

MINUTES

BIRMINGHAM PLANNING COMMISSION

The Birmingham Planning Commission convened in the City Council Chamber on Wednesday, June 29, 2022, at 9:16 a.m.

MEMBERS PRESENT: Chairman Michael Morrison, Vice-Chairman Dr. Nyesha Black, Chairman Pro-Tem Haley Colson-Lewis, Brian Gunn, Stephen Schrader, J. Charles Jordan II, Sharon Deep-Nelson, Patty A. Pilkerton, Mashonda Taylor, Councilor Valerie Abbott, Councilor LaTonya Tate (Brandon McCray), and Michael Eddington

MEMBERS ABSENT: Dr. Victoria Hollis, Chaz Mitchell, and Ronald Crenshaw

STAFF PRESENT: Michael Ward, Heather Garrison, Tim Gambrel, Kim Speorl, and Roderick Lowe

I. APPROVAL OF AGENDA

The meeting was called to order by Chairman Morrison. Commissioner Taylor made a motion to approve the agenda as presented. The motion was seconded by Commissioner Gunn and the agenda was approved unanimously.

II. APPROVAL OF MINUTES FROM JUNE 1, 2022

Commissioner Schrader made a motion to approve the minutes from the Commission’s June 1, 2022, meeting. The motion was seconded by Commissioner Deep-Nelson. Vice-Chairman Dr. Nyesha Black abstained. The minutes were approved.

III. DIRECTOR’S REPORT

No Director’s report.

IV. CASE NO. SUB2022-00022

SUBJECT: An appeal of the Subdivision Committee’s denial of a Preliminary Plat subdividing two lots into three lots called Milner Crescent Resurvey No. 2.

APPELLANT(S): H. Arthur Edge, III (SAV, LLC)

PREMISES: 1415 and 1429 Smolian Place in the Redmont Park Neighborhood.

Senior Planner Heather Garrison introduced the case, providing background information to establish the foundation for the appeal. Arthur Edge, legal representation for SAV, LLC, greeted the Commission, briefly mentioning the history of the case. Mr. Edge stated that he did not agree with the decision and feels that they meet all factors of the six-factor variance test.

Commissioner Colson-Lewis pointed out that the six-factor test does not seem to apply here and asked if legal was on the way. Chief Planner Tim Gambrel answered that legal was in route and would arrive soon. During this time, Zoning Administrator Kim Speorl addressed the Commission and provided an overview to explain the differences in the Zoning Board of Adjustment (ZBA) and the Subdivision Committee (SUB). Ms. Speorl described that ZBA deals with the Zoning Ordinance and variances and modifications associated with the requirements while the Subdivision Committee deals with the Subdivision Regulations.

Commissioner Deep-Nelson expressed that she understood a variance requires a hardship but wanted to know their hardship. Mr. Edge said the main concern is the cost, specifically the fallen retaining wall, costing around \$92,000. Commissioner Deep-Nelson pointed out that a financial hardship doesn't count. In addition, she was curious to why the numbers were different on the plats. Joey Miller with MTTR Engineering agreed that they were incorrect, but he would need to look further into this.

Commissioner Pilkerton asked Mr. Edge to explain which properties are owned and when they were purchased. Mr. Edge said they were purchased between three and three and a half years ago. She then proceeded to ask if the same crumbling wall in the alley existed when they purchased the property. Mr. Edge answered yes, it was there.

Commissioner Schrader asked Mr. Edge to explain why they wanted this to which Mr. Edge responded it is more profitable.

Commissioner Pilkerton said that she was looking around the area and saw no lots less than 7,500 square feet and asked if they wanted lots that were 50-52% less than those. Mr. Edge simply replied yes. Commissioner Pilkerton then mentioned that the Subdivision Regulations maintain the character of the area and wanted to know if it was denied because it did not meet the regulations. Chairman Morrison answered yes, it was the main criteria.

Commissioner Colson-Lewis asked why there was a need for more lots. Mr. Edge said the economics of building three houses versus two houses.

Chairman Morrison opened the public hearing at this time.

Reverend William Bates, 1411 Smolian Place, greeted the Commission, explained that he purchased his home with his wife, Mary. Reverend Bates is concerned that this is a risky proposition to develop due to a major sinkhole on Smolian Place. Mr. Bates then thanked the Commission for taking the time to hear his concerns. Commissioner Deep-Nelson asked if the sinkhole sunk again. Reverend Bates responded yes.

Sam Modder, 1420 Smolian Place, asked what the plan was for these properties. Mr. Modder said that it started as two lots, now they want to divide into three lots. He expressed that they have alley issues, cavern issue, parking issues, etc. Now, talking about putting small lots with skinny houses. No one ever informs us; we have to live with this Mr. Edge. I'm opposed.

Chairman Morrison closed the public hearing at this time.

Julie Barnard, Office of the City Attorney, arrived and asked if there were any questions. Commissioner Pilkerton stated that this project first went to ZBA to get a variance to allow smaller lot sizes than what's required in that zoning district and it was denied. The ZBA case was appealed to the Circuit Court of Jefferson County where an Order was issued that the proposed variance satisfies all six factors, granting the variance. Then, the appellant went to the Subdivision Committee to divide the two lots into three lots and the Subdivision Committee denied this request. She asked Ms. Barnard is the Subdivision Committee bound to any decision by the court? Ms. Barnard explained that the court ruling dealt with the ZBA, not the Subdivision Committee and that the two follow different standards.

Commissioner Pilkerton then asked if the variances are granted, why don't we honor the court case? Ms. Barnard responded that the decision to deny subdividing the lots was based on the Subdivision Regulations. Commissioner Pilkerton then asked, if the Subdivision Committee denied it, are we being asked to change this decision, uphold, or deny? Ms. Barnard responded that they could uphold or deny the decision of the Subdivision Committee.

Commissioner Colson-Lewis asked what the procedural trajectory of this was. Ms. Barnard said there is no zoning issue due to the court case ruling.

Councilor Abbott made a motion to uphold the decision of the Subdivision Committee regarding this case, Case Number SUB2022-00022. The motion was seconded by Commissioner Taylor and the following resolution was approved unanimously:

WHEREAS, the Birmingham Planning Commission has reviewed the Subdivision Committee's Case Number SUB2022-00022, which the Subdivision Committee voted 4-0 on May 25, 2022 to deny a Preliminary Plat subdividing 2 lots into 3 lots called Milner Crescent Resurvey No. 2; and

WHEREAS, the Subdivision Committee based their decision on what is stated in Article 3.12 of the Subdivision Regulations of the City of Birmingham, Alabama; and

WHEREAS, said Planning Commission has reviewed and evaluated the appellant's grounds for an appeal of said case as set forth in a notice of appeal dated June 9, 2022; and

WHEREAS, the Birmingham Planning Commission has held a public hearing to hear the comments and opinions of all parties concerned regarding this case and has given careful and thoughtful consideration to all of the above cited information; now therefore

BE IT RESOLVED by the Birmingham Planning Commission that said Planning Commission hereby concurs with and upholds the action of the Subdivision Committee in this case.

V. OTHER BUSINESS AND COMMUNICATIONS

Chairman Morrison made a request that the Commission be kept abreast of this situation.

There being no further business, the meeting was adjourned at 9:48 a.m.