

MINUTES OF MEETING
CITY COUNCIL OF PEACHTREE CITY
Special Called Meeting
July 13, 1990

The City Council of Peachtree City met in a special called session on Friday Evening, July 13, 1990, at 5 PM in the City Hall Council Chambers.

Mayor Brown called the meeting to order and led those in attendance in the pledge of allegiance.

Those present were: Mayor Frederick Brown, Jr. and Council members David Good, Annie McMenamim, Robert Brooks and Rich. Parlontieri.

Mayor Brown explained that the purpose of the meeting was to consider an appeal of Mr. Brad Lowery, President of Lowery & Associates, Inc. for the revocation of a building permit for 124 Battery Way, Peachtree City, Georgia.

The Mayor stated that this was a formal appeal hearing but that he would keep procedures informal. He called upon Mr. Brad Lowery to present his case.

Mr. Lowery explained that his appeal was based on three facts. First, the building permit was issued by the City based on the plans that were submitted which had previously been approved by Peachtree City Development Corporation. Mr. Lowery stated that upon issuance of the permit the project was started in good faith and a large amount of time and money had gone into the project. Second, several inspections had been made on various stages of construction and until last Friday, when the stop work order was issued, there was no indication of anything being wrong. He stated that while the inspectors were there the structure and the intent of same was discussed. Third, that prior to starting the framing of the second floor he had the inspector return and inspect the premises to be sure that everything was in order to continue.

Mr. Lowery stated that last Friday the City Manager, Jim Basinger, City Engineer/Building Official, Barry Amos and City Planner, Jim Williams, appeared at the site and informed him that the building permit had been issued in error and that he would have to stop work until a resolution of the situation could be made. Mr. Lowery stated that several suggestions were made to him by the city officials to make the structure legal. One was that the structure could be connected to the main house by a corridor, another was the kitchen be deleted from the second floor of the structure and the other was to bring it before City Council to try to obtain a variance.

Mr. Lowery reported that he and the owner, Mr. A.B. Michel, met with Amos and Williams on Monday where they received basically the same information., however, on Tuesday he was told by Amos that a meeting had been held and he felt the stop work order would probably be lifted the next day. On Wednesday he contacted Mr. Amos who informed him that he did not believe the stop work order was going to be lifted. Lowery then received a letter outlining his appeal rights.

Mr. Lowery reiterated his earlier statement that a building permit was issued by the city based on plans submitted and he did not feel that he or the property owner should have to suffer for this if there was error made by the city. He stated that this was a large project for him and the home owners and the cost ramifications, if denied, could be detrimental to Lowery and Associates.

Mr. Lowery explained that he was a next door neighbor to this property and he felt the addition of this structure plus the swimming pool would add to the property value of the area.

Mayor Brown called on the City Engineer/Building Official, Barry Amos, to present the City's position.

Mr. Amos called attention to a memorandum from him dated July 13, 1990 giving a detailed report on what had happened in this case.

Summarized it was that on June 1, 1990 Mr. Lowery applied for a permit to construct a pool guest house on property owned by Mr. and Mrs. A.B. Michel of 124 Battery Way. The plans indicated a two story structure with a single car garage, pool storage area, bathroom, and a wet bar on the first floor and a kitchen, fireplace, bedroom, living room and bath on the second floor. This second structure on the property was connected to the main house by a lanai screen enclosure. The permit was issued by Deputy Building Official, Allen Goode, who is no longer an employee of the City having left for reasons unrelated to this subject.

Amos explained that when framing of the second story started the City Manager received a complaint from a neighbor and, after reviewing the plans, he and the City Manager felt this was a second dwelling unit on the lot and a stop work order was issued on July 6th. Several meetings have been held on the subject and an inspection had been made and it is felt that the structure was in violation of the zoning. Amos explained that since Mr. Goode was no longer an employee of the City and could not be questioned, it was difficult to know his rationale in issuing the building permit. He stated that it was possible that Goode looked at the screen enclosure at the pool as an attachment to the main structure making the addition a part of the first structure.

Mr. Amos stated that he did meet with the owner and Mr. Lowery and made several suggestions on how the situation could be resolved and he also advised them of their appeal right. Mr. Amos also confirmed Mr. Lowery's statement that he at first felt the stop work order was going to be lifted but that after meeting with the City Attorney and further study was done on the subject that opinion was changed.

Attorney Van Stephens, represented the property owners, Mr. and Mrs. A.B. Michel, asked to address the Council. He requested assistance from the Council regarding this situation. He pointed to the fact that it was raining at the time and there was no roof on the structure. He asked that Council consider the revocation of the building permit, for one reason that building materials were being damaged at this time due to the stop work order. He pointed out that the owners had spend over \$60,000 to develop this property relying on the permit having been issued. He stated that he

realized that this was not a court but there were cases that addressed this type of situation. He quoted from several cases where vested rights by a homeowner were dealt with. He also quoted from a case involving family units. Mr. Stephens stated that the use of this development was to allow a son and his wife to live on this lot to assist with the care of a grandchild living with the owners. He felt the use of the property met with the definition of a single family unit or home. Mr. Stephens felt the proposed use of the property was in compliance with the definition of a single family unit and also that, because of what had happened in this case, his clients had a vested right to continue this development. He felt that if it was required to be torn down and taken off the lot his clients would be deprived of their constitutional rights.

Attorney Stephens asked that the City Council construe the addition to this home as a single family unit in conformance with what the supreme court had stated and allow them to continue what they have applied for.

Councilman Good questioned if the people that were going to be living in this structure were the owners. Attorney Stephens stated that it would be a son and his wife and there was no intention to charge rent.

Mayor Brown questioned Amos, and asked him to state the specific violation. Amos stated that, in his opinion, it was a violation of Section 1001.2 Pg. 1459, Permitted Uses. of the Zoning Ordinance. This section permitted a one family dwelling. He felt that two dwelling uses were not permitted in the zoning district.

Mr. Jack VanNess at this time spoke to the Council. He explained that he lived at 122 Battery Way, next door to the property in question. He supported the denial of this project and stated he felt it was a gross exceedance of the bounds of the zoning district. He pointed out that the Spy Glass Hill Subdivision, where this property was located, was all single family units. He felt that it would be extremely difficult to determine this structure to be an addition to the main structure. He pointed out that the building permit states this to be a new structure. He pointed out that the two structures were separated by approximately 40 - 45 feet with a pool located in between the structures. He asked, if this structure was intended to be an addition to the main house, why an additional kitchen, bathrooms etc. were required. He expressed sympathy to the property owner for their problem but he and other property owners in the subdivision objected to this structure. He felt that because the building was so far along in development he was sympathetic but he did not feel it would be in the best interest of the citizens of the City to allow this development to continue.

Others speaking against the project were Mr. L.C. Atkins, 112 Battery Way, Mr. Ray Berry, Battery Way, and Ms. Pat Anderson of Battery Way.

Mayor Brown called for questions or comments and Parlontieri questioned Mr. Lowery regarding the estimated cost of the project shown on the building permit which was \$50,000 and it had been indicated that \$60,000 had already been invested and the building was not complete. Mr. Lowery did not know how that happened and in answer to question as to why he checked new structure as opposed to add on he didn't have an answer.

Good questioned the staff about the definition of a "bath house" and the City Attorney read from Webster inasmuch as the zoning ordinance did not offer a definition. Webster defined it as a place to bath or a building containing dressing rooms for bathers.

Good offered to start discussion. He stated that what was being considered, in his opinion, was whether or not the building permit was properly withdrawn and not to consider whether or not a variance was in order or whether or not the structure fits appropriately into the neighborhood.

Good stated that in reading the zoning ordinance the building permit was properly issued and being withdrawn was improper. He supported Mr. Lowery's contention. He pointed out that the property was under one ownership and there would be no rent involved from the added structure. He also felt the two buildings were connected by the lanai, clearly a structure by definition in the zoning ordinance, which to him indicated a single structure by the definitions. He pointed out that also permitted under accessory uses was a private swimming pool and bath house or cabana. Unfortunately the ordinance did not define bath house but in reading from Webster it would seem that this would fit. He felt in considering all of this there was no basis for denying the building permit.

McMenamim stated that she sympathized with the property owner and builder and felt that the builder had acted properly in obtaining the building permits. She felt the question was whether or not there were two self sustaining residencies and did the pool enclosure become the common structure between the two residencies. She stated that she did not believe it did. She felt there were two self sustaining residencies totally independent.

Brooks indicated great empathy for everyone involved in this situation. He felt it was necessary to become very precise because everyone had rights. He felt after the reading the zoning requirements that he could not agree with Councilman Good. He pointed out that the permit lists pool guest house and the term guest house implies individuals other than family members. He felt the dwelling, because of the facilities built in it, was a self sufficient structure. He stated that it bothered him that this situation had happened. He felt it would be compounding a wrong if they continued to allow the building to take place.

Parlontieri agreed with Brooks. He stated that he looked at the application and had visited the site. The application said pool guest house and in looking at definition of guest house in the zoning ordinance he found it defined as living quarters situated within an attached or detached accessory building located on the same premises as the principal building; such quarters shall be used only by bona fide non paying guests or relatives of the owners or occupants of the principal building and shall not be rented or otherwise occupied as a separate dwelling.

He pointed out that these units would be occupied by family but in separate units and not sharing common space. He pointed to the fact that both units were equipped with independent living facilities. He shared the opinion of McMenamim and Brooks that these were two independent dwellings on a R-12 zoning lot. He did not believe these could be interpreted as a single

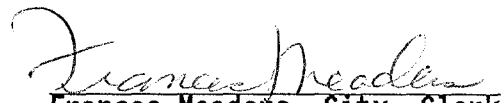
dwelling.

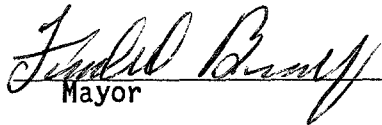
Mayor Brown stated that he believed the building permit was requested in good faith. He felt the building inspector who approved it made a mistake and it should never have been approved. He agreed with those opposing Mr. Good's comments but he felt more importantly, the zoning ordinance itself should be considered. He felt it would be a violation of the zoning ordinance if the permit was approved and he could not support that.

Motion was made by Mayor Brown that the appeal be denied. Motion was seconded by Parlontieri. Motion carried with Good voting nay.

Mayor Brown informed Mr. Lowery that the appeal had been denied and that he would receive a written notice of that fact.

The meeting was adjourned at 6 PM.


Frances Meaders, City Clerk

 Attest
Mayor