



**OFFICIAL MINUTES
BOARD OF AJUSTMENTS**

May 27, 2009

Members present: Malcolm Hodnett, Foye Lirette, Gary McNeal, Nathan Oubre, Clarence Savoie, Rudy Soignet and Mark Tortorich

Members absent: None

Also Present: Errol Price, Zoning Administrator and Ruby Maggio, Secretary

Mr. Hodnett replied the first thing that we have is the meeting minutes from the April 1, 2009 meeting, do we have any changes, corrections or comments or do I have a motion to dispense with the reading and approve the meeting minutes as submitted. A motion to dispense with the minutes and approve was made by Mr. Savoie and it was seconded by Mr. Lirette, Mr. Oubre, Mr. Lirette, Mr. Savoie, Mr. Soignet and Mr. Hodnett were in favor.

Mr. Hodnett stated for those of you who have not been to a Board of Adjustments meeting we have five permanent members and two alternates, Mark Tortorich and Gary McNeal are our alternates, they can participate in the discussion but they won't be voting tonight.

The first item was to consider a request by Lea Rutter Builders on behalf of Dr. Doug Ber to be allowed to vary 5' from front yard setback requirement of 20' in order to construct addition to building located at 511 Cardinal Drive (R-3 Zoning District). Mr. Lea Rutter of 206 Creole Lane came forward and stated that the request for the five foot variance, we're going to do a 1,000 sq. foot addition to Doug's office right now; we still have enough parking, we still have everything else, the setbacks and all that is necessary. The way it is, this building was built probably sometime in the '60's and at the time it was previous to zoning and so we're just trying to line it up with the front of the building and once we do our alignment in front of the building we're actually going to be 5 to 10 feet further back than some of the adjoining properties. So we'd just like to ask for your ok to go ahead and proceed, we've got Fire Marshall approval and we're ready to go. Mr. Hodnett replied ok, all right, just a clarification on your little site plan and you had mentioned that the addition won't protrude further than the furthest point of the front of the building right now. Mr. Rutter replied that is correct. Mr. Hodnett stated it lines up with that. Mr. Rutter replied exactly. Mr. Hodnett stated and then that gives you 15' from the face of that existing building to property line. Mr. Rutter replied yes the existing building is 15' from the property line, that is correct. Mr. Hodnett stated ok, just to make sure that is clarified, I did measure the prayer building from the edge of the road to the front of the prayer building is 15' so I know it is less because I know where the property line is in front of the prayer building, that faces Cardinal Drive; are there any other questions or comments from the Board? Mr. Lirette asked if the existing parking lot would stay the same. Mr. Rutter replied that is correct, we have more than enough parking, the one on the front, that is not going to change and we also have parking off of Foret which is the same so we have adequate parking. Mr. Hodnett replied do we have any other comments? Do we have any comments from the audience? Mr. Hodnett stated my opinion is that we're not protruding past the existing face of the building, now the question is, you need 20' for a parking space, you have 15', just to clarify, what is the distance from the face of the existing building to the edge of concrete or edge of road, what would that be? Mr. Rutter replied we were looking at it this morning and actually we probably have and I'm not exact, but we probably have about 25' to the actual existing part of the road because I was looking at, I don't know if there was a 40' or 50' right of way but... Mr. Hodnett asked for Cardinal Drive? Mr. Rutter replied that is correct, I'm not sure what it is but I noticed that the 15' we probably have a good 10 to 15 more feet from the property line to the edge of the street so... Mr. Hodnett replied ok, so you have in excess of 20' from where you're going to have the new addition to edge of Cardinal Drive. Mr. Rutter replied right and the parking that is there you all, is an existing parking lot, it has been there, we're not adding to it, we're just building on the building so nothing changes, it stays. Mr. Hodnett stated so you're going to be moving it back for a 5' sidewalk or... Mr. Rutter replied that is all taken care of. Mr. Hodnett replied ok, good deal. Mr. Rutter replied thank you. Mr. Hodnett then asked if there were any other comments from the Board or any motions from the board? Mr. Savoie replied he would make a motion to accept it, the motion was seconded by Mr. Lirette, all members were in favor. Mr. Hodnett replied good luck.

The second item was to consider a request by Taylor Gravois to have clarification on yard requirements in order to place 6' high board fence at corner of Plantation Road and Lynn Street (R-2 Zoning District). Mr. Hodnett replied Item #2 has been withdrawn from the agenda.

The third item was to consider a request by Jimmy and Kimber Ratcliff to be allowed to place 42" high picket fence within front yard setback requirement at residence located on corner lot at 212 Bayou Lane (R-1 Zoning District). Mr. Jimmy Ratcliff of 212 Bayou Lane came forward and stated that basically since the city has been doing the work of putting the culverts in, they've torn down the pine trees, we've taken down some as well on our part and there is really no privacy there, I've got a 5 year old and a 2 year old and we just want to build just a small little picket fence along the side to attach to the back side of my fence and that is really all there is to it. Mr. Hodnett replied and what you're proposing for the fence location, it looks like that would wind up being an extension of the existing fence and when you turn the corner down Menard and that would be on the property line itself. Mr. Ratcliff replied correct, it would run parallel to Menard. Mr. Hodnett replied ok, are there any questions? Mr. Savoie asked where is the property line? Mr. Ratcliff replied the property line runs, are you familiar with the property? Mr. Savoie replied yes. Mr. Ratcliff stated ok, the azalea bushes towards Menard St. there is about 6 ½ feet or excuse me, 5 ½ feet of property line but we want to come in some, we want to get as close to the azalea bushes as possible. Mr. Lirette asked how many feet do you have between Menard St. and the fence? Mr. Ratcliff replied I didn't bring that with me, I want to say from my fence towards Menard St. perpendicular is 24' and it runs parallel to Menard I believe it is 61 ½ I believe, I'm not exactly sure, but I think that is the measurements. Mr. Hodnett then asked if there were any comments from the Board, if not, I'll turn it over to audience, are there any comments from the audience? Is there any other discussion from the Board or motion from the Board? Mr. Lirette made a motion to accept the request, the motion was seconded by Mr. Soignet, all members were in favor. Mr. Hodnett replied good luck. Mr. Ratcliff replied thank you very much.

The fourth item was to consider a request by Shelby, Fauchaux & Pitre, L.L.C. to be allowed to operate multiple businesses within one building and be exempted from parking requirements at 102 E. 5th Street (R-2 Zoning District.) Mr. David Richard of 206 Green Street came forward and stated I represent all of the people applying for the variance but before I do that and Mr. Price was kind enough to send me some recent amendments to the zoning ordinance, I do have some questions and before we get into the variance as to whether or not a variance is required in this particular case. Mr. Hodnett stated so your question was whether or not we actually have to have the variance. Mr. Richard replied yes, the evidence will show and we can certainly call some people that in 1957 the building was built and I'm sure you're familiar with the building at the corner of Menard and Canal St. originally owned by Mr. George Marshall and at that time there were several professionals located in the building. In fact, when Mr. Buck Kern taught me in accounting back in the '60's I worked there helping him do some audits and the Kerns were located in the back of the building, Mr. George Marshall had half of the front and Shaver-Robichaux had the other half. So I think at that particular time and since that time we had a building with a number of professionals in it, when the ordinance was passed I think the zoning ordinance that really re-did the city's zoning was in 1985 maybe, or 1982. Mr. Hodnett replied it might be '76. Mr. Richard replied I think it was '75; I was city attorney at the time we did that, that is right, when the new form of government came into being. When you read the zoning ordinance it has a Section 405 that talks about non-conforming uses of structures or of structures and premises in combination and what happens when it becomes a non-conforming use. I think the evidence is clear that this building has been used since 1957 as a multiple professional office. Mr. Price was kind enough to send me a recent amendment in 2008 dealing with single offices but I don't think any amendment has any weight on the particular issue at hand. This non-conforming use which is supposed to be a non-conforming use, has never changed, even today there are professionals in the building, not one professional but a number of professionals in the building just like it has been since 1957. So the reasons why you have a non-conforming use that is penalized is when you do a number of things, add on the building, you change the format of the building and you make it something else, you make it a restaurant or something else other than professionals. Mr. Hodnett replied or one other thing would be a lapse in occupancy. Mr. Richard replied right, whether you had an empty building, I think six months I think they have some different times but I think it has six consecutive months or of 18 months during any three year period of time. Mr. Hodnett replied right. Mr. Richard replied and I think we can show that this never happened, the same professionals that have been there for the last maybe 3 or 4 years are still there, Buck and Bob Kearns are no longer there, they sold the building to Mr. Fauchaux and he intends to put some other professionals in the building. So I don't think that under the zoning ordinance itself the non-conforming use has ever changed to say you need a variance; you still have professionals in that building the way it's been since 1957, nothing has changed with regard to that. The fact that there was an amendment in 2008 to define what is a single office has no affect on this because it is conforming; it is a non-conforming use that is still being used the same way. In other words if you had a gas station and it continued to be used simply as gas station and it continued to be used simply as a gas station then you really don't need a variance because it is continuing the non-conforming use. To say it doesn't, you'd probably have some constitutional problems with due process, you can't take something from a person without due process, in other words, if he is grandfathered in and he has spent a lot of money having an office and all of a sudden you tell him for no reason other than he has changed the complexion of the office that he has to make it a home and he loses \$150,000.00 because he can't sell it as an office, that is an unlawful taking and it is unconstitutional under the due process clause of the constitution. So, my first argument would be is that I really don't think Mr. Kearns, Mr. Fauchaux need a variance, that this non-conforming use is not changed, we haven't added on to the building, we haven't made it something other than a professional building for professionals, so my first argument would be is that I don't think we need to apply for a variance and if we do, certainly I would like to argue that it is the same office it has been since 1957, we have

professionals in it, generally the spaces are closed by night, to say that all that we can do with this building is to make it a residence would probably be worse for the neighborhood than having professionals who use it during the daytime. Certainly there are no parties at this professional building and it has been there quite some time if you would want Mr. Kearns or Mr. Fauchaux to add anything to this I'm sure they would be happy to do so, can I have any questions about that argument. Mr. Tortorich stated I'll tell you, I pass by the building a lot and I agree with him, I agree that nothing has changed in the building, I pass by that building bringing my little boy to school and I also say this, that is not the only property in Thibodaux that this can happen to and I'm glad that the Mayor and one of the Councilmen are here, I think something needs to be changed in the city so that this does not even come up to us because all you're doing is, a guy that has had a business for a number of years wants to sell, get out, these people bought the building, now all of a sudden they're not doing anything different and we're telling them they have to come before us. I kind of agree with him not kind of, I agree with him. Mr. Richard replied and I think Mr. Tortorich is correct in saying that, I think that would create some constitutional problems with undue, without due process, a taking and you can't take property from people, value of property without due process and that generally means why you're doing this to this person who maybe invested, let's say it was a real nice office, \$400,000.00 and all of a sudden he had to make it into a house where he could only get maybe \$150,000.00 for it. Mr. Tortorich replied isn't there a business on the back side of it also, I'm talking about...Mr. Richard replied Mike Matherne has his back yard in back of the building and then Dr., well it used to be Dr. Peltier's office and now it is a computer place, Mark Boudreaux and then we have an empty lot and then George Deidrich's place with Century 21 and then I think Leslie Clement is on the other side of the street. Mr. Richard asked if they wanted to add anything. Ms. Celeste Shelby, Mr. Brett Fauchaux and Leo Pitre came forward and Ms. Shelby stated I wanted to read what we had written in our request just for the benefit of our members and people who live nearby and forgive me if some of the wording seems kind of sappy, but I am a counselor and this is very important to us. We are requesting the commission to continue to operate our counseling practice. Our office consists of therapists Celeste Shelby, Brett Fauchaux and Melinda Ensley Galloway. Celeste has been in practice in this location for 10 years, Melinda has been here for 7, and Brett has been here for 6 years. We purchased this building at the end of April, so we would be assured a place to practice for many years together. Our practice has served many clients in need from Lafourche and the surrounding parishes. We believe that we have played an important part in strengthening families and the community as a whole. Our mission has always been to help individuals and families in this community. All three of us are involved members of the community in one way or the other. We all respect the integrity of this quiet, clean area. We have enjoyed the short time we have had the building to manage our properties lawn and consider other ways to add to the beauty of this building and our town. In no way would we ever jeopardize the peaceful atmosphere we all are able to experience in this pristine little haven. Prior to purchasing our office building, the front offices of the building were occupied by Kearns Accounting. The owners of Kearns Accounting retired a few months ago and offered us the opportunity to purchase the building. We decided to purchase the building to continue our practice and lease the front part of the building to a Hospice Agency that would provide services to the citizens of Lafourche. We have a lease with Bayou Region Hospice to be effective on June 1st. This company would be run by the Administrator, Robert Eastwood, and staffed by three other nurses who see the patients in the home. The office would be used for administrative purposes only. It should be noted that we have never had a problem with parking issues or complaints while sharing the offices." That is what we wrote in our application. Mr. Hodnett then asked if they had any other questions. Yes, and you all have gone ahead and signed the lease with the hospice. Ms. Shelby replied we no longer have the lease with them. Mr. Hodnett stated they're just waiting for this to happen. A gentleman stated well they lost it as a part of going through the process, they had to find another place, so one alternative is, my name is Leo Pitre, I worked for Hibernia Investments and Capital One and since the last year have gone out on my own and we are currently located downtown. We are a financial planning firm here in Thibodaux and we potentially may move in there with myself and a secretary, and we're talking about again, something small and we are very active in the community, we just sponsored the high school all star classic at Nicholls which was a large sum of money that we did for all the local community, I'm on the board of CASA, so again, very active in the community, we want to stay, you know we serve the people, have been serving them for the last 11 or 12 years of Lafourche and Assumption also. Mr. Hodnett replied ok, good deal, we thank you all, I'll open it up to anyone else, does anyone else have any comments? Mr. Hodnett stated going back to the opening statement, I have to agree that really there is no real change, now Mark you had mentioned that we really probably shouldn't be hearing it but you know to I guess give everybody due process to me I think that it is appropriate to do it, that way everybody who is in the neighborhood is aware of what is going to happen because we've had in the past so many people get, and rightfully so, they get very nervous about things getting changed without them knowing about it and it affects the fabric of the neighborhood. Mr. Leslie Clement, Jr. came forward and stated I am next to the building at 409 Canal Boulevard and I certainly have no objection to the request. I think all of us in the community are aware of the great value of the architectural aspects of Canal Boulevard and I think that certainly has to be balanced though against things that can be provided by the group that is here. Quite honestly the reason I am here is not because I am so interested in opposing or supporting their request, but that in discussing this thing with Errol I learned that I was not aware that if ever I decided I wanted to bring another lawyer into my building that I would be in violation and as you can see I am getting older with gray hair and I'm thinking about potentially employing an associate at some point. I am disappointed to learn that I might be precluded from that by the current ordinance so I know that this is not the appropriate time and place to address that but I will share your

concern and ask that you take those issues into consideration; we need to have a balance of interest here. I do want you to know in closing though that I have absolutely no objection to the request that is being made when Mr. Kearns was there we never had a problem with parking, we were able to get along well with our neighbors and I wouldn't expect anymore problem and I think certainly a business like a hospice can be a valuable asset to the community. Mr. Hodnett replied thank you. Mayor Charles Caillouet came forward and stated I just wanted to let all of you know that I've advised Planning and Zoning that we're looking into having or hiring a firm to come in to review the entire zoning ordinance for the City of Thibodaux. I think that this is something that is probably long overdue, you heard the dates before when it was put into place and there have been some amendments to it. It is a very important situation to people who own properties because you buy it and you use it and you build it for one reason and then somehow a zoning gets changed on you and you're no longer able to use it for that purpose over a given period of time, a lot of grandfather clause. So just to let you know that we're looking into that, we're trying to secure a firm or looking towards South Central Planning as an example of where we might go to get this information but for your purposes and as board members to know that the City is looking into this and as I said, I've also informed Planning and Zoning that this is also to be taking place. Mr. Hodnett replied Charles, is it going to be, for instance, for signage, are we going to go back and review that in relation to other zoning ordinances or.....Mayor Caillouet replied well we need to locate a firm or somebody interested to do it, it might go out for proposals on it and we'll go with the scope of work. One of the things that has always kind of irritated me is that a billboard can be 10 times larger in the City of Thibodaux advertising businesses from all over the State than you can put on your own brick and mortar building in the City. You know most times it is 32 square feet and I see where we've got billboards going up now that are going to be 1,000 square feet, so again I think that definitely needs to be evaluated; but it is going to be the scope of what we would like to see them do. So hopefully this board, planning and zoning and certainly the council will make the final input into it but it will be a while in the making; once we even hire or secure their services it is certain to be a while before it is done. We have something already which is different than Terrebonne, they had to go in, they operated for a long time as a commission and never did their zoning. Now they went out and I think I was told that to do it for the whole parish was like ¾ of a million dollars, but they didn't actually have an ordinance in place, we do. So what we need to look at to see and get an idea of what it would cost to go in and evaluate and review what we have in place because it is not only in this particular issue tonight, it comes up on a regular basis, you know, when the building has been there, it has been used for a purpose, it has been shut down for various reasons, you come back in and you want to do it again and you've been told you can't use it for that reason anymore. Signage is another good thing, you know all of this really needs to be reviewed and my purpose here tonight would be to let you know that this is what the City is planning on doing but with that being said, it will still take a while before that is actually accomplished. Mr. Hodnett replied ok, good deal just keep us posted as you do go through it. Mr. Errol Price, Zoning Administrator, stated I'd like to make a statement, the reason that I sent them to the Board of Adjustments is Section 405 – Non-conforming use of structure or structures or premises in combination, Section 405.1 and Section 405.5 and the six month period, the only way I can treat it if the business is closed is when nobody has a certificate of occupancy to occupy the building and then somebody wants to get a certificate to occupy it, I have no idea if the business has been closed, how long it has been operating. I was informed that they were operating for nine years but they never applied to get an inspection to get a certificate of occupancy, so I have to treat it as it was non-conforming and that is the reason why I sent them for a variance. Mr. Harold Block came forward and replied this is my wife, Jane, and we live at 515 Canal Boulevard which is about a block away and Mr. Clement was just up here and I think I heard him say he was getting older but I believe Judge Richard said that he had his law office in this building in 1957, so that would make Judge Richard a little bit older than I think everybody in this room. Mr. Richard replied I'd like you to know that I am two months older than Errol Price. Mr. Block stated I think my wife would like to say something and basically Celeste we've known her most of her life and they've been wonderful neighbors and so forth but my wife wanted to say something that she has not disclosed to me, so. Ms. Block replied that is because he can't hear very well, we're very happy to have Celeste and her partners in the neighborhood and I think part of what makes a neighborhood like ours a nice one is that we do work together, for instance, should Leslie decide to take in a younger associated, we would be delighted with that too. We all try to work together to make a pleasant environment for one another and I think that is a nice thing about living in a town like Thibodaux. Another nice thing about living in a town like Thibodaux is trying to keep Thibodaux looking like a nice town and I do hope, Mr. Mayor, that when the new zoning ordinances are created, when they come before you all and when you review them that you keep in mind that we want to maintain a nice looking town, it is really, really important. It is important for all of us, those of us who live in the old part of Thibodaux to be able to continue to live in a nice looking old part of town where our property values are maintained, but it is nice for everyone who lives in other parts of Thibodaux to have this nice part of town, it is nice for all the visitors who come to Thibodaux from Houma and wherever else and say Thibodaux is so much prettier, we so like to come to Thibodaux because it has charm. You know we are in a stage of life where people because of the economy, traveling is cut back and people are taking little road trips as opposed to big trips. People come to Thibodaux, they like what they see and I think this is good for our economy, it certainly is good for Louisiana, it is good for all of us. I think we want to make sure that Thibodaux maintains the look that it has and increases its attractive appearance so please I hope that you all and the Mayor and the zoning will keep that in mind. Thank you. Mr. Hodnett thanked Ms. Block. Mr. Block stated another thing I'll add is I know you gentlemen are here doing your civic duty and so forth and I'm sure there are lots of days that there are other things that you'd rather be doing, on behalf of the community, thank you for

your service. The board members thanked Mr. Block. Mr. Hodnett then asked if there were any other questions or comments. Mr. Lirette stated I'd like to make a motion that we approve it. Mr. Soignet stated one more thing and I respect your opinion in this matter and as an attorney, you're getting me kind of worried for a second about what I was going to say, but I respect that and I'm glad you came up to talk because it seems to me that the zoning laws in this town, it is getting more complicated for us on this end to understand and this didn't vary my opinion either way, but I think we may need to get special attorneys and stuff like that because I'm getting to a point to where we need the city attorney involved to get her opinion on this, but it is our ruling, thank you. Mr. Hodnett replied yes, we appreciate everybody that comes out, I mean whether you are for it or against it, it just makes our job a whole lot easier, it just makes it that much easier. Mr. Hodnett stated Leslie, you have to point your finger at me because actually in '98 I was the one who re-zoned our neighborhood, I was the one who passed a petition, I'm the one who tried to get it in your spirit, Jane, so that we have a better quality and it was more of a neighborhood setting. At the time I was fearful that we would get for lack of a better term, gross commercial development in our neighborhood, we were R-3 and as far as I know in the City's history that it has been zoned from R-3, it was zoned up from R-3 to an R-2, but it wasn't to exclude professional type offices, it was more of a fast food type, there was talk of some activity in the neighborhood and I certainly didn't want that in what we consider and Jane you consider too, is a beautiful residential neighborhood. But in the spirit of doing that I certainly didn't want to penalize any businesses that were already in that area, that wasn't the intent, it was to preserve what we had but not penalize anybody. I don't see any problem with giving the variance on this issue because the building has been continuously occupied as you mentioned for all these years, now if I can throw a bone out there, the ideal situation is if you could buy the property next door and do a parking lot there, I don't know if that is a possibility but you know it is always an option to give yourself more space but I don't have a problem with it. Mr. Richard stated the only problem I would have Mr. Hodnett is whether or not there would be some problems in the future with a variance, I was just wondering if you all could possibly make a ruling on whether or not a variance is really required in this particular case because it is a continuing use that has been the same use since 1957, I don't know if a variance is creating this, will there be some problems down the line if they continue the same use, so... Mr. Hodnett replied well, that would be an interpretation in reference to this... Mr. Price stated until Planning & Zoning, Planning & Zoning is the one that created the ordinance, the Board of Adjustments give the variance but until I get a different interpretation this is the way that I have to do it. Mr. Richard replied but I'm looking at, call out the ones you talked about. Mr. Price replied 405.1. Mr. Richard replied and it says "No existing structure devoted to a use not permitted by this ordinance in the district which it is located shall be enlarged, extended, constructed, re-constructed, moved or altered except in changes the use of the structure to a use permitted in the district in which it is located." I think what they're talking about is that you can enlarge it as long as the use fits R-2, in other words, you can add on to that building for a house. Mr. Price replied I agree with you on that, the part I disagree with is the use, except changing to a use that is permitted. Mr. Richard replied but that means that if you add on to the building, that you conform to the new, in other words, you've violated the non-conforming provision. Mr. Price stated well it is not my, you know, I'm just the enforcer, you'd have to go to Planning & Zoning because they're the ones who guide me on how to interpret it, that is where I'm at. Mr. Richard replied but does the adjustment board have a right to say regardless of what your opinion is that a variance is not required in this particular case. Mr. Price replied yes, they could, yes, the Board of Adjustments has that authority. Mr. Richard replied that is all I'm asking and I think in this particular case I think the use is the same. They're talking about if you add on to the building, if you change the structure then you have to have the use, in other words you could add on to this building as long as it was a residence and it met the requirements of enlarging a residence. So, it is telling you that you can't enlarge the building or do anything to the building but if you do then you're not going to be an exception, you're not going to be grandfathered in but you have to use it now as an R-2, you can add on a room but you're going to have to use it as a residence and I think that is what that provision means. If it didn't, he would never have a non-conforming use that stayed the same, every time you sold you'd have to get a variance and I don't think that is correct. Mr. Price stated but their interpretation from the Planning and Zoning is that, their idea is to weed out the non-conforming use so if you had something that would come in different that was there, you're not allowed. Mr. Richard replied and I agree with that but I think the use is the same, professionals have occupied this building since 1957 and I don't think that is changing, the ordinance says if they add on to the building or they change the structure or they make it a restaurant, you can't do that but if you add on, you can add on but you're going to use it as a residence, it is not going to be a professional office anymore and I think that is what they're talking about. Mr. Hodnett replied thank you, are there any other comments from the audience? Are there any other comments from the Board or any motion from the Board? Mr. Lirette replied I don't know if we make a motion to approve it and say we don't need it or make a motion we don't need a variance for this. Mr. Soignet replied I think as a Board we make our decisions on hardships and also I think with this situation here it is actually grandfathered in, do we need a variance at all. Mr. Price replied let me make a statement because I've got a problem after, if they don't give a variance, I still don't have the authority to give it, it has to go to Planning & Zoning after, I don't have the authority to give them a permit for them to occupy it. Mr. Richard replied Errol, I'm just thinking, if I knew the repercussions of a variance down the road, I wouldn't want Mr. Fauchaux to have any problems down the road because you granted a variance when a variance was not needed and that is the only thing I'm saying. I haven't researched it yet and I don't know about that, I just thought the board had the right to say you don't need a variance. Mr. Price stated it is getting to a point and I don't want to be a spokesman because I am just an administrator, but the board should be doing the speaking, it is getting to a point legally, where we would

have to get the city attorney's advice because I have a problem if they say no variance, I still can't issue it. Mr. Richard asked how long would that take? Mr. Price replied I have no idea, I don't know, I can turn it over to her tomorrow and get an opinion but I don't know when. Mr. Richard replied in other words, once you determine somebody is in violation of the zoning ordinance, the adjustment board cannot say no, we don't think so. Mr. Price replied not for a variance, Planning & Zoning I think because.... Mr. Richard replied if the board can't say that, who can? Mr. Price replied that is what I said, I'm not attorney, so I don't know, so I'm in the middle, personally what I would do, no matter how they rule tonight I'm not going to do anything until I turn it over to the city attorney, she'd have to tell me how to proceed, they can rule the way they want. Mr. Richard stated Errol know that you are an administrator and the board is legislative to a certain extent with regard to zoning and if they can't determine that a variance is not needed in this case, who can? Mr. Price replied they can't create zoning and that is what you're kind of doing here. Mr. Richard replied no, but it is just a question whether or not they feel that it is in violation of the zoning ordinance or it is not. Mr. Price replied well, my opinion is though, they can, let the board do what they want but if they say no variance is required, I will turn it over to the city attorney before I issue anything. Mr. Richard replied that is fine, I mean if they vote that way, I'll be glad to talk to Ms. Jackson about it. Mr. Hodnett replied ok. Mr. Price stated I don't like to get involved that deep, I'd rather the board handle it all; I don't want you all to leave with the assumption that they say no variance and it is ok. Mr. Tortorich stated why don't we do two votes. Mr. Hodnett stated well we can go and consider it, whether or not we want to, personally I think we're doing the right thing, I think that Errol bringing it up it is a change to some degree and if your records don't show it for 9 years, as you mention then I think what we're doing is dotting the I and crossing T here, we're kind of eliminating someone to come back and say well you gave them, you let them come back into the building but really if I go back and say well nine years ago, they've been in that building as a non-conforming use for nine years. Mr. Richard asked why was it non-conforming nine years ago, I mean it is the same use; you can make the same argument, since 1957 there has been a professional office with several professionals in there, that has never changed. The ordinance says that you grandfathered in regardless of what ordinance you pass, what amendment you pass, it is due process, you can't take people's rights away without due process. However, if you change the structure or you do what 401, 402, 403, 404 and 405, if you do that then you need to get a variance but if you don't do any of those things you don't need a variance. The only thing I am concerned about is if we say we were in violation today and get a variance is that going to hurt them in the future if they want to do something in five or six years from now. I don't know the answer to that right now and I would think the board has authority to say that we are in compliance, we have the same use that we've had since 1957 and if you read 401, 402, 403 and I think Errol's interpretation I differ with, I respect his interpretation but if you add on to it, the only way you can add on to this building is if you make it a residence. Mr. Hodnett replied right. Mr. Richard stated because you've violated the provision that says you're grandfathered in, so that is where we are. Mr. Leslie Clement came forward and stated I don't know if Mr. Richard would accept this but perhaps he would accept a statement from the board that the board is not sure if a variance is needed but in the alternative, if a variance is needed then the board indicates it's approval of a variance, would that make you feel better. Mr. Richard replied sure. Mr. Hodnett replied ok and that would be relative to this particular case. Mr. Richard replied I don't know if Errol says that we can do that. Mr. Price replied I'm not an attorney, so I can't answer that. Mr. Hodnett stated well, does anyone want to make a motion to that effect? Mr. Lirette replied I'll make a motion to that effect, Mr. Hodnett stated we'll make it to your statement Leslie, about, Mr. Leslie Clement replied yes, I think the motion would be then to that if a variance is needed in this particular case then the Board would grant the variance. Mr. Hodnett replied correct, ok, are there any other comments? Do I have a second of the motion? Mr. Soignet stated hold up a second, why are we even granting a variance if a variance is not needed, because I understand the confusing part of not being on record but we know it's been in existence since 1957 as long as we've been living here, I feel it probably doesn't need a variance of any sort, it is just grandfathered in, so why are we even going to vote. Now, can we take Leslie's advice and just table it until the matter is cleared up. Mr. Hodnett replied we could but I think time wise that would affect the owner, the purchase agreement. Mr. Richard stated that would us some time for me to talk to Ms. Jackson or whoever I have to talk to in arguing the point that a variance is not needed in this particular case. Mr. Hodnett stated ok, so the motion that we have is still good, that is still good with you? Mr. Richard replied yes, in other words if we have no decision to make on whether or not a variance is needed but if one is needed you would grant the variance; I'll meet with Germaine and we'll get it cleared up. Mr. Hodnett replied ok, so do I have a second for... Mr. Soignet stated so we're still going to grant a variance if one is needed. Mr. Hodnett replied correct, well I mean if everyone votes for it, do I have a second on the motion. Mr. Oubre seconded the motion; Mr. Oubre, Mr. Lirette, Mr. Savoie, Mr. Soignet and Mr. Hodnett were in favor. Mr. Hodnett stated good luck to you and keep up abreast as to your conversations with Germaine because that would be something that we could use in the future to clarify this type of thing that comes up. Thank you.

The fifth item was to consider a request by Kibbie's & Ninnie's Quik Stuf to be able to operate a take out food establishment at 698 Gerald T. Peltier Dr. (R-3 Zoning District). Mr. Owens Blakely, 1314 Palm Center Dr. and on behalf of, well I have four boys, they are not here, they are serving in the service, the Navy and the Army and on behalf of my two daughters who are Quintals and Ashley here, I'm a little lost, this is the first time that I've been involved into this here but I have invested quite a bit into the place of business that they have and used up some of my sons money that they are not here to speak for themselves at the present. The reason why I am here, I've been asked in some shape or form

just asking to make some kind of re-consideration to re-open the place up in the line of a restaurant. Mr. Hodnett stated in your request for the variance it is strictly a take out food, no dining in, not a restaurant. Mr. Blakely replied not a restaurant, take out. Mr. Hodnett stated and no alcohol... Mr. Blakely replied no, sir. Ms. Shan tell Woolridge of 304 Marcello Boulevard came forward and stated we had tables in but we really didn't know that weren't supposed to be selling hot food when we opened up. We had a huge sign that was outside and it had hamburgers, french fries, hot dogs and stuff on the sign and Mr. Errol put a prohibited paper on it saying that we couldn't, the sign was too big, so we didn't know that we couldn't sell food, we just thought we couldn't have the sign and he said that we couldn't have gas, so we knew that we couldn't put the pumps back up but we didn't know that we were violating an ordinance by selling hot food that was prepared there at the building because we had the Board of Health come in and the Fire Marshal came in and we got our certificate. Mr. Hodnett replied everything was fine. Ms. Woolridge stated yes and we really didn't know that and the guy that we were leasing from he said that he would have never rented us the building and let us spend all the money that we invested in the building, we had to get the wiring done and the plumbing and everything, if he would have known that we wouldn't be able to sell food in the building because when we went to him we stated that that was what we wanted to do you know, we didn't say we wanted to be a restaurant, but we wanted to be able to sell burgers and fries and hot dogs and stuff like that. So he said he would have never let us invest in it, we both waited until February because we had to wait until we got income tax and I spent all of my income tax in the building and if we would have known that we were doing something wrong we would have never invested that kind of money into that building. Mr. Hodnett replied ok, and then it is not a drive up, it is just cooking, get your order and leave. Mr. Price replied excuse me, but you're going to have to treat it as a restaurant because there is no way to control it, to inspect it, but a food take out order or a restaurant is allowed in an R-4 Zone, so when they are asking for that variance right now, either one is fine, it would be the same in other words. Mr. Hodnett replied ok, thank you. Ms. Woolridge replied and we also sell chips and like drinks and we do sell package food also and we were trying to get an EBT time so we could sell bread and tuna and sardines and stuff like that for the community and I mean we were delivering to the schools, to the teachers and we were delivering to Cintas and to the hospital, we were delivering to Nicholls, to O'Reilly's, everybody in the neighborhood and down the street from us, Joannie's, they weren't selling food at the time, their kitchen was closed, they just like last week they got somebody to go in and start selling actual food out of there but they weren't even operating their kitchen, so they really didn't have a kitchen in the area and people were walking, in walking distance and they would come and get their food, so we were kind of like helping out. Mr. Hodnett replied you were, yes, because Connie's was closed for a while too. Ms. Woolridge replied yes well she is all the way down St. Charles, like almost by Malt-N-Burger, so that still doesn't help the people in that area that was walking to our establishment. The dialysis center next door, we were bringing food to them because they only get thirty minutes for lunch so they would call us and we would just run it over there to them. Mr. Hodnett replied ok, well thanks, are there any questions or comments? Mr. Tortorich stated so you're going to have like a little store, people come in, order a couple of burgers and walk off, but you're saying it could be a restaurant to. Mr. Price replied yes because. Mr. Tortorich stated but everything else is already approved, the Board of Health has already approved and the Fire Marshal has already approved you. Ms. Woolridge replied yes, we've got all of that stuff, we just didn't know that we were in a different zone, we didn't know that it was a Zone 3 and we were doing Zone 4 business, we really didn't know and when Mr. Errol came it was like Mr. Errol we really didn't know, I mean we are so sorry, and he was like well we can fix this or we can try and get you some help. Mr. Price stated the only issue I have and like I said, I had to stop them because they weren't zoned for that but the only issue that we would have is that they need a larger grease trap to do the cooking there, the Board of Health signed the paper way too small, a 32 gallon tank, they need a 500 so I did talk to her about that, if they get the variance, they would have to do that part because we didn't inspect the plumbing as a restaurant take out, we inspected it as a grocery store so it didn't require a grease trap. Mr. Soignet asked did the Board of Health inspect it as a restaurant? Ms. Woolridge replied yes, sir. Mr. Soignet stated if they approved the grease trap. Ms. Woolridge stated because you see we don't fry like chicken, like Popeye's, we only do drumettes, like little pieces of chicken and we only do maybe like a bag a day, so it is really not that much drumettes we do, like we do hamburgers but we do it on like one of those big old grills and they only have like one little grease tray at night, so we don't really use like a lot of grease. We do a lot of baking in the oven and cooking on the stove, like we do red beans and rice or baked pork chops, or baked chicken, we don't really do a lot of frying because we're trying to, because the hospital, the ladies they didn't want fried stuff, they wanted like baked fish and baked chicken so that is what we were basically doing but we do some frying but it is really not a lot, we don't do a whole bunch like Popeye's where we have to drain all the grease at night and all of that, we don't do that much, we have little deep fryers, not big ones. Mr. Hodnett asked if there were any other questions or comments from the Board. Ms. Quintas Garner, 216 Drive, Gray, came forward and stated I talked to Marchelli at the Board of Health and I called her two weeks ago and I let her know what was going on, she spoke to her supervisor and she was very upset when I called her and told her that we were closed because she could not believe what happened, she didn't know it was a residential area and her supervisor which I told her we weren't going to go into detail about it but they advised us to get an attorney or whatever but I told her we need to wait to come to the meeting. Mr. Ashley Brown stated and he wasn't even notified, nobody knew, we were like God, and she said it is online, so now you have to know to check the minutes for Thibodaux when stuff changes but we didn't even know that anything had changed, I didn't even know that Thibodaux was divided into zones, I didn't even know that. Mr. Hodnett replied well we all get an education every day. Ms. Woolridge replied I wasn't there, my sister was there and she called and said a man came by and said we can't cook in this

place and I was like, what? He said we can't cook anymore. Ms. Brown stated we would have to close up because we can't pay our rent if we can't cook, not by selling chips. Mr. Savoie asked what hours they would keep. Ms. Brown replied 11:00 to 6:30 on Monday, Tuesday and Wednesday and on Thursday, Friday and Saturday 11:00 to 8:00, only until the time changes because it gets dark at 8:00 but usually when it gets dark, like when the time changes, we're going to just close at 6:30 because believe it or not, we almost got robbed three times. Mr. Hodnett replied oh, God. Ms. Brown replied and it was just little kids in the neighborhood but that just goes to show things can happen at night or it can happen in the daytime. Ms. Woolridge stated we were considering putting cameras. Ms. Brown stated we have a lot of city police that come and eat there so they kind of like pass and you know. Mr. Hodnett stated keep an eye on things. Ms. Brown replied yes, so they've been pretty good. Mr. Hodnett replied good, are there any other comments from the board? Mr. Soignet asked who is the owner? Ms. Brown replied both of us. Mr. Soignet replied oh, so she's the owner of the business and you are the investors, I guess you say, right? Ms. Brown replied yes. Mr. Soignet stated and your son who is the military...Mr. Blakely replied yes, sir. Mr. Soignet stated he owns the place also...Mr. Blakely stated we're just using up a little bit of his money, you know. Mr. Hodnett stated does he know that? Ms. Brown replied we've been investing a little bit of everybody's money. Mr. Blakely replied both of them, I have two of them, but one of them, he's getting ready to go into the Marines, he works at J.C. Penny's at the present, so I have one, who is in Iraq and one who is in Washington State, he's in the Navy. Mr. Soignet stated our respect for your sons for being in the military. Mr. Hodnett replied yes, I think it is great. Mr. Soignet stated so, the owner, you're the owner, your name please. She responded my name is Ashley Brown. Mr. Soignet stated ok, and they're you're cooks? Ms. Brown replied yes. Mr. Price stated she was the unlucky one when I went, she got all nervous. Ms. Brown replied yes, I was in there and I was like I don't know what you're talking about, so I got on the phone and said we have to close, like now. Mr. Price replied and that is not what I said. Ms. Woolridge replied we didn't know. Mr. Hodnett stated are there any questions or any other comments or motion from the board? Mr. Soignet stated I'll make a motion to put them back in business; the motion was seconded by Mr. Lirette. Mr. Oubre, Mr. Lirette, Mr. Savoie, Mr. Soignet and Mr. Hodnett were in favor. Mr. Hodnett stated good luck to you all, it sounds like you all have really been working hard. Ms. Brown and Ms. Woolridge replied thank you.

Mr. Mike Sobert stated I realize that your Item #2 was withdrawn, so what happens? Mr. Hodnett replied we don't consider it, it is off the agenda. Mr. McNeal stated like on that situation, it was stated wrong, they wanted to put another fence on the other side and I talked to Errol about it. Mr. Sobert stated so what is there now is legal. Mr. Hodnett replied there is nothing there now. Mr. Soignet stated there is a partial fence. Mr. Hodnett stated on the new portion that is being built. Mr. Sobert stated it was discussed at the April meeting. Mr. Hodnett stated but according to what I understand, Item 2 is not being addressed. Mr. Sobert stated it has nothing to do with that portion of it. Mr. Hodnett replied no. Mr. Sobert replied then may I ask to go back to your April meeting. Mr. Hodnett stated well why don't you come up and stand up and state your name and address. My name is Mike Sobert, I live at 508 Plantation Road, and I did not, I apologize, I didn't understand the sign, but I brought some little where you are at and what you see kind of thing and now, in our April, when this subject the present one was brought up on April 1st, I think was the meeting, correct me if I'm wrong, you have the minutes, but several things happened, one, I asked you to allow the man to leave the six foot fence along Lynn Street and you said no, take it down, no six foot fence, you can look at the minutes. Mr. McNeal said are you all sure you want to vote on that because if we make a decision then that is final and you voted on it, so why am I looking at six foot fences. Mr. Hodnett replied you'd have to ask Errol. Mr. Price replied ok, all right, I discussed this with the City Attorney, they actually had said in the minutes they weren't going to allow any fence on that corner, you can't deny the man's rights, they didn't have the authority to say you can't have a fence as long as he meets the requirements, he moved his fence back, so he has a 10' rear yard, he took Lynn Street as his rear, he cleared up everything, he gave me the information, he is a corner lot, so he is required to have two fronts one, half the distance, so you need a 20 and you need a 10, the other two is treated as sides. So he takes his private street, which I had a problem with, but the City Attorney is telling me that is legal, he takes the front as his 20 on the private street, he picked Lynn St. as his rear which is 10', that is why he moved the fence over, Plantation stays as a side, so he could actually move that fence 5' from his property line. Mr. Sobert replied correct. Mr. Price stated because he is meeting the 50' radius clearance, so he is allowed to have what he has there. Mr. Sobert stated but when did he get, when was he granted the right to have a six foot fence. Mr. Price stated I gave him a permit after the meeting because I can't deny him not to have a six foot fence on that setback, he's legal, he didn't need to come in front of the board to put up what he has. Mr. Sobert replied I thought you had to come in front of the board if he wanted anything more than 30 inches. Mr. Price replied correct but the ordinance allows you have what he has. Mr. Hodnett stated because it is a side yard. Mr. Price stated as long as it is the setback area. Mr. Sobert stated so what you were discussing at the last meeting is wrong, is what you're telling me. Mr. Price replied some of it was wrong, the 50' clearance, vision and all is correct, that is why he cut it down but when they made the motion or they made a statement in the minutes, I listened to it and read it, saying that he wasn't allowed a fence on the corner, they couldn't do that. Mr. Sobert replied he said no six foot fence. Mr. McNeal replied 30 inches. Mr. Sobert stated they allowed a 30 inch fence which meant you didn't even have to come before the board as I understood it, but I am not an attorney, but that is ok. Mr. Price stated well what he has actually now is, he actually didn't need to come in front of the board at all for what you're showing right there. Mr. Sobert stated what you're saying is that, again, my opinion, and I can show you and you can look at the pictures, when you can't see and they smack them up and they wind up dead in my yard, what are we supposed to do, I

say the fence was legal. Mr. Price stated I can't answer that because we can't deny him his right and he meets all the city ordinances where he is at, in fact he is actually going to take the Plantation fence and move it five feet closer to the road; he's allowed to do it. Mr. Sobert stated that six foot fence. Mr. Price stated that six foot fence on Plantation side and Germaine told me I can't stop him, I gave him a permit because that is treated as a side, he has three areas that faces streets, he's only required by ordinance to pick two, the other one become a side. Mr. Sobert stated so you're telling me I live across the street and I own the whole block so if I want to run me a street right down the middle, I can double dip and put it on both sides, that is what you're telling me. Mr. Price replied that is correct, exactly, private counts, even a private driveway she tells me is included in there. Mr. Sobert replied I think you are kind of circumventing what you're trying to do, that is my personal opinion, that is what they make lawyers for and judges. Mr. Price stated that is why I went to her. Mr. Sobert stated but as I understood then what I understood from the last meeting was incorrect, so that this fence can stay up and I will re-iterate it again, and you can see clearly this is where you are at, you're at the stop sign, you're half way, you're all the way out, you can see the cars, they come all the way out because they can't see. The problem is this little extension of six foot fence, ok, that you can't see. In this last photo, right through this six foot fence, you can see that little red octagon sign, that is the Donnes Real Estate sign, well look at it, it clears with 30 inches, if you take that six foot fence down, you can see all the way, you can stop at the stop sign, you can see all the way and now you're telling me he can move this five feet further, they'll be in the middle of Plantation Road and still can't see, look, look at the amount. Mr. Lirette stated I agree with you. Mr. Sobert stated so I understand you with the zoning and that is not a problem, so it would be the safety and the police and we'll get an attorney and just see what they say. Mr. Soignet stated that is not for us to decide on but I went to that stop sign. Mr. Sobert replied I understand that but based on what you all said at the last meeting, I heard you all say two things, one, no six foot fence, no six foot fence anywhere and I understand we make mistakes, not a problem, and the other one was of course that it had to be moved away; and that is alright, so now I know and we can go and act accordingly, so, thank you. Mr. Hodnett replied thank you Mike. Motion for adjournment was made by Mr. Soignet and seconded by Mr. Lirette, all members were in favor.