

FILE

In re Brigham

Stubbs, Friedland & Oglethorpe, P.C.

Two Stirling Professional Center

Cooper City, Franklin 33024

www.SFOsmallbusinesslaw.com

MEMORANDUM

TO: Applicant
FROM: Jan Stubbs
RE: *Brigham Variance*
DATE: July 26, 2005

We represent Barbara Brigham, DDS, and her husband, Len, who are seeking a variance in connection with the remodeling of their family home to allow her to move her dental practice into the home to meet the professional service needs of the Rollingwood neighborhood. Dr. Brigham cannot presently operate her dental practice in their home because the property is zoned R-1 single-family residential.

We need to submit a request for variance in the form of a persuasive letter directed to the Cooper City Zoning Board of Adjustment (ZBA). This letter will also serve as our "brief" in the upcoming public hearing on the request for variance.

Please prepare the persuasive letter to the ZBA. Begin with an introduction stating the request and describing the variance being sought. Then, discuss the arguments in support of granting the variance, supporting your arguments with relevant facts and citations to legal authorities.

Be sure to present all of the arguments the Brighams can make in support of their request because the only claims we will be allowed to present at the hearing are those that we have advanced earlier in the letter. Even though the City Attorney will be present to advise the Board, none of the ZBA members is a lawyer, and unless we can make the presentation in terms the Board members can understand, we will not be able to persuade them to grant the Brighams' variance request.

CLIENT INTERVIEW NOTES—Brigham Variance Petition

June 14, 2005—*Interview with Barbara and Len Brigham*

Dr. Barbara Brigham, our business "neighbor," and her husband, Len, seek a variance for their new home. They have engaged our firm to assist them. Barbara's dental practice is located next door to our law office in One Stirling Professional Center. Len is an electrical engineer. About 18 months ago, they purchased a large (5,000+ sq. ft.) home on a 1.2-acre lot with a small pond at 2050 Maple Street in the Rollingwood neighborhood, a subdivision of Cooper City and a few blocks from Barbara's office, reducing her present commute to mere minutes and Len's to fewer than 20. The plan was for Len to direct a massive remodeling of the house. Four months ago, the Brighams moved to a rental home as preliminary site work began on an expected year-long renovation of their home.

About the time the Brighams moved to temporary quarters, two things occurred that were beyond their control and not the result of any action taken by them. First, in a surprise move, the Cooper City City Council passed an ordinance converting the 18.5-acre plot located between Barbara's Stirling Professional Center office and the Brigham home from R-1 single-family residential to R-R multi-family to accommodate a garden apartment complex catering to senior citizens.

Second, the landlord of the Stirling Professional Center gave notice of a 35% rent increase effective April 2006. Barbara, along with other Stirling Professional Center tenants (including our law firm), considered relocation options. Between 20% and 25% of Barbara's dental practice is *pro bono*. She cannot continue to operate the practice and absorb such a rise in rent along with other expected substantial increases in operating costs. The only real alternative is a less attractive and smaller office more than nine miles from her present location. Barbara is reluctant to move for several reasons: she specializes in geriatric dentistry (she is the only such specialist in Cooper City outside of the Franklin University Dental School Clinic, almost 12 miles away) and the new garden apartments being built in the neighborhood will house dozens of potential new elderly patients (both paying and *pro bono*); her existing, mostly elderly, patients are used to traveling to this section of Cooper City for dental care (she is the only dentist in a radius of 3.5 miles); and the proximity of the office to her new home.

As a solution, Len suggested moving her practice to their home and building a dental office in the home. After consulting his construction colleagues, he decided it was possible to include the necessary office space within the existing structure, without the need to add on any square footage. It

can be done without serious interference with the core plans for the remodeling. Len also concluded that project cost and time would not be unduly increased if construction on the office phase could begin by October 2005. Moreover, savings in office rent, plus additional value to property if the variance is granted, would more than offset extra building costs.

Barbara prefers to work four hours per day in a solo dental practice and does not anticipate adding a partner. She employs a dental assistant, a receptionist, and a part-time dental hygienist (2 days per week). She will schedule, at most, three patients per hour. On the days the hygienist works, there will be an additional two patients each hour. The office will be closed on weekends except for the occasional emergency visit. There is enough off-street parking available at the Brigham house to accommodate the patients and staff.

The office will consist of a waiting room with office area plus two patient treatment rooms, a small bathroom, and a storage room, totaling 800 square feet. It will be wheelchair accessible.

The Brigham home is zoned R-1 single-family residential. This classification does not permit a professional office on the property.

The Brighams have spoken with neighbors about the possibility of a dental office in their home. Most have no objection, although two have expressed concern about increased traffic and the resulting risk to small children. Most also agree there is ample space for off-street parking on the Brigham property. One neighbor, David White, a sergeant in the Cooper City Police Department, suggested installing speed bumps to slow cars to the present 25 MPH speed limit or less. The Brighams have volunteered to pay the costs of installing the speed bumps.

According to Len, Rob Zukor, the owner of Cooper City Realty, believes the substantial remodeling of the Brigham home will have a positive impact on neighborhood property values. Zukor estimates that values in the area will rise about 10% (property taxes will increase only marginally). Zukor does not think including the dental office in the remodeling will have a negative impact.

I have conducted a field investigation of the zoning history of the property and neighborhood. (See attached.) The Brighams have solicited "no objection" letters from neighbors. We now need to prepare and file appropriate documents requesting the necessary variance, and appear at a ZBA public hearing on their behalf.

Stubbs, Friedland & Oglethorpe, P.C.

Two Stirling Professional Center

Cooper City, Franklin 33024

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MEMORANDUM

TO: Applicant
FROM: Jan Stubbs
RE: Brigham Variance Petition
DATE: July 26, 2005

This is a summary of the items and information I've assembled.

- (1) Previous Cooper City Zoning Board of Adjustment (ZBA) variances in the Rollingwood neighborhood where the Brighams' new home is located:
 - (a) Area variance granted on the request of Parc 55 Development Corp., developer, for a 15-ft. side-yard setback on the east side of 2050 Maple Street, Cooper City, for the purpose of building a single-family dwelling of approximately 5,000 sq. ft. based on the practical necessity for the most efficient placement of a structure on the lot and the written statements of four contiguous property owners that they had no objections to the grant of the variance. ZBA decision issued July 23, 1969.
 - (b) Variance granted on the request of Craig Crespi, Chairman of the Board of Elders of the Rollingwood Community Church, to allow construction of a one-story place of worship of approximately 2,250 sq. ft., plus an accessory structure and space to park 40 vehicles on tract 20, consisting of 2.3 acres, address of 400 20th Street, Cooper City. Variance granted based on evidence the building will blend in with the residential neighborhood despite intrusion on structure and parking setback limits, and the written statements of nine property owners in the neighborhood that the church will be a positive addition to the community. ZBA decision issued September 12, 1986.
- (2) Len Brigham delivered letters written by nine neighbors addressed to the ZBA, including letters from the owners of all five contiguous properties and of the two properties directly across Maple Street. Each of the nine letters contains the following paragraph:

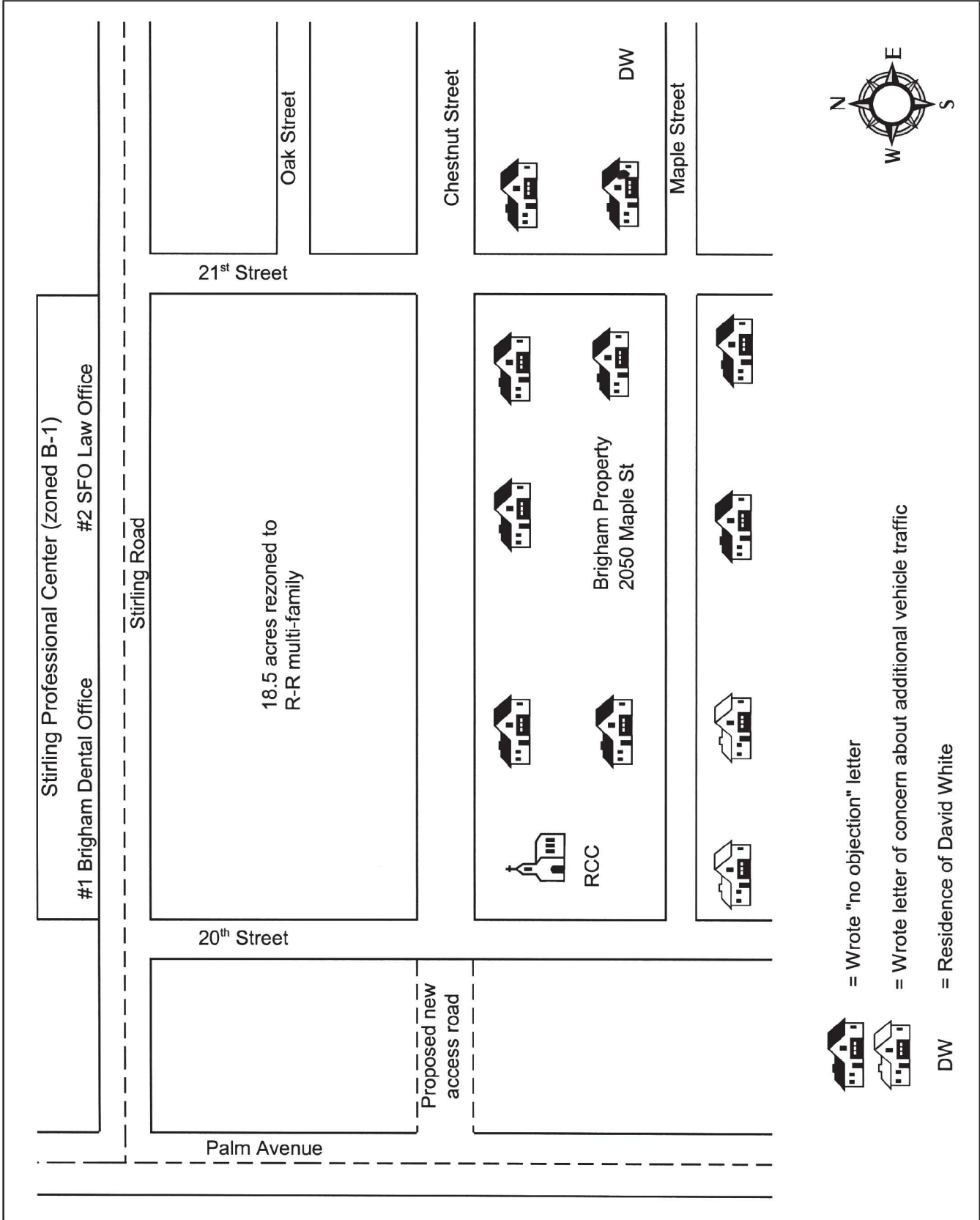
Our neighbors, Dr. Barbara and Leonard Brigham, have informed us that they are seeking a variance to allow them to add a dental office and an entrance/reception area for the office in their home. We have reviewed their plans and have no objections to the granting of the requested variance.

Each letter also contains a description of the location of the neighbor's property and the Brigham property. For example:

The west end of my property abuts the east side of the Brigham property.

- (3) Len Brigham also delivered letters written by two neighbors raising concerns about additional vehicular traffic if the variance is granted, causing increased risk to young children who live in the area. Each letter contains the following paragraph:

While we have no objection to Dr. Brigham operating a dental office in her home, we are very concerned that her patients will bring substantial additional automobile traffic to our small and secluded Rollingwood neighborhood. This added traffic poses an increased risk of injury to our young children who are used to playing throughout the neighborhood. We note that there are no sidewalks in the neighborhood, and the children ride bikes and otherwise play on our low traffic streets.



= Wrote "no objection" letter

= Wrote letter of concern about additional vehicle traffic

DW = Residence of David White

David White
2120 Maple Street
Cooper City, Franklin 33024

June 28, 2005

Jan Stubbs, Esq.
Stubbs, Friedland & Oglethorpe,
P.C. Two Stirling Professional
Center Cooper City, Franklin 33024

Dear Ms. Stubbs:

I am aware that my neighbors, Len and Dr. Barbara Brigham, are petitioning for a variance to allow them to build and operate a dental practice in their home at 2050 Maple Street. I also am aware that two other neighbors, Shannon O'Malley and Ken LeBlanc, have expressed concern that a professional office in our relatively isolated neighborhood will increase vehicular traffic and create an unacceptable risk to the young children in our community.

As you know, I am a sixteen-year veteran of the Cooper City Police Department and the sergeant in charge of the Traffic Control Division. I agree with Ms. O'Malley and Mr. LeBlanc that automobile traffic in our neighborhood will increase if the Brighams receive the variance they seek from the Zoning Board of Adjustment. I disagree, however, with their conclusion concerning the nature of the risk to our children. It is clear that excess speed, not the amount of traffic, is the primary cause of vehicular injuries to children. Mid-size speed bumps strategically placed on the few local access streets will reduce the speed of vehicles in the neighborhood.

I am confident that traffic engineers could develop a simple plan to control the speed of neighborhood traffic. I am equally confident that allowing the Brighams to include a dental office in their remodeled home will increase property values in our safe and secluded neighborhood.

If I can be of any further assistance, please do not hesitate to contact me.

Sincerely,



David White

Council's Surprise Move Creates New Elder Enclave

Cooper City City Council, in a 5-2 vote, unexpectedly took under consideration and passed an ordinance that rezoned a parcel of land to permit a new elder enclave in Cooper City. The Council changed the zoning classification of 18.5 acres in the Rollingwood neighborhood from R-1 (single family, one acre minimum) to R-R, a special multi-family zone reserved for low-income and elderly housing. The new complex will include up to 134 one-bedroom, moderately priced garden apartments on 13.5 acres with five acres reserved for open space.

Brion Blackwelder, president of the environmental watchdog group, Greenfields, labeled the action "another backroom deal between the Board majority and greedy developers." Council chairwoman, Bernadette Baugh, denied the charge and said City Housing Director Richard Cord and Thelma Stamp, Executive Director of Seniors Alliance in Cooper City, brought the matter to the City's attention.

According to Baugh, an emerging crisis in affordable housing for seniors caused Cord and Stamp to contact Jason Doran, the largest developer in southern Franklin, to encourage him to consider nominating one of his many parcels in Cooper City for the R-R classification. "Unless we build at least 300 moderately priced units in the next 15 months, we'll be embarrassed to find senior citizens joining the homeless and living on the streets," Stamp warned the Board.

Chairwoman Baugh said that Jason Doran initially was reluctant to consider applying for the R-R designation. "It's far more profitable for Mr. Doran to develop the site in Cooper City as high-end single-family dwellings on full-acre lots," said Baugh. "Doran

understood, however," Stamp said, "that the community needed to act quickly to avoid a crisis." Developer Doran noted he was hesitant when first contacted by Cord and Stamp. "Until they filled me in on the need for elderly housing, I wasn't interested," said Doran. "Besides, it could've cost me a bundle," he added. Doran noted a federal program being phased out in the coming year would provide a subsidy that "will reduce the loss to a modest level."

When asked why he chose the Rollingwood parcel from among all of his properties in Cooper City, Doran pointed to Stamp. "She's the one who did all of the research that showed Rollingwood was perfect." Stamp presented her findings to the Council during the public hearing. "This complex will be built on a site at the virtual geographic center of services needed by senior citizens," Stamp told the Council. "Within 2.5 miles are professional and support offices seniors need—a full range of medical specialists; a dentist specializing in geriatrics; a mental health clinic known for treating depression among seniors; a non-profit financial counseling center; two physical fitness programs that cater to older folks; and the state government complex that also has a Social Security branch office." Stamp also pointed out to the Council that "Cooper City's unreliable mass transit system makes proximity to services all the more important to seniors with limited mobility."

Though surprised by the action of the Council, residents in the area did not appear overly concerned about the future senior complex. "We didn't have much notice about this," said David White, who lives two blocks away from the proposed apartments, "but senior citizens tend to be good citizens and good neighbors."

TraffiControl, Inc.
Transportation Engineers
1000 Silver Springs Drive
Lakeland, Franklin 33554

July 15, 2005

Jan Stubbs, Esq.
Stubbs, Friedland & Oglethorpe, P.C.
Two Stirling Professional Center
Cooper City, Franklin 33024

Re: Traffic patterns near site of proposed dental office at 2050 Maple Street

Dear Ms. Stubbs:

We have completed our analysis of the traffic patterns and control alternatives in the Rollingwood neighborhood of Cooper City. Below we present our findings.

1. Existing traffic on Maple Street is light due to limited access (only two entrances to the area, both from Stirling Road) and relatively few residences.
2. Average automobile speed on Maple Street presently is 28.5 MPH as measured over three days and five hours.
3. Assuming the creation of the proposed apartment complex, a new access road from Palm Avenue, widened roads, and the inclusion of a dental office in the home located at 2050 Maple Street, we project that traffic will increase to light moderate.
4. The addition of five medium-sized speed bumps on Maple, 20th, and 21st Streets will control the speed of the increased traffic to the present level or below (projected average speed under assumed conditions is 23.5 MPH).
5. The estimated cost of installing the suggested speed bumps is \$3,750.

If you require additional information, please contact our office.

Sincerely,

Paul Heinz
Certified Traffic Engineer

