

DCA09-DEC-115

12525 Meadson Road
Pensacola, FL 32506
April 11, 2009

Re: Petition for Declarative Statement on Assemblies based on Certificate of Occupancy

Florida Building Commission
Attn: Ms. Paula Ford
2555 Shumard Oak Blvd
Tallahassee, FL 32399

Dear Sirs:

My husband and I own an historic property located at 520 North Spring Street in the North Hill Preservation District in downtown Pensacola. My husband and I constitute an elderly household. This house was built in 1883 and is listed on the National Registry of Historic Places. It is recorded at City Hall as a commercial building which has housed an art gallery/antique shop which holds functions, previously French Antiques now the Brian Dunwoody House, since 1980, almost 30 years.

Background

We bought this property in 1998 from Annis Brindl, a French lady. Before opening the business in the name we chose, Brian Dunwoody House after the original owner and builder, we met with Mr. Leo Doidge, Director of the Pensacola Planning Department to review what was required. Since we kept the same business, function and use as the former owner and only changed the name from French Antiques to the Brian Dunwoody House in honor of the owner who had the house built in 1883 (and we aren't French), we met all requirements to open.

He determined that since we complied with the zoning code and had the proper Certificate of Occupancy for functions (assemblies) of less than 100, Group B, we did not need to appear before any board or get a new Certificate of Occupancy but were authorized to open our business and, according to Pensacola City Ordinances, we were grandfathered in for the same business operations, parking and holding functions. We take stewardship of this historic property seriously and in 2000, we won the Joyce Turner Award for best restored house.

The basis for our approval to operate is:

FUNCTIONS

The following excerpt is from the Land Development Code contained in Pensacola City Ordinance Sec. 12-2-10.

- (B) *North Hill preservation zoning districts. PR-1AAA, PR-2, PC-1.*
- (1) *Purpose.* The North Hill preservation zoning districts are established to preserve the unique architecture and landscape character of the North Hill area, and to promote orderly redevelopment which complements and enhances the architecture of this area of the city.
- (2) ...

FILING AND ACKNOWLEDGEMENT
FILED, on this date, with the designated
Agency Clerk, receipt of which is hereby
acknowledged.


Miriam Snipes
Deputy Agency Clerk

4/16/09
Date

(3) *Uses permitted.*

(a) PR-1AAA, single-family district.

...

7. Churches, Sunday school buildings and parish houses.

8. Conditional uses permitted: Two-family dwellings (duplex) at a maximum density of

(b) PR-2, multiple-family district.

┆ Any use permitted in the PR-1AAA district.

Since we are in PR-2, we are allowed any use permitted in the PR-1AAA district.

Paragraph (a) 7. Churches, Sunday school buildings and parish houses show that these uses are freely permitted (reunions, weddings, open houses, and other social functions) in zoning code PR-1 and PR-2. These buildings require an Assembly Certificate of Occupancy to hold these events.

The Standard Building Code of 1997 – the official document in place when we opened - Chapter 3, Occupancy Classification, subparagraph 304, Assembly Occupancy – Group A, sets out the criteria for having assemblies. Subparagraph 304.2-2 clearly states that “Assembly occupancies with an occupant load less than 100 persons shall be classified as Group B.” Our functions are less than 100 people.

The next Section is Section 305 Business Occupancy – Group B. We fall under Group B, Business Occupancy, and are authorized to have assemblies (functions) of less than 100. Our contract with clients specified functions must be less than 100 people. We would not feel comfortable with more than 100 people in our historic house.

As stated above, the purpose of the North Hill preservation zoning districts are established to “preserve the unique architecture and landscape character of the North Hill area, and to promote orderly redevelopment which complements and enhances the architecture of this area of the city.” Many members of the North Hill Preservation Association, of which we are also members, expressed delight and approval that we would be holding functions in this beautiful building and said that our stated use complemented and enhanced the spirit and atmosphere of the historic area.

PARKING

Parking was grandfathered in to 1994 conditions, by City Ordinance: Sec. 12-3-1. Off-street parking spaces requirements. Off-street parking is required in all zoning districts, except as provided below. The following off-street parking is required by this chapter.

(A) *General provisions.*

.....

(7) The number of off-street parking spaces provided for buildings constructed prior to October 13, 1994, shall be deemed in compliance with the requirements of this code, for as long as the same land use is maintained within the same building footprint.

.....

Our building was constructed in 1883 and was used from @1980 on as an art gallery/antique shop (documented in City records) where the previous owner had many

social functions there, as part of her business, as I have previously indicated. There are no changes in the building footprint (since initial construction in 1883) and the same land use has been maintained at least since 1980. We fall under this exclusion.

Even if we weren't grandfathered in, our category requires approximately 14 parking spaces and we have parking for at least 20 spaces. In addition, there is designated, demarked on-street parking provided, both sides, in our block, the blocks above ours and in the blocks below ours. The on-street parking on Spring Street, a major artery downtown, alone within 500 feet amounts to approximately 70 parking spaces which bring the available parking spaces to about 90 parking spaces.

Since we restrict functions, by contract, to less than 100 people, we have had no problems with parking. No neighbor has ever complained about the parking and the City has never issued a citation or notified us of a legitimate parking problem. This is in spite of the fact that many parking citations have been issued in the City for illegal parking and parking inappropriate vehicles, even near us.

Under this official ruling, we obtained a retail occupational license, purchased our inventory, placed advertisements and operated our business for years with no complaints from neighbors, City Officials, or customers.

Current actions on the part of City Officials in violation of the Standard Building Code and City Ordinances

Suddenly, a police officer, with lights flashing, appeared at a wedding on a Saturday evening, March 19, 2005, at @7:00 PM and loudly declared that we were not authorized to hold functions and that we were closed down.

City Ordinances require that a code enforcement officer notify the person of a violation and give them 30 days to correct the violation. No notice was given. Our first knowledge was when the policeman arrived on our property during a wedding, told us we weren't authorized to have weddings and closed us down.

Sec. 13-2-2. Authority to issue citations and citations procedure.

(a) Prior to issuing a citation, a designated code enforcement officer shall provide notice to the person that the person has committed a violation of a code provision and shall establish a reasonable time period within which the person must correct the violation. Such time period shall be no more than thirty (30) days. If, upon personal investigation, a designated code enforcement officer finds that the person has not corrected the violation within the time period, a code enforcement officer may issue a citation to the person who has committed the violation. A code enforcement officer does not have to provide the person with a reasonable time period to correct the violation prior to issuing a citation and may immediately issue a citation if a repeat violation is found or if the code enforcement officer has reason to believe that the violation presents a serious threat to the public health, safety, or welfare, or if the violation is irreparable or irreversible.

We have never been issued a citation, we didn't know what the problem was and we never had a reasonable time to contest or correct the matter. I immediately contacted, Mr. Cowper, the Director of the Community development Department who stated in an email, "Spring Street property – the use of the property for weddings and similar events constitutes a violation of the city's zoning regulations irregardless of the building code and business license issues. ...Further, we have no record that a conditional use permit was ever approved by the planning board and city council for an art gallery."

Mr. Cowper finally admitted that we were right in his email of September 01, 2005, "Based upon information and evidence presented by you along with city records that I have reviewed I am convinced that the use of the property for an antique store / art gallery is indeed grandfathered."

Although parking and holding functions are also grandfathered, Mr. Cowper refused to acknowledge the legality of our parking facilities and holding functions - even gallery nights.

His replacement, Mr. Thaddeus Cohen, also admits that our art gallery/antique shop is legal to operate but also, wrongly, insists that our parking facilities and holding functions are not legal even though they, also, are grandfathered in. Even though they have said that we could reopen our art gallery/antique shop, we refuse to reopen as long as our rights to hold functions, especially gallery nights and open house events, are denied and our parking is considered inadequate even though we exceed the requirements. This would limit our business too much and we couldn't survive with these illegal requirements in place.

Even if our parking and holding functions were not grandfathered in, our parking exceeds City Ordinance requirements and the type of functions we hold are freely permitted in our zoning. Mr. Cohen is wrongfully keeping us from conducting our legally authorized business.

I responded many times to Mr. Cohen, about his complaint that we do not have enough off-street parking to accommodate social functions, pointing out that this statement is not true. Our parking is grandfathered in and, in addition, we exceeded the current requirements by quite a lot. Mr. Cohen's complaint is baseless as we exceed the parking requirements. He never acknowledged or answered my emails pointing out his error.

Ms. Morris sent an email, regarding the stance of Mr. Cowper and Mr. Cohen, stating, "As both also stated, the City's position is that weddings and other similar social functions are not considered a normal accessory use to an antique shop or art gallery." Assemblies have nothing to do with whether or not they are "considered a normal accessory use" but are allowed under an Assembly Certificate of Occupancy. Our Certificate of Occupancy allows assemblies of less than 100.

Mr. Cohen stated, "There are accessory / incidental uses that would normally be associated with and (sic) antique shop or art gallery, such as featured art showings. That same connection is not apparent for weddings and other similar social functions which tend to have a large attendance and a greater requirement for the availability of off-street parking; and therefore is not permitted." Mr. Cohen is wrong on both counts – accessory/incidental uses and off-street parking.

ARTICLE IV. NEIGHBORHOOD PRESERVATION STANDARDS

Sec. 12-2-31. Accessory uses and structure standards.

In addition to the principal uses which are designated herein as being permitted within the several zoning districts established by this title, it is intended that certain uses which are customarily and clearly accessory to such principal uses, which do not include structures or structural features inconsistent with the principal uses, and which are provided electrical and plumbing service from the main building service shall also be permitted.

For the purposes of this chapter, therefore, each of the following uses is considered to be a customary accessory use, and as such, may be situated on the same lot with the principal use or uses to which it serves as an accessory.

(A) *Uses and structures customarily accessory to dwellings.*

(a) Private garage.

...

(B) *Uses customarily accessory to retail business, office uses, and commercial recreation facilities.*

(a) Completely enclosed building not to exceed forty-nine (49) percent of the floor area of the main structure for the storage of supplies, stock, merchandise or equipment for the principal business.

(b) Lounge as an accessory use to a package liquor store, not to exceed forty-nine (49) percent of the floor area of the package store.

(c) Lounge as an accessory use to a restaurant, not to exceed forty-nine (49) percent of the floor area of the restaurant.

(d) Car wash as an accessory use to a service station not to exceed forty-nine (49) percent of the square footage of the total site.

(C) *Uses customarily accessory to cemeteries.* A chapel is an accessory use to a cemetery.

....

City Ordinances address accessory use as use by another building on the same lot to support the use of the main building. From the beginning, our detached garage was recognized as an accessory use as the previous owner and we, also, use it as a repair shop for antiques that need gluing, painting or restaining and storage for surplus inventory.

An Assembly Certificate of Occupancy (functions) is not an accessory use but is a dual Certificate of Occupancy with Group B, Business – which we are.

Instead of correcting their errors, Ms. Morris, Community Development Department sent an email which stated, “Your property is grandfathered to allow Conditional Uses (b) and (c), however, you could also obtain Conditional Use approval to utilize the property for

any of the other uses listed under subsection (5). The other uses listed in subsections 1-4, such as a Bed and Breakfast, do not require Conditional Use approval.”

Conclusion

- Florida Administrative Code - Uniform Rules for Declaratory Statements: Chapter 28-105

Chapter 28-105.002(5) A description of how the statutes, rules or orders may substantially affect the petitioner in the petitioner’s particular set of circumstances.

The above misinterpretation or misrepresentation of the applicable rules and regulations have already substantially affected us as we have been without income for over 4 years from our business property downtown because the City Officials closed us down for not being authorized to operate although pertinent rules and regulations clearly state that we are authorized to operate and we were previously vetted by City Officials in 1999-2000.

Apparently the City Officials want us to:

1. Lose our historic property due to lack of income.
2. Use our property for other uses which would require a new Certificate of Occupancy which City Officials have used in the past to strip historic buildings (ours included) of their historic artifacts.
3. Remain victims of a standoff until our beautifully restored historic house, over 122 years old, sits unused until it rots even though we are authorized to operate our business.

We want to operate an art gallery/antique shop where functions can be held as we are legally authorized. We are not interested in the other uses: Community residential homes licensed by the Florida Department of Children and Families, or bed and breakfast subject to regulations in section 12-2-55, social services homes/centers, boarding and lodging houses or child care facilities subject to regulations in section 12-2-58 which City Officials recommend that we try. Some of these uses would require that strangers stay overnight in our beautifully restored historic house. This is something that we have avoided from the beginning to protect our beautiful house and the contents of antiques and art pieces.

We have enjoyed collecting antiques and art pieces for resale. We have also enjoyed seeing the family reunions, weddings and other social functions take place in our beautiful building especially the candlelight weddings (I supplied the candles and flowers free of charge) for young servicemen and women where I performed the marriage ceremony as I am a notary public. Since we have worked so hard all our lives, we

wanted to enjoy our retirement by doing things we loved and, at the same time, add income to our fixed retirement income.

We are asking for a Declarative Statement which clearly reflects what the Standard Building Code and City Ordinances, at the time of our original opening, authorized us to do with our property. We have not asked for any waivers, special uses or favored treatment. We researched the property before purchase and ascertained that we would enjoy running an art gallery/antique shop, where our interests lie, and holding functions for the neighborhood of less than 100 persons. City Officials have deprived us of our income from our property for over 4 years even though we have consistently and frequently contacted them pointing out that we operated within the City Ordinances controlling our situation.

I am enclosing some pictures of our property downtown to clarify the situation. Thank you for your assistance.

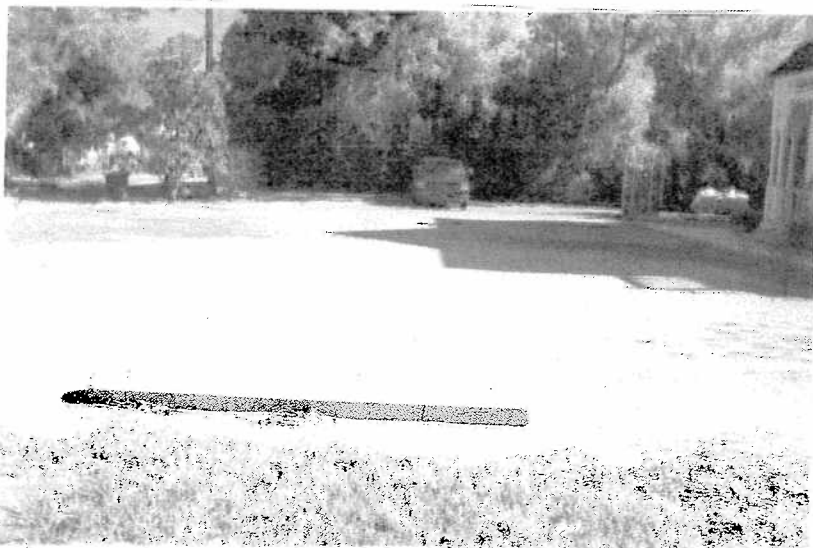
Sincerely,


Mary Mead

OUR PROPERTY AT 520 NORTH SPRING STREET

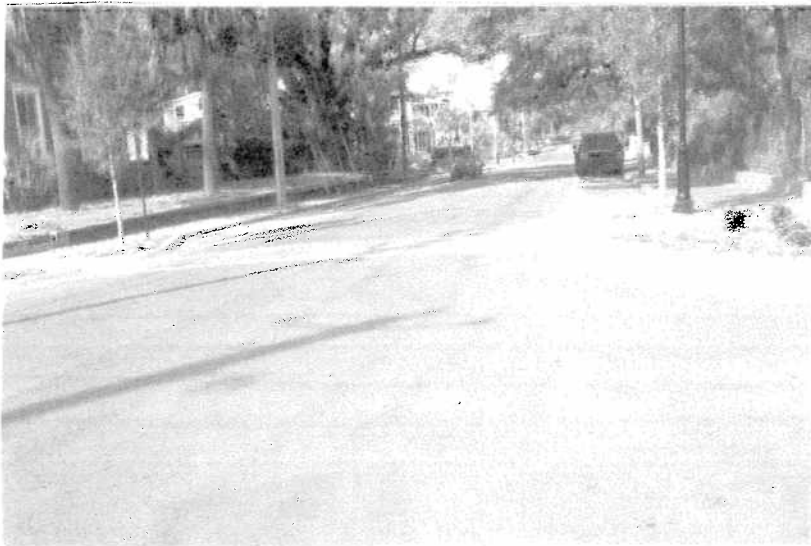


THE ENTRANCE/EXIT TO OUR PARKING LOT LOCATED ON JACKSON STREET



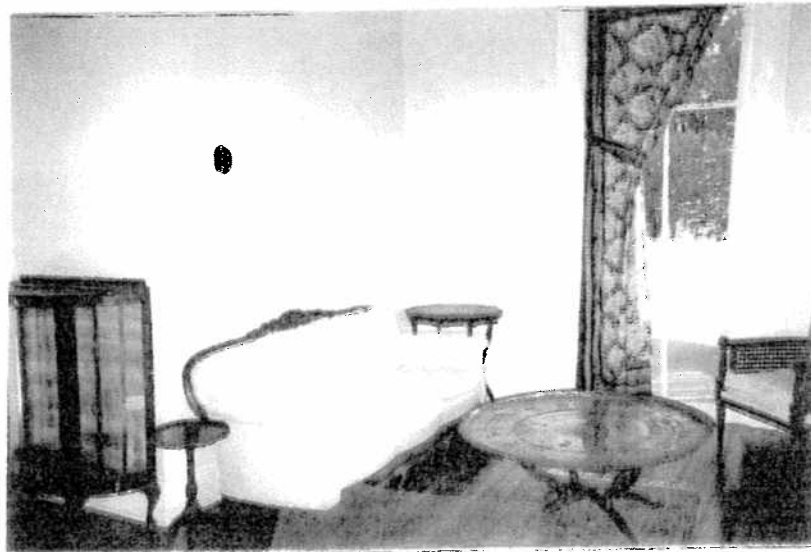
BOTTOM – OUR PARKING LOT FROM THE WEST END (SPRING STREET)

**ON-STREET PARKING ON SPRING STREET IN FRONT OF OUR PROPERTY
(BLUE WALL ON THE LEFT) FACING SOUTH**

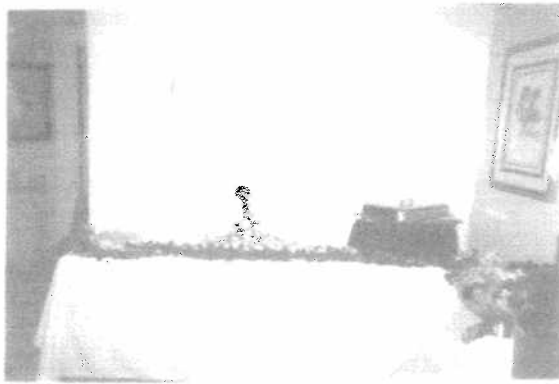
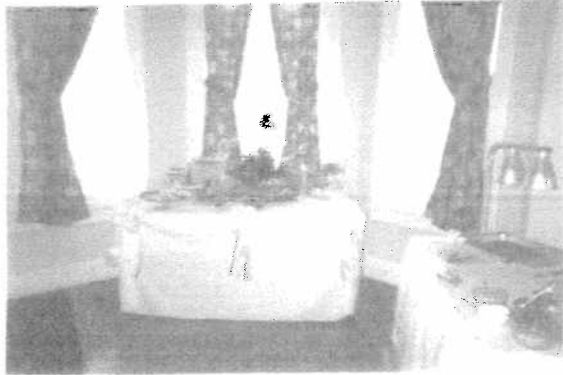


ON-STREET PARKING ON SPRING STREET FACING NORTH

PART OF THE ART GALLERY –ALL ARTISTS LEFT AFTER WE WERE CLOSED



THE BOTTOM PICTURE IS PART OF OUR ANTIQUE SHOP SETUP



Enclosure (15)

READY FOR A FUNCTION



A TYPICAL WEDDING IN THE GAZEBO/PATIO



WORDERFUL FOOD – WE HAVE BEEN FORTUNATE TO HAVE EXCELLENT
CATERERS TO RECOMMEND FOR FUNCTIONS