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MEMORANDUM

TO: Planning and Zoning Commission – City of Dyer, Arkansas
FROM: City Attorney – M. Sean Brister
DATE: January 2, 2008
RE: Colleen J. Doerksen/James R. Crisel Variance Request

This memorandum is intended to provide the Planning Commission with the current state of the law and city ordinances as they relate to the submitted “variance request” so that the commissioners are aware of the issues prior to the next meeting. I do not believe that any formal actions are necessary before the meeting on January 8, 2008.

The “variance request” seeks to place a mobile home on a lot currently zoned as R-1. Currently, the Zoning Ordinance only allows mobile homes in mobile home parks located in the R-4 Mobile Home District. This request would result in a non-conforming use of land and/or a non-conforming structure. Presently, this request is not properly before the Planning Commission as the procedures outlined in the Zoning Ordinance have not been followed. Unfortunately, the issue is slightly more complicated than that as this memo describes more fully below.

Article V Section 3A(3) of the Zoning Ordinance states that, “Prior to the location or installation of a mobile home within the City Limits of Dyer, other than on a parcel or plot of ground previously zoned as an R-4 Mobile Home District, application shall be made to the Planning Commission for a change in zoning classification.” Article IV Section 8 says in part, “[n]o mobile home shall be permitted on any lot or plot of ground except that within a mobile home park or area zoned for a single mobile home.” This seems to indicate that in order for a mobile home to be placed elsewhere, the lot must be re-zoned as R-4. Unfortunately, the only permitted uses in R-4 are mobile home parks and their support buildings. R-4 does not allow mobile homes on single lots. Dyer does not have any zoning classifications that would allow a mobile home on a single lot for residential purposes (the I-1 Light Industrial District does allow single mobile homes, but not for residential purposes, and Dyer does not have

R-4
Mobile homes
R-2
apartments

any area zoned I-1 at present). Even if it did permit them, the re-zoning of single lots presents the problems associated with spot zoning.

Another quite liberal interpretation would be that the "change in zoning classification" actually means a request for a conditional use permit. Article II (5) states, "Conditional Use [a] use that is not automatically permitted in a zoning district but which, after complying with special conditions and procedures set by the Planning Commission, may be authorized." Also, Article IV Section 1 declares, "[n]o building or land shall hereafter be used and no buildings or part thereof shall be erected, moved, or altered unless for a use expressly permitted the [sic] district in which it is located, unless said building or land shall have been awarded a conditional use permit." I would not recommend this approach because it is such a liberal construction of the ordinance.

The pending "variance request" is for property located on Melody Lane, which is in an R-1 district. Under the list of permitted uses for R-1 districts, Article V Section 1(1)(i) of the Zoning Ordinance permits, "[a] conditional use authorization under the Dyer Permitted and Conditional Use Legend and approved by the Planning Commission." It would seem that conditional uses can be approved by the Planning Commission if the proposed use meets the requirements of the "Conditional Use Legend." At this time, I am unaware of any documents or items that would be considered a "Conditional Use Legend." It would seem impossible to grant a conditional use permit without an objective list of requirements or standards. Granting permits without standards could lead to potential legal problems such as equal protection violations or arbitrary and capricious decisions by officials.

In sum, there are conflicting provisions regarding mobile homes under the Dyer Zoning Ordinance. One provision explicitly states that mobile homes can only be located in a mobile home parks or areas zoned for single mobile homes. Dyer does not have a zoning district classification allowing single mobile homes, so under the current ordinance Dyer only allows mobile homes in mobile home parks. The only other provision that seems to address the placement of mobile homes outside of the R-4 district requires the Planning Commission to approve a change of zoning classification, presumable to R-4, before a mobile home can be placed. The zoning of single lots is subject to the problems associated with spot zoning and not recommended. Regardless of the procedure or application process employed by Ms. Doerksen and Mr. Crisel, under the current language of the Dyer City Zoning Ordinance, there does not seem to be any way to permit any mobile homes on single lots anywhere within the city limits of Dyer.

As I discussed in my previous memorandum dated December 20, 2007, Arkansas state law, Ark. Code Ann. § 14-54-1604, requires that cities allow mobile homes/manufactured homes on individual lots in at least one (1) district. Therefore, it is my recommendation that at a minimum the current Dyer City Zoning Ordinance be amended to allow single mobile homes on lots as a permitted use within the current R-4 district. Additional restrictions can be created to maintain the quality of life and property values in Dyer, such as setbacks, minimum sizes of the homes, carports, porches, drives, etc. This will bring the city into compliance with state law.

I also recommend that a Conditional Use Legend be adopted and a formal procedure to apply for a conditional use permit be established in the Ordinance. Further, if the city wishes to allow mobile homes in other areas of the city, then the procedure and requirements for this should be clearly laid out in the ordinance.

Despite the fact that there does not seem to be any legal way under the current Zoning Ordinance to allow any single lot mobile homes, the procedure to request one is through a zoning change request in the form of an amendment to the Zoning Ordinance. The procedure for this is contained in Article IX (1). It requires the person requesting a zoning change to pay a \$25.00 fee to the City Treasurer and then to submit a petition to the Planning Commission giving the legal description of the property, the zoning classification requested, and a statement and diagram explaining why the proposed changes will not conflict with surrounding land uses. The Planning Commission must then provide the required notice and hold a public hearing.

If the Planning Commission so desires it can accept the "variance request" filed by Ms. Doerksen and Mr. Crisel and liberally construe or interpret it as a petition for zoning classification change. If this is the path the Commission wishes to take, then a letter should be sent to the applicants with a copy of Article IX(1) giving the procedure and requesting the \$25.00 fee. I do not suggest taking any action until the matter can be fully discussed at the next regular meeting.

Again, this memorandum is intended to provide the Planning Commission with the current state of the law and city ordinances as they relate to the submitted "variance request" so that the commissioners are aware of the issues prior to the next meeting. I do not believe that any formal actions are necessary before the meeting on January 9, 2008.