE: Petition of Robert McCorkle
B-090527-31739-2
6 West Harris Street**

Present for the petition was Mr. McCorkle.

Mr. Butler gave the following Staff Report.

The petitioner is requesting approval of a parking variance of 13 spaces to permit the operation of a house museum.

Findings

1. The subject property is an historic structure on a 10,418-square foot lot located at 6 West Harris Street, at the corner of West Harris and Bull streets.
2. The property is zoned RIP-A (Residential, Institutional, Professional – Urban Residential). Walking tours, cultural facilities, museums and other similar uses are permitted by right in the RIP-A district.
3. The petitioner is currently operating a Ghost Tour location, an events venue, and a house museum.
4. The petitioner is requesting a variance from the 13 parking spaces which would be required for the legal operation of the facility.
5. The petitioner has received from the City of Savannah’s Parking Services a letter confirming the availability of sufficient off-site parking at the Liberty Street Parking Deck and the Civic Center parking lot.
6. The Civic Center parking lot on Liberty Street is approximately 780 feet from the petitioner’s property. The Liberty Street Parking Deck is approximately 1,000 feet from the petitioner’s property.
7. In order to be used as remote parking, spaces must be within 150 feet (500 feet for a college dormitory) of the use under the ordinance.
8. Under the provisions of Section 8-3095, the Board of Appeals may approve an alternative parking plan following a public hearing.

Staff Recommendation

The majority of the business of house museums in the Historic District is either foot traffic or delivered to the site by tour bus. However, the allowance of remote parking at public lots at five to seven times the statutory distance from the proposed use, and the fact that the Parking Services letter of availability of spaces submitted by the petitioner does not constitute “legally committed” space under the intent of Section 8-3088 are problematic. Staff recommends approval of the requested parking variance.

Mr. McCorkle stated that the petitioner would like to get the proper parking variance in order to get the right permits to operate the museum. The petitioner has received from the City of Savannah’s Parking Services a letter confirming the availability of sufficient off-site parking at the Liberty Street Parking Deck and the Civic Center parking lot.

Ms. Shaver stated that the proposed museum is being use as a bed and breakfast and has documentation that she pulled off the internet stating that. She is in opposition with the petition due to the lack of parking.

Mr. Carey stated he is in opposition with the request due to the fact the proposed remote parking is too far away from the business to constitute practical use and the petitioner is not actually secure on the parking spaces.

Mr. McCorkle stated that the petitioner has never used the museum as a bed and breakfast.

SZBA Action: Ms. Bock made a motion that the Savannah Zoning Board of Appeals deny the petition as submitted. Mr. Jones seconded the motion and it was unanimously passed.

**RE: Petition of Labor Ready Southeast, Inc.
B-090527-31837-2
1802 B East Broad Street**

Present for the petition was Ramsey Khalidi.

Mr. Butler gave the following Staff Report.

The petitioner is requesting approval of a variance of a separation requirement that a use (47d – Temporary day labor employment center) be located not less than 300 feet from any residential use.

Findings

1. The subject property is a 9,000-square foot lot located adjacent to a 27,000 square feet associated lot at 1802 B East Broad Street.
2. The property is zoned I-L (Light Industrial).
3. The petitioner is proposing to operate a temporary day-labor contracting business from the location.
4. The proposed use (47-d) is permitted in the IL zoning district, provided the use is set 300 feet from the nearest residential use.
5. The petitioner’s property is located directly across E. 34th Street from a residential block. The separation between the petitioner’s property and the residential properties is approximately 40 feet.
6. The petitioner has made provisions to locate all persons awaiting employment inside the subject property.
7. The petitioner is requesting a waiver of the required separation distance of 300 feet.
8. The Zoning Board of Appeals may authorize a variance in an individual case upon a finding that:
 - a. **There are extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape, or topography.**

The particular piece of property is in an I-L (Light Industrial) zoning district located in the middle of a residential R district.

- b. The application of this chapter to this particular piece of property would create an unnecessary hardship.**

The application of this chapter to this particular piece of property would not create an unnecessary hardship.

- c. Such conditions are peculiar to the particular piece of property involved.**

The conditions are not peculiar to the particular piece of property involved.

- d. Relief, if granted, would not cause substantial detriment to the public good, or impair the purposes and intent of the Savannah Zoning Ordinance.**

Relief, if granted, could cause substantial detriment to the public good, if persons awaiting employment are not housed within the property or are permitted to loiter in the residential neighborhood.

Summary Of Findings

The petitioner currently operates a furniture construction and materials reclamation business from the subject property. The proposed use would impose less impact on the neighborhood than the current use. The right of way of 34th Street provides a substantial buffer between the petitioner's property on the south side of the right of way and the residential properties on the north side of the right of way.

Staff recommends approval of the requested separation variance, however the petitioner should be required to file a site plan with the MPC staff providing provisions for housing persons awaiting employment within the site.

Mr. Taharka stated that labor ready will provide employment opportunities for members of the community and also there will be training on job skills and employee relations as well as potential opportunities for skilled labor training.

Ms. Bock asked what street will the entrance be off of?

Mr. Taharka stated East Broad.

Ms. Futch stated that she is in support with the petition because she felt it would be an asset to the community.

Ms. Eady stated she is in support with the petition because it will provide supportive employment and training services to Savannah's homeless and at risk communities.

Ms. Hamilton stated that she is in support with the petition because she felt it would be an asset to the community.

Mr. Green stated that he is in support with the petition because when he was out of work they supported him.

Mr. Bowne stated that he want to address the issues with people that are waiting for work. They believe that this site would allow everyone to the interior of the property.

Ms. Slaughter stated she is opposed to the request because it would be harmful to the neighborhood.

Mr. Williams stated he is opposed to the request because it would negatively affect the neighborhood's image.

Ms. Curry stated she is opposed to the request because of the traffic that Labor Ready would bring to the neighborhood.

Mr. Case stated that Labor Ready is a benefit to the community because it helps people work when they need it.

Mr. Mackey stated that the biggest concern here today is that this type of business will be so close to a residential area.

Mr. Johnson stated he is opposed to the request because it would negatively affect the neighborhood.

Mr. Khalidi stated that the property will be cleaned up. He asked that the petition be continued to further talk with the neighbor's to address the issues that have arose today.

SZBA Action: Mr. Jones made a motion that the Savannah Zoning Board of Appeals continue the petition until the next regular schedule meeting on July 28, 2009. Mr. Robinson second the motion and it was unanimously passed.

RE: Other Business

RE: Adjournment

There being no further business to come before the Savannah Zoning Board of Appeals, the meeting was adjourned at 3:17 p.m.

Respectfully submitted,

Jack Butler,
Assistant Secretary

JB/jm