

BOARD OF ZONING ADJUSTMENT MINUTES
MEETING OF APRIL 5, 2010 - 2:00 P.M.
MOBILE GOVERNMENT PLAZA, MULTI-PURPOSE ROOM

MEMBERS PRESENT

Reid Cummings, Chairman
William Guess
Vernon Coleman
Sanford Davis

*supernumerary member

MEMBERS ABSENT

Adam Metcalf
Russell Riley*
J. Tyler Turner*

STAFF PRESENT

Frank Palombo, Planner II
Caldwell Whistler, Planner I
Sondi Galanti, Secretary I

OTHERS PRESENT

John Lawler, City Attorney
Jennifer White, Traffic Engineering
David Daughenbaugh, Urban Forestry
Gerard McCants, Urban Forestry

The notation *motion carried unanimously* indicates a consensus, with the Chairman voting.

CALL TO ORDER:

Chairman Cummings advised all in attendance as to the policies and procedures of the Board of Zoning Adjustment. He noted the number of members present constituted a quorum and called the meeting to order.

APPROVAL OF MINUTES:

The Chair announced that minutes had been presented for approval. Mr. Guess moved, with second by Mr. Coleman, to approve the minutes from the following, regularly held, Board of Zoning Adjustment meetings:

- September 8, 2008
- October 6, 2008
- November 3, 2008
- December 1, 2008
- January 5, 2009
- February 2, 2009
- March 2, 2009
- April 2, 2009
- May 4, 2009

The motion carried unanimously.

April 5, 2010
Board of Zoning Adjustment

HOLDOVERS:

#5600

(Case #ZON2010-00284)

SRK Holdings, LLC

1431 East I-65 Service Road South

East side of East I-65 Service Road South, 325' ± South of Pleasant Valley Circle

Sign Variance to allow a total of two freestanding signs for a single-tenant commercial site in a B-3, Community Business District; the Zoning Ordinance allows one freestanding sign for a single-tenant commercial site in a B-3, Community Business District.

The Chair announced the matter and asked if it were being held over again for another month.

Mr. Palombo stated the staff had received a letter from the applicant requesting that the matter be held over.

Hearing no further discussion, the Chair opened the matter for a motion.

A motion was made by Mr. Coleman, with second by Mr. Guess, to hold the matter over until the May 3, 2010, meeting, with revisions to illustrate exact sign placement, and revised renderings to show the exact look, height, and size of all signage due to the Planning Section by April 14, 2010.

The motion carried unanimously.

PUBLIC HEARINGS:

#5606 / 2239

(Case #ZON2010-00410)

Jada & Willie McElroy

1350 Arlington Street

Northwest corner of Arlington Street and Olive Street

Use, Parking Ratio, Access & Maneuvering, Off-Site Parking, Tree Planting, and Landscaping Variances to allow a convenience store and beauty salon, with seven (7) on-site parking spaces, inadequate access and maneuvering area, parking in the right-of-way, and no tree plantings or landscaping area in an R-1, Single-Family Residential District; the Zoning Ordinance requires a minimum B-2, Neighborhood Business District zoning, one (1) space per 300 square feet of floor area, 24-foot two-way access and driveways, all parking to be on site and out of the right-of-way, and tree plantings and landscaping.

The Chair announced the matter, advising it had been recommended for approval and that the applicant should address the Board regarding the subject at that time.

Jada McElroy, 1350 Arlington Avenue, Mobile, AL, stated she had read the recommendation but needed some clarification regarding revising the parking area so as to provide adequate ingress and egress to the site, the issue of using the right-of-way, and some safety concerns regarding the planting of trees.

April 5, 2010

Board of Zoning Adjustment

Mr. Palombo stated, regarding adequate ingress and egress, the applicant would need to provide 24 foot access ways. He noted the plan currently showed them providing approximately 8 feet of accessway. He added that though they are not being required to provide the full 24 feet at the access points, they were being asked to open the current ones up which would require moving the curb-cut and providing asphalt to the parking area. He noted that elimination of the front parking needed to include the provision of curbing in that area as well.

Ms. McElroy noted that the parking in question had been in place for many years prior to her proposed business being there and inasmuch, would it still need to be removed, to which Mr. Palombo said yes unless otherwise approved by the Board.

Mr. Daughenbaugh stated that Urban Forestry required three overstory trees be planted along Arlington Street as well.

Ms. McElroy stated her opinion that those would pose a safety issue because trees along there would create a line of sight issue.

Mr. Daughenbaugh stated that Urban Forestry would coordinate with Traffic Engineering to see that the required trees did not create line of sight traffic problems.

Ms. McElroy stated she had had her business at the location for the past 20 years and the parking the staff wished to eliminate had been there prior to that time. She expressed her feelings that the elimination of said parking would cause drainage issues due to the slope of the land in that area.

Ms. White, Traffic Engineering, stated she could not see how putting in complete curbing would have the effect the applicant was stating, as it should flow the water to the nearest inlet as the curb would push the run-off water toward it.

The Chair asked how long the applicant had had the property in question and was advised it had been in her possession since 1988, to which the Chair asked why there were now issues.

Mr. Palombo stated it was due to the fact that she was adding a new, additional use of a convenience store to the location.

Ms. McElroy stated that had always been the case and that she had previously rented the convenience store portion to a tenant, who had not successfully gotten their business license. She noted that caused the property to revert back to its R-1 classification. She added she only became aware of that issue when she tried to re-open the convenience store portion herself.

The Chair asked her feelings regarding the remaining recommendations.

Ms. McElroy stated there would be no dumpster on site as she was utilizing curb side pick up by Waste Management.

Mr. Palombo asked if a note could be placed on the site plan stating there would be no dumpster on site and that the garbage would be curb side via a garbage can by Waste Management.

April 5, 2010

Board of Zoning Adjustment

Mr. Coleman asked that even though the Board knew parking was not allowed in the right-of-way, if something had been in existence for some time, could it be allowed to continue, legally, by issuing a variance for it.

Mr. Lawler responded that though a private person could not condemn public property, an agreement could be reached between the two parties and the applicant could possibly lease the property in question from the City.

Mr. Palombo noted Mr. Lawler was describing a non-utility right-of-way use agreement. He advised the applicant that the right-of-way use agreement process was a lengthy one of approximately five to six weeks and that the application for same could be gotten from the City Clerk's office. He noted that the applicant would need to have an attorney do a "metes and bounds" legal description of the property prior to filing the application.

Mr. Guess asked if on street parking was allowed in the area, but Ms. White was unable to state definitively yes or no at the time.

The Chair asked if there were any more questions from the Board. Hearing none, he asked if there were those in opposition to the matter and opened the floor to their comments. Hearing none, he opened the matter for a motion.

A motion was made by Mr. Coleman, with second by Mr. Davis, to approve the above referenced request, subject to the following conditions:

- 1) revision of the parking area to provide an acceptable means of ingress/egress to be approved by Traffic Engineering;**
- 2) submission and approval of a non-utility right-of-way use agreement to allow parking along Olive Street;**
- 3) coordination with Urban Forestry regarding tree planting of three overstory trees along Arlington Street;**
- 4) provision of a dumpster, screened from view and in compliance with Section 64-4.D.9 of the Zoning Ordinance, or the placement of a note on the site plan stating that garbage collection will be curb-side via a private pick-up service and no dumpster will be utilized;**
- 5) provision of a revised site plan to the Planning Section of Urban Development prior to the issuance of any permits or land disturbance activities; and**
- 6) full compliance with all other municipal codes and ordinances.**

The motion carried unanimously.

#5607 / 5427

(Case #ZON2010-00587)

Irma Williams

April 5, 2010

Board of Zoning Adjustment

1907 Prichard Avenue West

South side of Prichard Avenue West, 95'± West of Joel Court

Use, Parking Surfacing, Maneuvering, Tree Planting, and Landscaping Variances to allow a convenience store and take-out restaurant with aggregate parking, inadequate maneuvering area, and no landscaping or tree plantings in an R-1, Single-Family Residential District; the Zoning Ordinance requires a minimum B-2, Neighborhood Business District zoning, parking surfacing of asphalt, concrete, asphaltic concrete, or an approved alternative surface, 24-foot two-way access and driveways, and tree plantings and landscaping.

The Chair announced the matter, advising it had been recommended for holdover and that the applicant should address the Board regarding the subject at that time. The Chair asked the applicant if she was in agreement with the holdover.

Ms. Williams asked the reasons behind recommending the matter be held over and Mr. Palombo stated the staff would like to see a little more compliance with the tree and landscape ordinance. He noted the site as already in existence with rollover asphalt curbing from practically one side of the property to the other. He said the staff felt that a specific entrance should be designated for the site and not have the perimeter wide open. He added that it was felt trees should be planted as well.

Mr. Daughenbaugh stated that if nothing was to be physically changed about the site, Urban Forestry felt it was possible to get two clusters of three trees on each end of the site.

The applicant asked if she planted the trees, would she still have to wait a month to have the variance request heard and advised all that she was leasing the property.

Mr. Daughenbaugh advised Ms. Williams that the staff was not specifically asking that the trees be planted at this time but that the location of the trees be shown on a revised site plan to be submitted by the next meeting.

The Chair asked where Urban Forestry would suggest putting the trees in question.

Mr. Daughenbaugh stated the requested overstory trees would go in the existing green spaces located at either end of the property.

Mr. Davis expressed his hope that the Board could hear the matter as soon as possible as the site had been in place for some time and was in dire need of the positive attention a good property owner would give it.

The Chair stated that though he would like very much to hear the case, the site plan presented was really nothing more than a survey as it showed no indication of designated parking spaces as required by code.

Ms. Williams expressed her frustration with the process stating that when she went to the Planning Department she asked the staff exactly what she needed. She said it was her thought that the materials she gave them were the necessary materials as no one on the staff told her otherwise.

April 5, 2010
Board of Zoning Adjustment

Mr. Guess asked if the current parking spaces were designated on the property itself, including being painted, and what was the number of the current parking spaces.

Ms. Williams stated they were painted but she was unsure of the number.

Mr. Palombo noted that seven parking spaces were required at the site.

The Chair noted that the applicant may not feel that she was given the correct information by the staff, however, the surveyor of record should have known the necessary requirements for the proposed use and that person should have advised her of the same. He also noted his inclination to hold the matter over because there were a number of variance requests involved in this application and hoped the Board would see that need as well.

Mr. Palombo stated that the surveyor of record was deceased and that the survey presented had been done prior to his death. He added that the survey presented had been done in 2002 for a variance request presented at that time. He noted that request had been denied for no parking ramp, inadequate landscaping and trees, etc., and that Ms. Williams was simply using the same site plan/survey for a new request without addressing those issues.

Mr. Palombo advised that if the Board was leaning toward approving the matter, the staff could attach the condition that seven parking spaces be provided and approved by the Planning Staff with the correct width, distance, and circulation, as well as coordination with Urban Forestry regarding the locations of the necessary trees. He also noted his belief that it would be difficult to add parking spaces without the addition of asphalt based upon the site plan submitted.

Mr. Whistler noted that there was an approved site plan for the location along with an expired variance approval for the property from approximately two years prior. He stated that approval was for a different applicant.

Ms. Williams stated she had no problem adding asphalt for additional parking or adding trees if necessary for an approval, as long as she knew the matter would ultimately be approved.

The Chair asked if there were any more questions from the Board. Hearing none, he asked if there were those in opposition to the matter and opened the floor to their comments.

Eugenia Hobbs, spoke on behalf of the Morleigh Terrace residents who live in the area directly behind the proposed convenience store and were opposed to the proposed convenience store. She stated they had presented a petition against the development to the Board. She noted they had spoke in opposition to a similar matter two years prior when a request for a use variance for a convenience store at that location had been presented to the Board. She cited the residential character of the neighborhood, the large number of elderly area residents, and an increase in crime as reasons for opposing the matter.

Mr. Davis asked Ms. Williams if she was aware of the previous speakers concerns.

Ms. Williams noted that all of the issues brought forth by the speaker were also present in many other areas of the city and those reasons should not prevent a business from being approved.

April 5, 2010
Board of Zoning Adjustment

The Chair noted that at best the matter needed to be heldover as it was missing required information, however, there were members of the Board who very much wanted the matter heard at that time. He also asked the opposition if there were any suggestions from them regarding a positive use of the site.

Mrs. Hobbs noted that no thought had been given to that but that possibly a garden or sometime of park might be a good idea.

Ms. Williams noted that based upon Mrs. Hobbs' statement the community would be opposed to any type of business that might want to occupy that space.

The Chair noted that was not the gist of Mrs. Hobbs' statement, adding that businesses such as a tax preparation office, beauty shop, or an insurance office would not attract the clientele of a convenience store and thereby have a less negative impact on the neighborhood.

Hearing no further discussion, the Chair opened the matter for a motion.

A motion was made by Mr. Guess, with second by Mr. Davis, to deny the above referenced request.

The motion carried unanimously.

#5608
(Case #ZON2010-00591)
Tamara Taylor & Eric Williams
1252 Government Street

North side of Government Street, 55'± West of South Georgia Avenue

Use and Tree Planting and Landscaping Variances to allow a restaurant in a B-1, Buffer Business District and no tree plantings or landscaping; the Zoning Ordinance requires minimum B-2, Neighborhood Business District zoning for a restaurant and full compliance with tree planting and landscaping requirements.

The Chair announced the matter, advising it had been recommended for approval and that the applicant should address the Board regarding the subject at that time.

The applicants expressed their agreement with the staff's recommendations

The Chair asked if there were any more questions from the Board. Hearing none, he asked if there were those in opposition to the matter and opened the floor to their comments.

John Dukes, 150 Government Street, Mobile, AL, spoke on behalf of John and Julie Vitalo, 1216 Government Street, Mobile, AL. He stated that the Vitalos were out of town that day and unable to attend so they had asked him to represent their interests. Mr. Dukes then stated the following concerns:

- A. wanted the proposed restaurant to have as minimal an impact on the surrounding residential neighborhood as possible;

April 5, 2010

Board of Zoning Adjustment

- B. concern over the amount of noise generated by the proposed restaurant;
- C. concern of the hours of the proposed restaurant;
- D. concern over the mitigation of smoke and other odors coming from the restaurant;
- E. concern over whether alcohol would be sold on site; and,
- F. concern that the building itself might be expanded and so parking would have to be expanded as well and expressed the hope that no off-site parking would be allowed.

Mr. Coleman asked how long the Vitalos had lived in their house and was advised they bought the property in October of 2008.

Mr. Davis asked if the applicants could give some insight into their plans for the property.

The Chair noted there was further opposition and asked them to come forward.

Michael Pittillo, 111 South Georgia Avenue, Mobile, AL, noted that the property in question was surrounded by the historical districts of Oakleigh and Old Dauphin Way and it was hoped that the historical nature of the neighborhood would not be compromised by significantly altering the requirements of such.

The Chair advised that per the staff recommendations, if the matter were approved, the applicants must remain in full compliance with all municipal codes and ordinances, including those noted in any applicable historical overlay.

The Chair asked the applicant when deliveries would be made to the establishment and was told they were uncertain but probably between the hours of 6 a.m. and 6 p.m. and that these were also the hours of operation. The Chair asked how many days a week restaurant would be open and was advised by the applicant they would work seven days a week. The Chair asked what type of food would be serviced by the restaurant and was told by the applicant it would be home style cooking with no alcohol served. The Chair asked what type of exterior lighting would be used and the applicant advised there was limited lighting with spot lights pointed toward the building and advised that no new exterior lighting fixtures were to be put in place.

Opposition voiced strong opinions regarding the use of the internal pit for smoking meat stating it was their belief that to do so would negatively affect the residential character of the surrounding neighborhoods and asked the Board to set limitations along those lines as well.

Mr. Coleman stated that it was his opinion that it was not reasonable to tell the business they could not use the smoking pit simply because the odor was offense as it was already in place at the time they contracted the business,. He noted that it would also imply that neighboring residents could not BBQ at their homes as they would create the same odor.

Opposition then asked if a condition could be added that limited the time when the smoker could be in use.

The Chair then asked the applicant their response to the question of when the smoker would be in use.

April 5, 2010
Board of Zoning Adjustment

The applicant responded that the smoker would only be in use during the hours of operation.

Hearing no further discussion, the Chair opened the matter for a motion.

A motion was made by Mr. Guess, with second by Mr. Cummings, to approve the above referenced request, subject to the following conditions:

- 1) hours of operation be limited to 6:00 AM – 6:00PM;**
- 2) provision that the dumpster pick-up between 9:00 AM and 9:00 PM on weekdays only;**
- 3) provision that deliveries are restricted to the hours of operation;**
- 4) that the site not be allowed the sales of alcohol;**
- 5) the smoker be limited to the hours of operation;**
- 6) lighting of the site to focus only on the site and not overflow to the adjacent residential properties;**
- 7) provision of a hedge or fence along the eastern property line, to be approved by the Architectural Review Board;**
- 8) provision of a dumpster, screened from view and in compliance with Section 64-4.D.9 of the Zoning Ordinance;**
- 9) provision of a revised site plan to the Planning Section of Urban Development prior to the issuance of any permits or land disturbance activities; and,**
- 10) full compliance with all other municipal codes and ordinances.**

The motion carried unanimously.

#5609

(Case #ZON2010-00623)

Frank H. Kruse

215 South Cedar Street

East side of South Cedar Street, 110'± North of Eslava Street.

Use, Parking Surfacing and Access, and Maneuvering Variances to allow an attorney's office in an R-1, Single-Family District, with aggregate surfacing, and maneuvering area of 12 feet; the Zoning Ordinance requires a minimum R-B, Residential-Business District zoning, parking surfaces paved with asphalt, concrete, asphaltic concrete, or an approved alternative surface, and 24-feet of access and maneuvering area.

The Chair announced the matter, advising it had been recommended for approval and that the applicant should address the Board regarding the subject at that time.

Mr. Kruse stated he was in agreement with the recommendations and noted there was currently a privacy fence already in place. He noted he had done extensive remodeling of the building so he believed his neighbors were happy with the new condition of the building. He then asked for clarification regarding the issues of landscaping and trees.

Mr. Daughenbaugh stated the site had limited green space and as a result only had space for a few understory trees such as crepe myrtles. He advised the applicant that the Urban Forestry

April 5, 2010

Board of Zoning Adjustment

Department would be happy to work with him regarding what trees would work on the property and the best places for them to be planted.

The Chair asked if there were any more questions from the Board. Hearing none, he asked if there were those in opposition to the matter and opened the floor to their comments. Hearing none, he opened the matter for a motion.

A motion was made by Mr. Coleman, with second by Mr. Davis, to approve the above referenced request, subject to the following conditions:

- 1) **provision of a 6' high wooden privacy fence along the East and South sides of the property, decreasing to 3' in height within the front 25' of the property;**
- 2) **compliance with the landscaping and tree planting requirements of the Ordinance as much as practicable, to be coordinated with Urban Forestry;**
- 3) **coordination with Traffic Engineering on the revised location of the parking stalls;**
- 4) **submission of a revised site plan to the Planning Section reflecting all approval conditions prior to the obtaining of any permits; and**
- 5) **full compliance with all other municipal codes and ordinances.**

The motion carried unanimously.

OTHER BUSINESS:

There being no further business, the meeting was adjourned.

APPROVED: August 2, 2010

Chairman of the Board

/jsl