

BOARD OF ZONING ADJUSTMENT MINUTES
MEETING OF MAY 3, 2010 - 2:00 P.M.
MOBILE GOVERNMENT PLAZA, MULTI-PURPOSE ROOM

MEMBERS PRESENT

Reid Cummings, Chairman
William Guess
Sanford Davis
Adam Metcalf
*supernumerary member

MEMBERS ABSENT

Vernon Coleman
Russell Riley*
J. Tyler Turner*

STAFF PRESENT

Frank Palombo, Planner II
Tony Felts, Planner I
Sondi Galanti, Secretary I

OTHERS PRESENT

John Lawler, City Attorney
Butch Ladner, Traffic Engineering

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. He advised that it would require all four members present to vote in the affirmative to approve any variance and then called the meeting to order.

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, advising it had been recommended for denial and that the applicant should address the Board regarding the subject at that time.

Roger Koby, SRK Holdings, LLC, 1431 East I-65 Service Road, spoke on his own behalf.

The Chair noted the matter had been held over from a couple of months prior. He added that the matter needed further research regarding the proximity of other free standing signs adjoining the property in question and how their locations would be relative to the above referenced proposal.

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Mr. Koby stated that Subaru was undergoing internal changes and as a result he had had difficulties reaching someone at the Subaru corporate level to advise him regarding the signage issue. He stated that when he finally reached someone in the Subaru corporate offices, they advised him that he “needed to do whatever he needed to do” to get a sign up at his location. He stated he had devised a solution to his signage needs and presented plans to the staff and Board.

The Chair asked if copies of his plan had been presented to the staff and Mr. Koby advised he had only thought of it the day before.

Mr. Koby noted that the proposal just presented to the staff and Board, showed both of the proposed signs adding up to 132 square feet. He stated that based upon his calculations and due to his having 254.5 feet of road frontage he could have up to 254 square feet of signage. He reminded the Board that Subaru required the two signs not abut each other meaning that the total calculated air space would be 305.5 square feet.

Mr. Palombo stated the staff would have no problem with the proposed signage as presented that day.

The Chair expressed his opinion that the plan presented that day was what the Board had hoped for at the previous hearing.

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. Metcalfe, with second by Mr. Davis, to deny the above referenced request, and the matter carried unanimously.

A second motion was made by Mr. Metcalfe, with second by Mr. Davis, to approve a new request to approve a 51 square foot sign size variance to allow a 305.5 square foot freestanding sign.

The matter carried unanimously.

PUBLIC HEARINGS:

#5610

(Case ZON2010-00619)

Advantage Sign Company

6650 Cottage Hill Road

South side of Cottage Hill Road, 360' ± East of Pesnell Court

Sign Variance to allow a double-faced freestanding monument entrance sign containing 69 square feet per face at an apartment complex in an R-3, Multi-Family Residential District; the Zoning Ordinance allows a maximum of 25 square feet per face for a freestanding monument entrance sign at an apartment complex in an R-3, Multi-Family Residential District.

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

Hearing no one in favor of the matter, 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. Cummings, with second by Mr. Metcalfe, to deny the above referenced application for want of support.

The motion carried unanimously.

#5611/5475

(Case #ZON2010-00746)

Amity Missionary Baptist Church

2451 St. Stephens Road

South side of St. Stephens Road, extending from Strange Avenue to Como Street, and Southwest corner of St. Stephens Road and Como Street

Off-Site Parking and Parking Ratio Variances to allow 27 of the proposed 63 parking spaces for a 255-seat church to be off-site; the Zoning Ordinance requires 64 on-site parking spaces for a 255-seat church.

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.

Jeffrey Mackey spoke as a representative of Amity Missionary Baptist Church.

The Chair advised Mr. Mackey that if the Church had no new information that needed to come before the Board and were in agreement with the staff's recommendation for approval that the Board could move forward with granting what would basically be an extension of their earlier request.

Mr. Mackey advised that was the case and the Church was in agreement with the 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. Hearing none, he opened the matter for a motion.

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

- 1) limited to the submitted site plan;**
- 2) provision of a 6' high wooden privacy fence in compliance with Section 64-4.D.1. of the Zoning ordinance, except within the required 25' minimum building setback (where the fence shall be 3' high);**
- 3) compliance with parking area screening requirements of Section 64-6.A.3.i. of the Zoning Ordinance;**

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- 4) **compliance with the site and parking area lighting requirements of Sections 64-4.A.2. and 64-6.A.3.c. of the Zoning Ordinance;**
- 5) **compliance with the tree and landscaping requirements of the Zoning Ordinance, with separate calculations for each site; and,**
- 6) **full compliance with all municipal codes and ordinances.**

The motion carried unanimously.

#5612/3972

(Case #ZON2010-00953)

Joseph Payne

2655 Airport Boulevard

Southeast corner of Grant Street and Airport Boulevard

Use and Parking Ratio Variances to allow a 2,864 square-foot professional office building in an R-1, Single-Family Residential District with 8 parking spaces; the Zoning Ordinance requires a minimum B-1, Buffer Business District for professional offices, and 10 parking spaces for a 2,864 square-foot office building.

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

Nathan Friedlander, 126 Government Street, Mobile, AL, attorney for Mr. Payne, stated that after reviewing the staff report they would like to request that the matter be held over to allow the applicant time to amend the proposal to address the parking issue

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.

The following people spoke in opposition to the matter:

- Reggie Copeland, City Council person, District 5; and,
- Carl Deakle, president of the Dellwood Subdivision.

They made the following points against the matter:

- A. the property in question was very narrow and zoned as R-1, single-family residential;
- B. there was no commercial property located on the south side of Airport Boulevard from Florida Street to the Mid-town/Loop area;
- C. the original application was approved by the Planning Commission but did not pass the City Council;
- D. the current proposal before the Board was for a two story building and Mr. Copeland was emphatically opposed to that, as were the neighbors;
- E. one of the previous owners, Art Olensky, at one time had offered the property to the City to be used for a park but that was never pursued by the City;
- F. expressed the concern that there would be serious traffic issues if anything were built there;

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- G. expressed the extreme opposition to the matter by the Dellwood Subdivision residents;
- H. concern over privacy issues for adjacent residents;
- I. concern regarding setbacks; and,
- J. concern over an increase in crime.

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

Mr. Metcalfe expressed his opinion that even though the applicant requested the matter be held over due to a desire to address parking issues, it appeared that there was much more involved with the property and the proposed use than that.

A motion was made by Mr. Davis, with second by Mr. Guess, to hold the above referenced request over until the June 7, 2010, meeting, to address the issue of parking. That matter failed with only Mr. Guess voting in favor of it and the Chair announced the matter would be heard that day and asked Mr. Friedlander to address the Board.

Mr. Friedlander noted that it was pure speculation that the addition of this building would cause an increase in crime in the area. He also noted that none of the speakers had offered that the property was suitable for anything other than a commercial development. He stated that the affidavits submitted by a real estate appraiser, as well as a real estate developer, and attached to the proposal stated that the only suitable use for the property was commercial. He added that to deny the application based upon the nature of the property and its lack of suitability for residential use would affectively deprive Mr. Payne of the use of his property which would constitute a taking. Mr. Friedlander said if that were to happen, Mr. Payne would be in a position where he would have to ask the City of Mobile, under eminent domain power, to purchase the property from him. He stated that Mr. Payne, instead, wanted to put the property to a productive use that could generate tax revenue for the City. He added that the hold over would have allowed his client the ability to address not just the parking issue, but many of the other issues as well.

The Chair asked when the applicant had purchased the property and was advised by Mr. Friedlander that the applicant had owned the property for approximately a year.

The Chair then noted that the property was purchased with R-1 zoning and the applicant knew that at the time of purchase. He also stated that the applicant's representative had made no statements as to what hardships existed to prevent the applicant from developing the property as single-family residential, which were the guidelines for the Board.

Mr. Friedlander stated that the hardship was the inability to effectively use the property in any way other than commercial, which was why the Planning Commission had recommended the same to the City Council. He then noted that the decision to come before the Board was due to the fact there was no appeal process available since the City Council had voted against rezoning the property.

Mr. Copeland rebutted the statement of there being no appeal from the City Council's vote, noting that an applicant could always take the matter before Circuit Court.

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The Chair noted that was the same appeal process for rulings by the Board of Zoning Adjustment.

Mr. Metcalfe pointed out to the Chair that Mr. Metcalfe's parents lived in the Dellwood subdivision. He stated that though his parents had not mentioned the matter to him, due to the sensitive nature of the matter, he felt it necessary to recuse himself on the matter.

Upon hearing this, the Chair announced that the matter no longer had a quorum so it was automatically held over until the next meeting.

#5613

(Case #ZON2010-00956)

Board of Water and Sewer Commissioners of the City of Mobile

East side of Shelton Beach Road Extension, 2/10 mile± North of Moffett Road

Use, Buffer and Parking Surface Variances to allow a contractor's storage yard in a B-3, Community Business District (rezoning pending), with a partially open buffer fence and gravel equipment parking surface; the Zoning Ordinance requires I-1, Light Industry District, for a contractor's storage yard, with the storage area to be completely enclosed with an 8' high wall or fence, and the equipment parking area to be paved in asphalt, concrete, or an approved alternative paving surface.

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

Ray Miller, Volkert and Associates, spoke on behalf of the applicant and offered the following in support of the variance:

- A. the applicant was making a concerted effort to reduce any risks associated with the location of some of their centralized services including the relocation of non-administrative functions from the Catherine Street location;
- B. the Catherine Street facility currently housed their bulk materials storage yard which was subject flooding; and,
- C. it was believed that by allowing the variance, it allowed MAWSS a better way of protecting and providing for the public good.

The Chair asked who owned the land north of the property in question and was advised the eight acres referenced had been purchased earlier in the year by a church and MAWSS was in discussion with the church regarding purchasing said property.

Mr. Guess stated his recollection that MAWSS had been before the Board in last few years for a water treatment plan off of Moffett Road and part of that request had been the ability to stage trucks and other heavy vehicles and equipment there.

Mr. Miller stated that a variance had been requested and granted to MAWSS approximately a year prior for the old Delchamps Shopping Center but it was for specific trucks that would operate out of that facility.

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Pastor Vincent Robinson, representing the church that owned the eight acres to the north of the MAWSS property, spoke to the Board. He stated that if negotiations did not go well and MAWSS did not purchase the property from them, the church would build their church on the eight acres and hoped the adjacent property owned by MAWSS would be kept in such a way as not to look like a dump site or heavy equipment storage site.

The Chair asked what the distance was between the gravel staging area and the auto shop and the property to the north.

Mr. Miller answered that it was his belief that the distance was approximately 50 feet with what he believed was a 25 foot buffer zone as required where the property was adjacent to R-1 zone property. He added that it was MAWSS's intention to maintain that through the property, as well as maintain as much natural, vegetative space as possible.

The Chair asked the pastor if, after hearing the applicant, there were issues of concern that might be raised by the congregation.

Mr. Robinson stated that the church had hoped the area would maintain a more forested look, but based upon the current status of the property, that would not be the case. He added that based on the information he had received regarding the storage of gravel and heavy equipment including dump trucks on the site that the church would need to consider their position on the matter.

Mr. Metcalfe asked Mr. Miller if he knew where the stormwater outfall was from the on-site detention area.

Mr. Miller stated that based upon the topography the stormwater flow was going to be from the southwest to the northeast so it should be located in the northeast corner.

Mr. Metcalfe noted that would have the stormwater run off directed toward the houses and then asked if there were a ditch or some other water retaining devise to prevent the water from reaching those residential properties.

Mr. Miller noted those design details had not yet been done but based upon size there should not be an issue.

Mr. Metcalfe noted that due to the fact the applicant was asking for the ability to store gravel, sand, and other fill materials on the site. He stated those would create both red and white rainwater run off and he did not want to see that runoff adversely affect the residential properties. He stated he wanted assurances from the applicant that the design of the site would be of such a nature that any run off would be contained on-site in the stormwater detention area before being released into the City sewer system.

Mr. Robinson noted that water run off would also be an issue for the church's property, even though there was a large ditch that ran along the front of both properties. He noted that the water would need to be detained before reaching the retirement home and apartment complex adjacent to the properties.

The Chair asked if the matter had been before the Planning Commission.

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Mr. Miller stated it had been approved by Planning Commission and was now scheduled to be heard by the City Council on May 25, 2010. He also noted that some of the issues regarding design that had been brought up by the Board were simply where MAWSS was waiting to have firm approval that they would be able to complete the proposed project before spending the additional money to complete those necessary plans.

Mr. Palombo asked if the materials storage lay down area would be contained in such a way as to prevent the run off from simply leaving that area.

Mr. Miller stated that would definitely be taken into consideration when designing that area. Mr. Miller then asked whether the eight foot high wooden buffer fence required would be mandatory around the entire perimeter of the property as MAWSS would like the northern side, which was interior to the property, be allowed to remain open to the property to allow for flexibility and access to all of the individual storage areas located on the property.

Mr. Guess asked how long the property in question had been owned by MAWSS and was advised it was not currently owned by the applicant but they were in the process of acquiring it and that the purchase agreement between the current owner and MAWSS was contingent upon the approval of the rezoning and variance approvals.

The Chair asked with regards to the landscape plan presented if it corresponded with the proposed green space that was to be retained per the Planned Unit Development application.

Mr. Palombo said not necessarily because the site required 12% of the total green space and of that 12%, 60% was also required in front of the building. He expressed his opinion that the applicant could probably provide the necessary amount of landscaping by moving the buildings closer to the street or adding more gravel to the green space. He also offered the following as conditions for approval, should the Board be leaning towards such:

- A. no operation of heavy machinery outside the hours of 8 a.m. to 5 p.m., unless due to a severe storm event or declared emergency;
- B. complete enclosure of the storage area, including at least a 25 foot landscaped, natural, vegetative buffer along the north and east side, and along the south side where it was adjacent to residential properties; and,
- C. an eight foot, wooden, privacy fence be located along the east boundary on the outside of the 25 foot natural, vegetative buffer.

Mr. Palombo stated there was a pending request that the property be rezoned to B-3 and if it were re-zoned accordingly the applicant could go with a smaller vegetative buffer because the church knew when they bought the property that they were buying a B-3 zoned property, including the associated uses with B-3.

The Chair asked if the R-1 parcel discussed was occupied or only housed a cell tower.

Mr. Palombo answered it was his belief that the property had both a communication tower and a trailer located upon it.

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Mr. Miller expressed concern over limiting the hours to 8 a.m. to 5 p.m. as MAWSS regular working hours were not 8 a.m. to 5 p.m. He noted he was not sure of their regular working hours but believed it might be more appropriate to limit the site to 6 a.m. to 6 p.m. Monday through Friday, which were MAWSS publicly stated hours.

Both Mr. Palombo and the Chair were agreeable to that change.

Mr. Miller also noted that the department to be housed at that site supported the MAWSS repair crews and if there were repairs necessary at hours outside of those posted there would be a need to access the site at those times. He added that in all probability those would not normally fall under the stipulated severe storm event or declared emergency statement.

Mr. Metcalfe stated that the Board had similar type uses come before it and the conclusion had been reached that the greatest generator of noise was load delivery as opposed to taking supplies from the site. He added that it might better serve the general good to limit delivery times.

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. Guess, with second by Mr. Metcalfe, to approve the above referenced request, subject to the following conditions:

- 1) **no operation of heavy machinery outside of the hours of 6am to 6pm, Monday thru Friday unless it is due to a severe storm event, declared emergency, or emergency after-hours call-out;**
- 2) **no deliveries of bulk materials to the site except between 9am and 5pm, Monday thru Friday;**
- 3) **provision of a 25-foot wide Landscape buffer and 8-foot high privacy fence outside the landscape buffer along the East side and South Side where the property abuts residentially zoned property;**
- 4) **provision of a 25-foot wide Landscape buffer and 8-foot high privacy fence outside the landscape buffer along the North side of the property unless the property becomes owned by MAWSS;**
- 5) **provision of security protection around the remainder of the site of at least an 8-foot high chain link fence; and,**
- 6) **bulk storage area to be designed in such a manner as to prevent runoff and spillage of bulk materials.**

The motion carried unanimously.

#5614

(Case #ZON2010-00961)

John Lunstrum

3808 Dauphin Island Parkway

West side of Dauphin Island Parkway, 600'± South of Boykin Boulevard

Use, Access/Maneuvering, and Parking Surface Variances to allow a tattoo parlor in a B-2, Neighborhood Business District, with less than 24' of access/maneuvering area, and gravel

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parking surface; the Zoning Ordinance requires a minimum B-3, Community Business District for a tattoo parlor, with 24' of access/maneuvering area and parking surface of asphalt, concrete, or an approved alternative paving surface.

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

The following people spoke in favor of the application:

- John Lunstrum, 3808 Dauphin Island Parkway, Mobile, AL, spoke on his own behalf; and,
- Sam Williams, 3817 Dauphin Island Parkway, Mobile, AL, owner of the property in question.

They made the following points in favor of the request:

- A. stated there was asphalt under the gravel currently on the site;
- B. the waiting room was only 7 feet by 14 feet, thereby limiting the number of people at the business, so there would not be a need for a large number of parking spaces;
- C. noted that in 2002, the site was the location of Little Sammy's Automotive Repair which was in operation under a legal, non-conforming status; and,
- D. if the property were not swept and cleaned well once a month, sand would develop on it, encouraging vegetation to grow.

The Chair asked why gravel was on the site if the parking lot was asphalt.

Mr. Lunstrum stated that MAWSS had used the area a lay down yard and the gravel belonged to MAWSS.

The Chair asked how the property was accessed and the applicant advised him there were two access points to the property and he planned to put in signage designating one as entrance and the other as exit.

Mr. Metcalfe asked if his understanding was correct that the applicant wanted to put the tattoo shop in a B-2 zoned area with no additions or improvements to the parking lot associated with it.

The applicant stated that was his current plan but not his overall plan. He said that in the future he planned to do all improvements to the property, but that currently he could only do the improvements one at a time, starting with the parking lot and then the fence.

Mr. Metcalfe asked the applicant for a clear explanation of what he planned for the parking lot and the applicant said he currently planned on putting parking blocks in to clearly mark the designated parking spaces.

Mr. Palombo stated that as the applicant was asking for a change of use, a new site plan would be required.

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Butch Ladner, City Traffic Engineering, stated that ingress and egress were problematic for the site and his department would like to have a chance to review it more and make sure it was done properly.

Mr. Palombo asked the applicant what was the square footage of the building located on the site and was advised they thought it was approximately 1500 square feet.

Mr. Palombo stated the business would need five spaces based upon the square footage and it appeared there were approximately 10 spaces at the site. He suggested re-striping to provide only the necessary parking for the business, adding that action would probably free up enough on-site parking to prevent cars from backing out onto Dauphin Island Parkway. He added that the use was really not an issue for the staff, however, the parking and access to the site were.

The Chair asked, based upon the pictures presented, how the applicant entered the site and if the area was curbed.

Mr. Lunstrum stated the area had curb and there were openings along the site that allowed for entrance to the site.

Mr. Palombo stated that the curb-cuts might not be City standard curb-cuts, which would be needed for approval.

The Chair stated that based upon the statements heard that day more information, including an accurate site plan, was needed from the applicant.

Mr. Guess stated that based upon the application there had been renovations done to the property and then asked if those had been permitted.

The applicant acknowledged the renovations were done without benefit of permits.

The Chair advised the applicant that the staff would probably recommend, assuming the Board approved the use variance, having a 24 foot wide, ingress/egress driveway, a minimum of five parking spaces, and an asphalt parking lot as conditions for approval.

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. Metcalfe, to hold the above referenced request over until the June 7, 2010, meeting, to allow the applicant to confer with staff regarding the parking and access of the site, with any revisions being due to the Planning Section by May 17, 2010.

The motion carried unanimously.

#5615

(Case #ZON2010-00964)

O'Charley's Restaurant (Trisha Wise, Agent)

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725 Schillinger Road South

Southeast corner of Schillinger Road South and Old Government Street Road

Sign Variance to allow a 68'-6" high freestanding sign at a single-tenant commercial site in a B-3, Community Business District; the Zoning Ordinance allows a maximum height of 35' for a freestanding sign for a single-tenant commercial site in a B-3, Community Business District.

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

John Moran, North American Signs, South Bend, Indiana, spoke on behalf of the applicant and made the following points in favor of the applicant:

- A. O'Charley's was in the process of re-branding their restaurants and the new signage was part of that re-branding;
- B. the sign currently was 83 feet 3 inches high but the ordinance called for signs to be no higher than 35 feet;
- C. other signs in the area were taller than the ordinance as well as being taller than the current O'Charley's on-site sign;
- D. the re-branding plan called for reducing the size of the sign by 25%;
- E. recognized that the current height of the signs in the area was due to their being in the county initially; and,
- F. expressed the opinion that it gave O'Charley's competitor an unnecessary advantage with regards to recognition and visibility if O'Charley's was forced to replace their sign at the 35 foot height.

The Chair expressed his opinion that regardless of the sign's height, the quality of services provided by O'Charley's was the real draw for the public.

Mr. Guess stated that after a review of the pictures presented, some of the street frontage trees might obscure the sign if it were reduced to the 35 foot height.

Mr. Metcalfe stated his understanding of the situation was the applicant wanted to put in a new, smaller, O'Charley's sign on top of the existing structure and advised that was the case.

The Chair noted that if something were to happen to the current sign, it could be replaced with an identical sign because it enjoyed non-conforming status due to the annexation, however, to replace it with different signage would remove its non-conforming status, hence the need for a variance.

Mr. Palombo corrected those statements by saying that even if it were destroyed by a natural disaster or if they wished to move the existing sign, it would lose its non-conforming status.

Mr. Metcalfe expressed his opinion that this was a situation that inevitable when areas were annexed. He stated he personally did not have a problem with the proposal as they were both lowering the sign and making it smaller.

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Mr. Palombo asked if the applicant could be required to plant five frontage trees along Schillinger Road and Old Government Street.

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.

Mr. Metcalfe moved, with second by Mr. Davis, to approve the request, including the amendment regarding five frontage trees.

In discussion, Mr. Cummings stated his concerns over the sign's height and noted the 35 foot sign located on Airport Boulevard seemed have caused no ill effects on that store's business.

Mr. Guess advised the applicant that it would take the approval of all the members for this matter to pass and suggested he might want to consider having the matter held over to increase the chance the matter might be approved.

Mr. Lawler noted that the applicant had not been advised of that prior.

The Chair asked if the applicant wished the matter held over for 30 days, who responded that he did so wish.

Mr. Metcalfe withdrew his earlier motion to approve the matter and made a motion to hold the above referenced request over until the June 7, 2010, meeting at the applicant's request, which was seconded by Mr. Davis.

The motion carried unanimously.

#5616

(Case #ZON2010-00977)

Apostolic Overcoming Holy Church of God

2257 St. Stephens Road

West side of St. Stephens Road, extending from Vetter Street to Allison Street, and Northeast corner of St. Stephens Road and Dickens Avenue.

Parking Surface and Off-Site Parking Variances to allow grass parking on-site in a B-1, Buffer Business District, and expanded off-site parking in a B-3, Community Business District, for an existing church; the Zoning Ordinance requires parking surfaces to be asphalt, concrete, or an approved alternative paving surface in a B-1, Buffer Business District, and non-conforming off-site parking expansion is not allowed in a B-3, Community Business District.

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

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The following people spoke in favor of the matter:

- Joe Cleveland, architect, for the applicant; and,
- Reginald Davis, associate pastor for the church.

They made the following points for the matter:

- A. the area that would have been used as parking is part of the playground for the on-site daycare;
- B. as its primary purpose is as a playground, the church does not want to pave it; and,
- C. regarding the across the street parking, it has been included on a Planned Unit Development application, however, it was not believed it would be included due to zoning matters, which is why it had come before the Board.

Mr. Palombo stated the Board was really looking at a parking surface variance for this matter as the off-site parking was being addressed by the Planning Commission. He did note that the parking discussed is not over-flow parking but rather required parking for the site.

Mr. Cleveland stated that was correct but added that the church did not typically use all of their spaces so they feel like they will have enough spaces without using the off-site parking.

Mr. Guess asked how the current space that the Board had just been advised was part of the playground was controlled.

Pastor Davis stated the area was fenced off and gated.

Mr. Cleveland stated there was fencing between the property and all of its neighbors.

Mr. Guess stated he was most concerned with whether there was fencing between the area in question and the noted parking lot.

Mr. Metcalfe stated his understanding as the applicant was taking their playground and modifying it for Sundays only as a parking lot so that they met the necessary number of required parking spaces.

Mr. Guess asked how the current parking stalls were marked.

Butch Ladner, City Traffic Engineering, stated he had seen some striping in the area but it had looked like some of the spaces were too close and did not maintain 24 foot wide aisles as required.

Mr. Palombo asked what was the occupancy load of the sanctuary and was advised that maximum seating approximately 915 seats. He then asked the pastor what his membership numbers were. He explained his reason for asking as though the planners were required to ask for one parking space per four seats, if the church came before the Board and could show

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membership at say 500, even though the building had a larger capacity, the Board could vote for the variance based upon the lack of actual members.

Mr. Cleveland stated that based upon that the church needed 228 spaces.

Mr. Guess asked the Board to consider reducing the number of spaces from the 60 that were listed to approximately 30 so that the church could dedicate a specific area for an isolated playground.

Mr. Palombo agreed that if they could get the parking space number based upon the church's actual membership number with possible a few extra for overflow it would be better than using the playground space for parking as well.

Mr. Davis expressed his opinion that the situation with this church was unique as it was the mother church of the A.O.H. church and because of such, from time to time the church hosted events that required the other A.O.H. churches in the area to attend.

The Chair asked Mr. Cleveland how much of the playground area in question was actually used as actual play space. He also questioned the exact location of the daycare on site.

Mr. Cleveland stated that the play space extended into the tree line planted by the Church. He added that the daycare was housed in the back portion of the sanctuary.

Mr. Metcalfe asked what was housed in the existing small building on the property and was advised it housed an assisted living facility and their parking count was included in the number before the Board.

Mr. Metcalfe asked if it would be safe to assume that Monday through Friday during the day the gates to the playground area would be closed and it would be used as only a play space and was advised yes.

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. Davis, with second by Mr. Metcalfe, to approve the above referenced request.

The motion carried unanimously.

#5617

(Case #ZON2010-00978)

Patrick S. Heroman

166 South Royal Street

Southwest corner of South Royal Street and Theater Street

Use Variance to allow an indoor landscaping and plant leasing business in an H-B, Historic-Business District; the Zoning Ordinance does not allow live plant rental or leasing in an H-B, Historic-Business District.

May 3, 2010

Board of Zoning Adjustment

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.

Pat Heroman, 131 LaPort, Pensacola, FL, spoke on his own behalf and stated he was in agreement with the staff recommendations.

Several members of the Roussos family, the former owners of the property in question, voiced their favor in the matter.

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. Metcalfe, with second by Mr. Davis, to approve the above referenced request, subject to the following conditions:

- 1) approval and compliance with the Architectural Review Board;**
- 2) coordination with the Building Inspection Department regarding any change of occupancy issues; and,**
- 3) full compliance with all municipal codes and ordinances.**

The motion carried unanimously.

#5618

(Case #ZON2010-01039)

M. B. Canton Co., Inc.

3525 Riviere du Chien Court

South side of Riviere du Chien Court, 100'± East of its West terminus

Administrative Appeal of a staff decision to issue a building permit based on nonconforming status rather than an approved variance.

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

Jim Fernandez, attorney at law, spoke on behalf of the applicant and made the following points in favor of the appeal:

- A. it had been placed on the agenda too early and his client had not had time to thoroughly review the staff's recommendations;
- B. the easement in question was a temporary dwelling easement that had been originally granted to a former owner of the property to create a dwelling for her son and that dwelling was only supposed to be in place until he left home or if it were destroyed;
- C. the originally holder of the easement was deceased, her son had moved from the property long before, and the dwelling in question had been destroyed by Hurricane Katrina;

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- D. the Zoning Ordinance stated that each dwelling required a separate dwelling, building site;
- E. the structure violated the setback requirements as it was built over existing lot lines; and,
- F. the building was not restored after Hurricane Katrina within the timeframe stated in the Zoning Ordinance.

Mr. Lawler addressed the Board and made the following points:

- A. the dispute was between Mr. Canton, his company, and the Callahans over the ability to rebuild a pool house, not a home;
- B. after a number of years filled with lengthy litigation, the matter was heard by the State Supreme Court who ruled that the Callahans had the right to apply and be permitted to rebuild their pool house;
- C. the permit was held while the matter went through the court system which resulted in the Callahans not rebuilding within the timeframe specified within the Zoning Ordinance; and,
- D. the matter had been put on the May 3, 2010, agenda in an effort to conclude a matter that had been on going too long and proper notification was sent out regarding the public hearing for that day.

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.

Scott Callahan, 3525 Riviere du Chien Court, Mobile, AL, owner of the property in question addressed the Board. He apologized for the matter stating his firm belief that it was a waste of the Board's time. He noted that he and his wife had attempted to get a permit to re-build their pool house from the beginning but had been stalled by Mr. Canton's complaints and litigation over the past six years. He noted that the matter had been all the way to the State Supreme Court, where the Court had ruled in their favor.

The Chair asked if the Callahans were in agreement with the staff's recommendation and was advised they were.

Mr. Davis offered a motion that the matter not be held over and that it be heard that day.

Mr. Metcalfe asked if it might be less confusing if a member of the Board would offer a motion to hold the matter over instead and if that matter failed, then the matter would be heard that day.

The Chair asked if any member of the Board wanted to move to hold the matter over for 30 days and hearing none, the Chair moved forward with the matter.

Mr. Metcalfe asked Mr. Fernandez what was the reason for requesting the matter be held over.

Mr. Fernandez stated that the applicant was not in town and had also not made arrangements with him to represent the applicant in this matter.

May 3, 2010

Board of Zoning Adjustment

The Chair asked for clarification from Mr. Fernandez for the sake of the Board's records and that day's minutes if he was representing Mr. Clanton that day to which Mr. Fernandez gave no answer.

Mr. Fernandez also noted that the applicant had not had an opportunity to review the staff's recommendations regarding the matter as those were not mailed to him.

Mr. Palombo stated that was not the practice of the staff.

The Chair noted that one of the reasons for a public hearing on a matter was the distribution of said material and on top of that the information was also available the City's website as that was where he, himself, read the information that very morning.

The Chair asked Mr. Callahan if there was anything more he wished to say.

Mr. Callahan asked, if possible and the Board ruled in their favor, could the Stop Work Order be lifted so that they could finally begin work on the pool house.

The Chair noted there was a 15 day appeal period, during which nothing could go forward on the matter, so the property owner would have to wait until those 15 days had expired before he could move forward.

Hearing no further pertinent discussion, a motion was made by Mr. Cummings, with second by Mr. Guess, to deny the above referenced Administrative Appeal.

The motion carried unanimously.

OTHER BUSINESS:

There being no further business, the meeting was adjourned.

APPROVED: September 13, 2010

Chairman of the Board

/jsl