The meeting was called to order by Mr. Krecicki at 7:00 p.m. in the Commission Chambers of the Winter Park City Hall.

Present: Chairman Drew Krecicki, Vice-Chairman Rick Swisher, Michael Dick, Sarah Whiting and Carolyn Cooper. City Attorney Nikki Van Hook was also present. Staff: Planning Director Jeffrey Briggs, Sr. Planner Stacey Scowden, Planning Technician Caleena Shirley, and Recording Secretary Lisa M. Clark.

Approval of minutes – June 2 and May 20, 2009

Motion made by Mr. Dick, seconded by Mrs. Cooper to approve the May 5, 2009, meeting minutes. Motion carried unanimously with a 5-0 vote.

Public Hearings

CU 2:09 Request of Mr. Jamie McFadden for Conditional Use Approval to allow the sale and consumption of alcoholic beverages in conjunction with a new 32 seat restaurant to open at 961/963 Orange Avenue, zoned C-3. Sale and consumption of alcoholic beverages requires conditional use approval when the location is within 300 feet of residential properties.

Planning Director Jeffrey Briggs presented the staff report. He explained that the applicant, Mr. Jamie McFadden, is requesting conditional use approval to allow the sale and consumption of alcoholic beverages within the 32 seat restaurant planned for the property at 961/963 Orange Avenue (former State Farm Insurance) due to this location being within 300 feet of residential properties. He reviewed the applicant’s submittals that describe the type of restaurant planned to open, which included a prospective menu and floor plan. He noted that the application states that the hours of the operation will end at 10 p.m. Mr. Briggs explained that the criteria associated with this type of conditional use are intended to safeguard and protect adjacent residential neighbors from restaurant/bar establishments that can cause nuisances related to “overflow parking on residential streets, noise which is disturbing to the residential occupants or loitering of patrons within residential areas”. He stated that parking does exist in the parking lot on the rear of this property as well as on-street parking along Orange Avenue. A 10 p.m. closing time does not lend itself to create those noise nuisance conditions that we have experienced with other restaurants that later at night turn into a rowdy bar with late night noisy patrons. Staff recommended approval of the request subject to the condition that the hours of sale and consumption of alcoholic beverages end at 10 p.m. He noted that any change to that condition requires a future conditional use application, notice to neighbors and rehearing by P&Z/City Commission. Mr. Briggs responded to Board member questions and concerns.

Jackie Parker, represented the applicant, responded to Board member questions and concerns. She explained that the plan is to open a 32 seat restaurant with 8 parking spaces in the rear. She responded to
board member questions. Specifically, with regard to overflow parking needs, she stated that she feels that will be addressed when the need arises and also that no live amplified music is proposed.

Ed Sabori, 446 Melrose Avenue, spoke in favor of the request. He said that he feels that the proposed restaurant will be a great addition to the neighborhood.

Ron Jackson, 521 Melrose Avenue, property owner, addressed concerns raised regarding parking. He outlined which properties that he owns that are in proximity to the proposed restaurant that would be available if the need for overflow parking arises.

No one else wished to speak concerning the request. Public Hearing closed.

The Board members were satisfied that there is ample parking for the restaurant. They supported the recommendations proposed by staff of sale and consumption of beer and wine only, no live amplified music, and that they close by 10 p.m.

**Motion made by Mr. Krecicki, seconded by Mr. Dick to approve the request subject to: 10 pm closing, the addition of one (1) handicap parking space, no amplified music, and restricted to the sale and consumption of beer and wine only. Motion carried unanimously with a 5-0 vote.**

Appeal of MFT Enterprises of Winter Park, Inc. contesting the City Building and Zoning Official’s interpretation and enforcement of Article III, “Zoning” of Chapter 58 of the City of Winter Park’s Land Development Code regarding the provisions of Section 58-64 for nonconforming uses relating to the denial by the City for the use of the property at 2190 W. Fairbanks Avenue, zoned C-3, for the sale of motor vehicles as applied to the provisions of the code regarding nonconforming uses.

Planning Director Jeffrey Briggs presented the staff report. He stated that pursuant to Section 58-91 of the Zoning Code, MTF Enterprises of Winter Park Inc. has filed an appeal contesting the interpretation and determination of the City’s Building and Zoning Official that the sale of motor vehicles and recreational vehicles from the property at 2190 West Fairbanks Avenue violates the code provisions regarding nonconforming uses.

He gave the Board members an overview of their role in the appeal process. He explained that in cases of appeals, the Planning Commission’s role is like a judicial Court of Appeals. You listen to both sides and both interpretations of the zoning code and then decide which position you agree with. Your decision may be the final decision. However, either party, may within 15 days, following the Board’s decision, further appeal the decision onto the City Commission for a final decision. Mr. Briggs stressed that it is important to understand that this is not like a conditional use application. The Planning Commission is not deciding if you feel the use of the property is appropriate or compatible. You are not negotiating about the operations or landscaping or any other aspect of how the business is conducted. Your decision is whether the zoning code permits a motor vehicle and recreational vehicle sales business to operate at this location or does the zoning code prohibit that business, based upon the facts presented.

He summarized code provisions relating to this item. On March 12, 2007, the City Commission adopted, following notice mailed to all commercial property owners in the City, Ordinance No. 2706-07. That ordinance, among other things, changed the status of new or used motor vehicle sales businesses from a conditional use status, city-wide, to a conditional use status only within certain geographic areas of the City and otherwise a non-conforming use outside of those specified geographic areas. As a result, the status of the all commercial properties on Fairbanks Avenue, including this particular one at 2190 West Fairbanks Avenue was changed from having the potential for the approval of a conditional use to permit motor vehicle sales to a situation where motor vehicle sales are prohibited.

As a result, the only way MFT Enterprises of Winter Park, Inc. can qualify to be permitted for motor vehicle sales is to prove that they were actively in business within and upon the areas for which they now seek an approval so as to be considered “grand-fathered-in” as a “nonconforming use”. Generally “non-conforming
uses” may continue to operate, (per Section 58-64), as long as the “use” is not discontinued for more than six months. However, nonconforming uses may only be “grandfathered-in” for the specific portion of the property that has been actively used for motor vehicle sales. Nonconforming uses cannot be enlarged, extended or moved to any other part of the property or building. Also it is very important to note that once a property or building or a portion of the property or building is used for a permitted legal use, then that property or portion of a property or building cannot revert back to a “nonconforming use”, regardless of the time period. In other words, once a property or building or portion of a property or building becomes “conforming” then it cannot thereafter become “non-conforming”.

He detailed the Winter Park’s Building and Zoning Official position. He said that in March 2009, MFT Enterprises of Winter Park, Inc. applied for a business certificate (occupational license) for motor vehicle sales from the property at 2190 W. Fairbanks Avenue. That application was denied because no existing business certificate was in effect for this property that could substantiate that any motor vehicle sales business had been conducted on this property that could qualify as being grandfathered-in for “nonconforming status”. Previously MFT Enterprises had been licensed for motor vehicle sales at 2190 W. Fairbanks Avenue but that license expired on Sept. 30, 2005. No business certificate (occupational license) from the City of Winter Park was requested or issued for the 2006, 2007, 2008 or 2009 business years.

On April 7, 2009 the City received correspondence from attorney Jason Merritt, representing MFT Enterprises (Matt and Karin Thilmony) providing information to assert that an active motor vehicle sales business had been in continuous operation from the property at 2190 W. Fairbanks. That information included the State of Florida Motor Vehicle motor vehicle dealer licenses at that 2190 W. Fairbanks Avenue address and sales tax records. From that information it appeared that since March 2007 (when the zoning code changed) motor vehicles were sold in two months of 2007 and in ten months of 2008.

At that point, the City was prepared to issue a business certificate for motor vehicle sales but only for the specific portion of the property that was grandfathered-in. That consisted of the 11x18 office at the rear of the building at 2190 W. Fairbanks Avenue and the parking lot area to the rear of that building.

MFT Enterprises however, has insisted upon the right to utilize the entire building at 2190 W. Fairbanks Avenue for motor vehicles sales and as well as the right to park and display motor vehicles for sale across the Fairbanks Avenue frontage of the property.

The City has outlined earlier that it cannot permit the expansion or enlargement of a nonconforming use. The City also cannot permit a nonconforming use to occupy a portion of a property that has been made conforming to the code.

Since March 2007, the City has issued business certificates (occupational licenses) for the building at 2190 W. Fairbanks Avenue to the American Combat Club (mixed martial arts studio) and to the Black Chapel Tattoo (art/photo gallery, photo studio and retail sales). These businesses have included use of the front parking lot area as the required parking for employees and customers. Otherwise they would not have been able to provide the required paved parking necessary to meet the parking requirements for those businesses. Thus, the building with the exception of the 11x18 office at the rear of the building has been used for permitted and conforming uses in the C-3 zoning.

As a result, the City cannot permit or issue a business certificate for motor vehicle sales for this entire property, as requested. To do so would be an enlargement or expansion of a nonconforming use because when use of the building and the front portions of the property have been used for permitted legal businesses, then the non-conforming uses (motor vehicle sales) cannot be re-established.

Staff Recommendation is for Denial based upon the factors outlined above. Messrs. Briggs and Wiggins responded to Board member questions and concerns. Mr. Wiggins also detailed the occupational licenses that have been issued under that address.
Jason Merritt, 1000 Legion Place, Suite 1700, Orlando, FL, represented the applicant. He clarified that the request is not to expand the uses from this space into the rest of the building. They agree with the City’s interpretation of the Code concerning the expansion of a non-conforming use. They take issue with the City’s interpretation of the Code with regard to parking. He gave background of the applicant operating out of this location. They have no record of occupational license renewal being received and was not aware until the client was “red tagged” concerning the parking of motor vehicles on the portion of the property facing Fairbanks Avenue. He did note that parking has been shared by all occupants of the building. He said that he feels that the issue that the Board has to decide is if the applicant has intentionally or voluntarily abandoned his non-conforming use status to be able to use the front portion of the property for parking of motor vehicles. He discussed his concerns relating to the code interpretation of Section 58-64 (e)(3). He said that he feels that is important to look at the property whole and note that the applicant has continued to maintain his office in the rear, maintain appropriate state license, insurance and bonds. He responded to Board member questions and concerns.

Matthew Thilmony, the applicant, was also present and responded to Board member questions with regard to previous occupants and uses of the building.

No one else wished to speak concerning the request. Public Hearing closed.

Mrs. Cooper stated that she feels that there are three different areas of the code that apply to this particular issue. The first is the existence of a state license which was provided by the applicant’s attorney. The second is that at the time that the ordinance amending C-3 was adopted, this particular site was not configured for sales. So, the nonconforming use cannot be extended to the rest of the building and that she agreed with the Building Official in this regard. Further, that since the applicant has leased space to other conforming uses that front Fairbanks Avenue he has compromised the non-conforming use status as the original approval for the front portion of the building was for automobile repair.

Mr. Swisher agreed with the comments made by Mrs. Cooper and added that if the City’s occupational license had been renewed the situation would be totally different.

Mrs. Whiting said that she feels that the submission of the State license proves that the business that operated out of the back office continued to be in existence with two continually used parking spaces and that the remainder of the parcel has lost the non-conforming use status.

Mr. Dick requested that the City Attorney clarify what the Planning Commission was required to decide on. Mrs. Van Hook stated that the Planning Commission has to make a determination of whether the code would allow this use to continue under the current non-conforming use provisions. He explained that he feels that the original approved use has changed because of the various tenants that the space has been leased to. He agreed with Mrs. Cooper with regard to parking.

Mr. Krecicki stated that this is one property with one address and it cannot prove that it has not been in continuous use and the submission of the state license proves that it has been continuous and that the non-conforming use should be allowed to continue.

Motion made by Mrs. Cooper, seconded by Mr. Swisher to uphold the Building Official determination in that motor vehicles cannot be stored on the front portion of the property at 2190 West Fairbanks Avenue. Motion carried with a 3-2 vote. (Mr. Krecicki and Mrs. Whiting voted against the motion).

Site Plan Reviews

- M/M Boardman request lakefront site plan approval for a building addition at 701 Balmoral Road (Lake Berry)

Assistant Planner Stacey Scowden presented the staff report. She reviewed the issues of floor area ratio, impervious coverage, views of the neighbors and the lake, storm water retention and tree preservation. Staff recommended approval. She responded to Board member questions and concerns.
The applicants and their architect were present to address any concerns raised by Board members. There were also neighbors present in support of the request. However, they did not address the Board.

Public Hearing closed.

**Motion made by Mr. Dick, seconded by Mrs. Cooper to approve the request. Motion carried unanimously with a 5-0 vote.**

**New Business**

Mrs. Cooper asked the Board members to consider that while they are in the process of reviewing the Code to see if other issues can be addressed at this time. She said that she particularly would appreciate more discussion on the conditional use clause that they consider requiring that conditional use request require a supermajority vote by the City Commission.

Mr. Briggs discussed upcoming meetings. He added that the election of Chair and Vice-Chair will be on the next agenda. He also noted that the formal application has been received from the YMCA and the public hearing will be on the September agenda.

There was no further business. Meeting adjourned at 10:15 p.m.

Respectfully submitted,

Lisa M. Clark,
Recording Secretary