

BOARD OF ZONING ADJUSTMENT MINUTES
MEETING OF AUGUST 2, 2004 - 2:00 P.M.
MOBILE GOVERNMENT PLAZA, MULTI-PURPOSE ROOM

MEMBERS PRESENT

Stephen J. Davitt, Jr.
H. Lamar Lee
William Guess
Martha Collier

STAFF PRESENT

Margaret Pappas, Planner II
Richard Olsen, Planner II
Rose Murphy, Secretary II
Mae Sciple, Secretary II

MEMBERS ABSENT

Reid Cummings, Chairman
Horace Christian
Rev. Clarence Cooke

OTHERS PRESENT

Wanda Cochran, Assistant City Attorney
David Daughenbaugh, Urban Forestry
David Roberts, Traffic Engineering

Vice-Chairman Davitt noted the number of members present constituted a quorum and called the meeting to order.

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

APPROVAL OF MINUTES:

A motion was made by Mr. Guess and seconded by Mr. Lee to approve the minutes of the meeting June 7, 2004, as submitted. The motion carried unanimously.

NOTE: It should be noted that the July 12, 2004 meeting was cancelled due to a lack of a quorum available to conduct business; items scheduled for that meeting were heard at this hearing.

EXTENSION:

#5211

(Case #ZON2003-02414)

Bobby J. & Roma K. Lopez

(South side of Anna Drive, 300' ± West of Shana Drive)

Front Yard Setback Variance to allow a new dwelling unit to be constructed 10' from the front (North) property line in an R-1, Single-Family Residential District; a minimum front yard setback of 25' is required in an R-1, Single-Family Residential District.

The site plan illustrates the proposed buildings and setbacks.

There was no one present to represent the applicant.

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Ms. Pappas explained that the Board had previously approved such requests in the absence of the applicant.

A motion was made by Mr. Lee and seconded by Mr. Guess to approve the request for a six-months extension of the previously approved Front Yard Setback Variance to allow a new dwelling unit to be constructed 10' from the front (North) property line in an R-1, Single-Family Residential District.

The motion carried unanimously.

PUBLIC HEARINGS:

#5243

(Case #ZON2004-00925)

Dirt, Inc.

5401 Bear Fork Road

(South side of Bear Fork Road, 1,000' ± East of North University Boulevard)

Use Variance to allow an auto wrecking yard and storage facility in an R-1, Single-Family Residential District; the Zoning Ordinance requires I-2, Heavy Industrial District with Planning Approval.

The plan illustrates the existing structures and the proposed lots.

Mr. Lamar Harrison, the applicant, stated that he was seeking a variance to allow the subject property to be used as a storage facility for wrecked vehicles. He went on to say that the property had been occupied with businesses for the preceding 25-plus years. Dirt, Inc. purchased the property in 1978 for use as a dirt pit. A previous tenant used a portion of the property as an automobile wrecking business. There was a building on the property, which was leased to an electrical contractor until 2002. Dirt Inc. had a permit from the State of Alabama to operate the dirt pit. Subsequently, Mr. Harrison leased the property to an individual, who now used it for wrecked automobiles.

Mr. Harrison stated that the property was rezoned in 2002 to R-1, Single-Family residence. He was unaware of the rezoning. He requested approval of the variance to allow use of the five acres in the northwest portion of the subject property for storage of wrecked automobiles. Mr. Harrison felt that the proposed use was a continuation of a previous use. He was willing to make improvements to the site to make it more acceptable to the neighbors. He stated that the current tenant had a letter and restrictions from the Alabama Department of Environmental Management (ADEM) to operate on the site. To his knowledge the tenant operated within the guidelines of ADEM. Mr. Harrison asked that the Board approve the application so that they could continue to operate on the property as they had been done for the preceding 35-plus years.

Mr. Lee stated that the staff report indicated the site had lost its non-conforming status because the site ceased to be used as an automobile salvage yard several years ago.

Mr. Harrison felt that was incorrect information. He stated that Mr. Revette had operated a business on the site for the previous 15 years. Wrecked automobiles had been stored on the East

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end of the property for the previous 25 years. He went on to say that there were two additional wrecking yards within one-quarter of a mile of the subject property.

Mr. Guess asked if the current business was permitted with ADEM.

Mr. Harrison said yes.

Mr. Guess asked how long it had been permitted.

Mr. Harrison was unsure, but thought six to eight months for the Northwest corner of the property.

Mr. Guess asked if the permit had to be changed when the tenant relocated to the subject property.

Mr. Harrison was unsure how long ADEM permitted such businesses.

Ms. Amanda Raine of 5105 Bear Fork Road voiced opposition to the application based on her knowledge that the current business operated on the subject property only since last March, and without a permit. She went on to say that there was no water supply to the site; sanitary conditions were unacceptable; there were no restrooms available for employees; stacking of wrecked vehicles was a safety issue; and the ground was being contaminated by drainage of automobile fluids. The lake on her property was being contaminated by runoff from the subject property. Ms. Raine stated that wrecked automobiles had not been stored on the East end of the subject property for the preceding 25 years. There was nothing there to her knowledge. She did not object to the dirt pit. She was opposed to the change in use of the property.

Ms. Mary Zoghby, Executive Director of the Boys & Girls Clubs of South Alabama, stated that the Boys & Girls Clubs owned the property South of the subject property. She presented maps, which depicted the proximity of the proposed wrecking yard to the Boys & Girls Clubs camp. The Boys & Girls Clubs had a 150-acre camp with an entrance on Shelton Beach Road that was used as a day camp as well as civic and private events. Ms. Zoghby expressed concern about runoff of automobile fluids from the subject property into the lake and property of the Boys & Girls Clubs. She was not opposed to the operation of the dirt pit, but was opposed to the proposed use as a wrecking yard.

Mr. Doug Hammac of 5075 Bear Fork Road, next to the subject property took exception to Mr. Harrison's statement that automobiles had been on the property for the preceding 15-25 years. The electrical contractor, who previously leased the property, kept the site clean. He stated that the current tenant began operation on the site in March without a license, water, or restrooms. Mr. Hammac stated that his daughter witnessed an employee relieving himself near their driveway. He went on to say that automobile fluids were being drained onto the ground with no precautions taken. According to Mr. Hammac, the tenant also operated a business at Bear Fork Road and Shelton Beach Road, which had runoff into 8-Mile Creek. The tenant's operation at the subject site created runoff of oil and other automobile fluids onto Mr. Hammac's property. Mr. Hammac went on to say that several other neighbors, who were unable to attend the meeting today, also opposed the variance request. He also felt there was a potential safety hazard in

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stacking the automobiles. Mr. Hammac stated that the current tenant of the subject property had been expelled from other sites for operating a business without a license.

Ms. Earline Adams of 4301 Bent Tree Road opposed the variance and presented a signed petition in opposition to the proposed use of the subject property.

Mr. Olsen clarified the issue of rezoning. The property was not rezoned to R-1 in 2002. The property was annexed in the mid-80's. At the time of annexation all property annexed was zoned R-1. Mr. Olsen went on to say that the staff report indicated that a business license had not been issued for a wrecking yard at this location for the previous two years. The dirt pit was not an issue; proper non-conforming documentation was on file. The Zoning Ordinance requires that a junkyard cease operation within three years of an area being annexed into the City, or that the Planning Commission grant proper approval. There was not a non-conforming situation documented with regard to a junkyard for this location. Mr. Olsen stated that a non-conforming use could not be moved from one location to another on the same piece of property.

Mr. Harrison stated that he was willing to do what was necessary to contain runoff of fluids and water from the site. He felt he should be allowed to lease the property for any use.

Ms. Cochran noted that the rights and obligations of Mobile citizens were contained within the Zoning Ordinance. The Board of Adjustment's obligation was to apply the laws as written. The Zoning Ordinance, as it applied to this situation, stated that if a site was not used continuously for two years, the non-conforming status was lost. She felt it would be helpful to know how long an automobile salvage yard existed on the subject site.

Mr. Jim Revette of 2942 Bear Fork Road stated that his previous businesses were properly licensed and the property properly maintained.

Ms. Cochran asked how long Mr. Revette had operated at the current site.

Mr. Revette replied since 1969.

Ms. Cochran asked if he had an automobile salvage business in continuous operation at the site since 1969. She asked if he had a City of Mobile business license.

Mr. Revette said he had operated an automobile salvage on the subject property since 1969. He noted that he referred to 2942 Bear Fork Road. He had used the subject property for storage. He said there were approximately 500 automobiles on the site. Mr. Revette went on to say that there was a retention pond on the site to contain fluids. He did not feel a large amount of fluids had drained. His main operation was at 2942 Bear Fork Road and ended at 5:00 p.m.

Mr. Lee asked how long Mr. Revette used the subject site.

Mr. Revette said he used the site as a storage facility off and on since the early 1980's.

Ms. Collier asked about the noise heard at night and if there were employees there.

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Mr. Revette said that there were no employees there after approximately 5:00 p.m., but there was no way to keep the public from going onto the site.

In discussion Ms. Cochran referred the Board to paragraph 5 of the Zoning Ordinance on page 87, which stated that junk yards in R-1 Single-Family Residential areas should cease to exist three years after annexation of an area. She pointed out two areas of consideration – one, if an automobile salvage yard existed on the date of annexation; and, two, had it been three years since the area was annexed. If it had been three years since annexation, then the Board had no authority to grant the requested use.

Mr. Davitt asked when the area was annexed.

Ms. Pappas said it was annexed in the mid-1980's.

Mr. Davitt noted that the three years elapsed long ago.

Mr. Lee asked if the staff found existence of a wrecking yard at the subject site within the last two years.

Mr. Olsen said no history of such as used had been found for the last two years. Aerial photographs from 2000 and 2002 did not indicate that the property was used as a salvage yard.

A motion was made by Mr. Lee and seconded by Mr. Guess to deny the request for a Use Variance to allow an auto wrecking yard and storage facility in an R-1, Single-Family Residential District.

The motion carried unanimously.

#5246

(Case #ZON2004-01241)

Delaware Street Missionary Baptist Church

701 South Lawrence Street

(Northeast corner of South Lawrence Street and Delaware Court)

Side Yard Setback Variance to allow the addition of a 18.5' x 24.75' open carport to be constructed 11' from a side (South) street property line in an R-1, Single-Family Residential District; a 20-foot side yard setback is required along a side street in an R-1, Single-Family Residential District.

The plan illustrates the existing and proposed structures and parking.

Mr. James R. Potter, a Trustee and member of the church, stated that they were requesting a Side Yard Setback Variance to construction of an open carport for use by the handicap members. The carport was needed to shelter handicap entrance into the church.

Mr. Davitt asked if Mr. Potter had reviewed the staff recommendation, which recommended approval.

Mr. Potter said no.

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Ms. Pappas provided him a copy of the staff recommendation.

There was no one present in opposition.

A motion was made by Mr. Guess and seconded by Ms. Collier to approve the request for a Side Yard Setback Variance to allow the addition of an 18.5' x 24.75' open carport to be constructed 11' from a side (South) street property line in an R-1, Single-Family Residential District at the above referenced location.

The motion carried unanimously.

#5247

(Case #ZON2004-01257)

Eliska Wireless Ventures I, Inc.

2262 Hillcrest Road

(West side of Hillcrest Road, 950'± North of Cottage Hill Road)

Height, Setback and Access/Maneuvering Surface Variances to allow the construction of a 150' Monopole Telecommunications Tower, setback 25' from a lease parcel line, with a gravel drive and parking; the maximum allowable height is 45', a 150' tower must be setback at least 150' from a lease parcel line and access/maneuvering areas for towers must be asphalt, concrete or an approved alternative paving surface, in a B-2, Neighborhood Business District.

The plan illustrates the existing structures, along with the proposed tower.

Mr. Olsen noted that the setback of 25' shown in the report should reflect a 10' setback as approved by the Planning Commission.

Mr. David Wilkins represented the application and concurred with all recommendations with the exception of the requirement for a paved parking surface. He explained that the topography of the lot lent itself to an aggregate surface. The location of the proposed drive would be in excess of 600' from Hillcrest Road, a minimum of 50' from the property to the South, and in excess of 100' from the property to the West. The drive had minimal usage after construction. He felt that an alternative paving surface would add to storm water runoff to the West.

There was no one present in opposition.

In discussion, consideration was given to allowing an aggregate surface for the limited access area. It was decided that the requirements of the Zoning Ordinance should be carried out.

A motion was made by Mr. Lee and seconded by Mr. Collier to deny the request for an Access/Maneuvering Surface Variance and to approve the request for Height and Setback Variances to allow the construction of a 150' Monopole Telecommunications Tower, setback 10' from a lease parcel line, at the above referenced location subject to the following conditions:

- 1) full compliance with landscaping and tree planting requirements of the Ordinance (for the lease parcel);

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- 2) the provision of a 24-foot wide drive as required by Planning Commission; and
- 3) full compliance with all municipal codes and ordinances, including but not limited to the Telecommunications Towers and Facilities Ordinance.

The motion carried unanimously.

#5248

(Case #ZON2004-01307)

Dora Finley

501 Monroe Street

(Southwest corner of South Lawrence Street and Monroe Street)

Use Variance to allow the conversion of a single-family dwelling into a duplex unit in an R-1, Single-Family Residential District; two family dwelling units are allowed in R-2, Two-Family Residential Districts.

The site plan illustrates the existing buildings and proposed parking spaces.

Ms. Dora Finley of 204 S. Lawrence Street, the applicant, stated that she bought the subject property as an investment. It was her desire to convert the single-family residence into two apartments of 1,500 sq. ft. each. The subject property was highly visible to the public utilizing the Civic Center. A homeless person lived in the bushes behind the house. Ms. Finley said that a duplex, the Civic Center, the Maritime Services (formerly Koch Gallery), and her residential property bordered the subject property. She presented photographs of the external improvements already completed to the structure. There was sufficient parking for four automobiles on site. She had surveyed the neighbors and presented a petition of 45 names in support of the project.

Mr. Davitt noted that this Board could not address the rezoning of the property.

Ms. Finley requested approval of the application for a Use Variance.

Ms. Cochran asked Ms. Finley's current address and when she purchased the subject property.

Ms. Finley said she lived at 204 S. Lawrence Street and purchased the subject property in May 2004.

Mr. Davitt asked if she purchased the property for investment purposes.

Ms. Finley said yes.

Ms. Cochran asked if the property was vacant when she purchased it.

Ms. Finley said yes. It was vacant in excess of one year.

Ms. Cochran asked if Ms. Finley knew the previous use of the structure.

Ms. Finley said it was a single-family residence.

Ms. Cochran asked how long Ms. Finley resided on Lawrence Street.

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Ms. Finley said nearly 20 years.

Mr. Davitt asked if she wanted a duplex to generate more income.

Ms. Finley said to generate sufficient income to maintain the premises and keep it attractive and pay for itself.

Mr. Bob Hanks of 200 S. Warrant Street, immediate past-president of the Church Street East Historic District, spoke in opposition to the application. He stated that their efforts concentrated on maintaining owner-occupied dwellings in the area. There was an attempt to have a non-owner occupied dwelling in the past that was defeated. He felt that if the variance were granted the property would never be owner-occupied. Mr. Hanks was unaware of the petition presented by Ms. Finley. A meeting was held at his house with Ms. Finley and no one in attendance supported the attempt to convert the residence into a duplex. He requested denial of the application.

Ms. Tissa Loehr of 201 S. Dearborn Street, current president of the Church Street East Historic District, stated that there was no doubt of the good intentions of the applicant. She felt a precedent would be set if this Use Variance was granted. Ms. Loehr asked about size requirements for rental structures.

Ms. Pappas stated that the subject property would have to exceed 7,200 sq. ft to meet density requirements of the Zoning Ordinance.

Ms. Loehr noted that the home was of brick construction, built in the 1960's or 1970's. She disagreed with the deterioration of the structure.

Mr. Chris Berry also opposed the project based on his belief that the area should remain with owner-occupied facilities.

Ms. Finley took exception to Mr. Hanks statement that no one at the neighborhood meeting favored the application. She stated that several attendees followed her to the subject site following the meeting and none disagreed with the application. Ms. Finley reiterated that there was sufficient parking on site and that she had made some of the needed repairs to the exterior of the structure.

In discussion, Mr. Lee recalled a similar case the Board dealt with recently in DeTonti Square.

Ms. Pappas explained that that case involved a density issue, but the use was allowed because the property was zone R-B, Residential-Business, rather than R-1, Single-Family Residential. Ms. Pappas stated that the Church Street East Historic District was the subject of a rezoning study in the early 1990's. At the time the area was predominantly zoned R-B, Residential-Business. The residents of the area requested the rezoning study and the Planning Commission and City Council acted to rezone most of the area R-1, Single-Family Residential.

Mr. Guess asked if Ms. Finley could rent the property as a single-family residence.

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Ms. Pappas said yes.

A motion was made by Mr. Lee and seconded by Mr. Guess to deny the request for a Use Variance to allow the conversion of a single-family dwelling into a duplex unit in an R-1, Single-Family Residential District.

The motion carried unanimously.

#5249

(Case #ZON2004-01315)

Saint Peter Baptist Church

(Southeast corner of New Jersey Street and South Bayou Street)

Sign Variance to allow an 8' x 5' illuminated double-sided off-site sign in an R-1, Single-Family Residential District; the Zoning Ordinance only allows off-site signs if the sign replaces an existing off-site sign.

The plan illustrates the existing parking and proposed sign location.

Rev. Cleveland McFarland, Jr., pastor of St. Peter Baptist Church, stated that they were seeking a variance to erect a sign on the church-owned property across the street from the Church. He referred to photographs of the sign contained in the packets. They wanted to place the sign across the street because when the church was erected in 1963, it was allowed to be placed close to the corner of Bayou and New Jersey Streets and there was insufficient area to place a sign on that corner.

Mr. Davitt asked if Rev. McFarland had seen the staff recommendations.

Rev. McFarland said no.

Mr. Davitt read the recommendation for approval with conditions to Rev. McFarland and asked if they could comply with the conditions.

Rev. McFarland stated that they did not have a free-standing sign currently on the Church property.

Ms. Collier stated that she had driven by the site and noted a free-standing sign on the property. She felt existing signage was sufficient for identification. She went on to say that she did not see a need for a fourth sign.

Rev. McFarland stated that the small iron sign on the Church property would be removed. The proposed sign was too large to replace the smaller one. They wanted traffic on New Jersey to see the sign for the Church.

Ms. Collier asked if the new sign could be made smaller.

Rev. McFarland said the proposed sign would be used as an informational sign.

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Ms. Pappas suggested a holdover might be appropriate in order to allow the applicant to resubmit a site plan to address some of the issues addressed.

Mr. Roberts noted that the proposed sign would not present a line-of-sight problem across the street, but may pose a problem if located on the Church property.

Ms. Collier asked how Traffic Engineering viewed the existing free-standing sign.

Mr. Roberts said they had no problem with the existing sign.

Rev. McFarland felt they would not be able to place as much information on a smaller sign. A member had donated the funds for the proposed sign.

Ms. Collier noted there were two additional signs on the Church property for a day care center.

Rev. McFarland stated that those signs were advertising the summer day care program and would be removed.

Ms. Cochran asked for clarification from Rev. McFarland if the existing sign on Church property would be removed if the variance were approved.

Rev. McFarland said it would be removed.

Ms. Cochran asked staff if the square footage of the proposed sign was within the guidelines of the Zoning Ordinance.

Ms Pappas said yes.

There was no one present in opposition.

A motion was made by Mr. Lee and seconded by Mr. Guess to approve the request for a Sign Variance to allow an 8' x 5' illuminated double-sided off-site sign in an R-1, Single-Family Residential District subject to the following conditions:

1. if a freestanding sign is erected on the church building property, the parking lot freestanding sign be removed;
2. the location of the sign to be approved by Traffic Engineering; and
3. full compliance with all municipal codes and ordinances.

The motion failed. Mr. Lee, Mr. Guess, and Mr. Davitt voted aye. Ms. Collier voted nay. Four votes are required for approval.

#5250

(Case #ZON2004-01328)

JJT, an Alabama General Partnership

419 East I-65 Service Road South

(Southeast corner of East I-65 Service Road South and Pleasant Valley Circle)

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Sign Variance to allow four free-standing signs on a multi-tenant site with 1,147 linear feet of road frontage; a maximum of two free-standing signs are allowed for a multi-tenant site with 1,147 linear feet of road frontage.

The plan illustrates the proposed structures, paving and landscaping.

Mr. Frank Dagley of Frank A. Dagley Engineering represented the applicant and concurred with the staff recommendation. He had reviewed and concurred with the staff recommendations.

There was no one present in opposition.

A motion was made by Mr. Guess and seconded by Ms. Collier to approve the request for a Sign Variance to allow four free-standing signs on a multi-tenant site with 1,147 linear feet of road frontage at the above referenced location subject to the following condition:

- 1) full compliance with all codes and ordinances.

The motion carried unanimously.

#5251

(Case #ZON2004-01334)

Merritt and Walding Properties

1363 Government Street

(Southeast corner of Government Street and Everett Street)

Front Setback Variance to allow a 33.6' x 57.6' canopy to be constructed 9.83' from the front (North) property line in a B-2, Neighborhood Business District; a minimum 25-foot front setback is required in B-2, Neighborhood Business districts.

The site plan illustrates the existing buildings and canopy to be removed, along with the proposed canopy and existing landscaping.

Mr. Rick Blow of Merritt Oil Company explained that they were requested permission to expand an existing canopy on the subject site by 8 feet. They were not requesting approval to go nearer the front street. He went on to explain that the proposed expansion was for safety and economic reasons. Mr. Blow felt the current layout was a safety hazard due to the ingress and egress of automobiles. Expansion of the canopy would allow improved ingress and egress of the site. He went on to say that the company needed to be competitive. He identified other sites, and presented photographs, that were now closed because he felt they were not allowed to be competitive. Mr. Blow stated that they had not received any negative opposition and had community support for the project. An adjoining church was allowed to use the subject property during worship services. He went on to say that other facilities in the area were allowed to expand their canopies. He presented photographs of these, the existing facility, and the proposed improvements. The hours of operation were 5:00 a.m. until 1:00 a.m. and offered a secure place for customers. By expanding the canopy the customer would be offered additional service. Widening of the canopy would not interfere with current landscaping or trees. He felt the renovation of the site with expanded lighting would become a deterrent to crime. Mr. Blow requested approval of the application.

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Ms. Cochran asked if the site was within a Historic District.

Mr. Blow was unsure.

Mr. Olsen did not think it was.

Ms. Cochran stated that signage on Government Street from the river to the Loop was required to be approved by the Architectural Review Board (ARB).

Mr. Blow said they were not asking for any changes in size of signage. The only portion that could be considered signage would be the starbursts on the canopy.

Ms. Cochran asked the staff if the proposal was considered signage that must be reviewed by the ARB.

Ms. Pappas said that because the site was between the Mobile River and the Loop on Government, all signage would have to be reviewed by the ARB. The starbursts on the canopy would be considered signage because it identified the business.

Mr. Blow was willing to eliminate the signage if necessary.

Ms. Cochran reminded the Board to note such a condition if the Board approved the request for variance.

Mr. Davitt asked if two existing pumps would be replaced and the width of the canopy expanded.

Mr. Blow said yes, the pumps would be replaced and that the canopy would not be extended toward Government Street.

Mr. Guess asked the need to expand.

Mr. Blow stated that the expansion would alleviate a safety issue with the current configuration.

Mr. Guess asked how long the current configuration existed.

Mr. Blow said over 30 years.

Mr. Lee asked if there were Planning Commission regulations regarding relocation of the pumps.

Ms. Pappas said no.

Mr. Davitt asked if the additional pumps required Planning Commission approval.

Ms. Pappas pointed out that this request dealt with the canopy.

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There was a brief discussion about how pumps would be located on the site. It was determined that the single product pumps would be removed, and four multi-product pumps installed within the same plane.

There was no one present in opposition.

In discussion, Mr. Lee noted that the staff report indicated that if this change were allowed, a precedent would be set for future similar requests. Consideration was given to the fact that the proposal would serve to upgrade the aesthetics of the area.

The Board considered the safety issues addressed and the fact that the expansion would be allowed under the recently adopted Historic District Overlay.

Ms. Cochran explained that the commercial real estate industry opposed the portion of the Overlay as it applied to commercial properties. They felt it would limit their ability to setback buildings. As a result, residences were not restricted by the setback requirements, but commercial properties were required to comply. This proposal was not covered by the Historic District Overlay and the Board must consider only if a hardship existed for the property.

Discussion centered on alternative placement of the canopy over the new pumps and reducing the front setback. The applicant did not feel such an alternative would be acceptable for safety reasons. Consideration was also given to the fact that an expansion of a non-conforming design would lead to an increased number of requests for similar variances.

A motion was made by Mr. Lee and seconded by Ms. Collier to approve the request for a Front Setback Variance to allow a 33.6' x 57.6 canopy to be constructed 9.83' from the front (North) property line in a B-2, Neighborhood Business District.

The motion failed. Mr. Lee, Ms. Collier, and Mr. Guess voted aye. Mr. Davitt voted nay. Four votes are required for approval.

#5252

(Case #ZON2004-01341)

Austal USA

(South side of Dunlap Drive, between Dunlap Drive & Highway 90, adjacent to the North side of Bankhead Tunnel)

Parking and Use Variances to allow 94 parking spaces in an R-1, Single-Family Residential District; the Zoning Ordinance requires all parking to be located on site and a parking lots are prohibited in R-1, Single-Family Residential Districts.

Mr. Davitt recused from discussion and voting on this application. A quorum was no longer available to hear the case.

The applicant requested a holdover until the September 13, 2004, meeting due to the lack of a quorum to vote on the application.

#5253

(Case #ZON2004-01536)

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Persons Development & Construction Services, LLC

(Southwest corner of Grant Street and Cottage Hill Road)

Fence Height Variance to allow construction of a 7' masonry wall, 1' 2" from the side street property line; a 20' side yard setback is required from a side (east) property line for a 7' high wall in an R-1, Single-Family Residential District.

Mr. Frank Dagley of Frank A Dagley Associates represented the applicant and stated that he had reviewed and concurred with the staff recommendation.

Ms. Joan Goodman of 303 Cottage Hill Road asked the design of the fence.

Mr. Dagley stated that the fence would be an attractive concrete masonry wall within 1' of the right-of-way line, approximately 12' to 14' off the pavement.

Ms. Goodman did not express any opposition.

A motion was made by Ms. Collier and seconded by Mr. Guess to approve the request for a Fence Height Variance to allow construction of a 7' masonry wall, 1' 2" from the side street property line.

The motion carried unanimously.

#5254

(Case #ZON2004-01542)

William J. Casey, II

3108 Pleasant Valley Road

(Northeast corner of Pleasant Valley Road and Myra Drive)

Use and Parking Ratio Variances to allow a law office and four parking spaces in an R-1, Single-Family Residential District; a law office requires a minimum of B-1, Buffer Business District and five parking spaces are required.

The plan illustrates the existing structures, drive, parking, and green areas.

Ms. Pappas noted that a revised site plan was received and inserted in their packets.

Mr. William J. Casey, II, the applicant, presented photographs of surrounding businesses, a copy of his current business license, and letters of support from neighbors who could not be present at the meeting. Mr. Casey noted that all adjoining property owners, as well as those across the street from the subject property, supported his request for a variance. He went on to state that he returned to Mobile to practice law after receiving his degree out of state. He bought the subject property for a residence in 1999. He moved his law office to the subject site with a variance for a home occupation in 2001. He moved out of the house in January 2003. Mr. Casey said that the only negative impact he could see in allowing the variance would be the addition of 2-5 automobiles a day on Pleasant Valley Road. Primary access to the property was from Pleasant Valley Road. There was additional access on Myra Drive. He felt the increase in traffic would be insignificant. He went on to identify various businesses in the area. Mr. Casey stated that there were two full-time employees. He felt that his operation would enhance the area. He intended to enclose the carport for additional space. Mr. Casey went on to say that because

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someone was at the site all day, it provided some measure of security to the area. He was willing to do whatever was necessary to improve his chance for approval.

Ms. Collier asked if Mr. Casey intended to sleep in the office to provide security for the area.

Mr. Casey said he had no intention of sleeping at the office, but felt that his presence during the day was a deterrent to crime in the area.

Ms. Cochran asked if Mr. Casey was familiar with the legal standard that governed the Board of Zoning Adjustment.

Mr. Casey said no.

Ms. Cochran noted that he made good arguments for rezoning the area, but this Board could not deal with that issue. This Board could only consider whether a hardship existed for the property in making a decision. She asked Mr. Casey to state the hardship for the property.

Mr. Casey stated that the property could be used for a residence without question. A hardship would be created for him to use it as a residence. He had customized the structure for office use.

Ms Pappas noted that Mr. Casey was issued a Zoning Certificate to operate a law office at his residence, not a variance.

Mr. Guess asked if the Zoning Certificate was still valid since Mr. Casey no longer lived at the site.

Ms. Pappas said no, which precipitated the need for a variance.

Mr. Joseph H. Collie of 805 Myra Drive stated that his property abutted the subject property. He went on to say that Mr. Casey had been a good neighbor, and he supported the request for a variance.

Mr. John Nolan, Sr. of 907 Imelda Drive also spoke in support of the application.

Mr. J. K. Christopher stated that he knew Mr. Casey approximately three years. He also supported the request.

Mr. William J. Casey, father of the applicant, requested approval of the application.

There was no one present in opposition.

In discussion, consideration was given as to whether the Zoning Certification was still valid after the applicant stopped living on the premises. The Board also considered whether a hardship existed for the property to be used as a residence. It was determined that the Zoning Certificate was no longer valid and that a hardship could not be identified to prevent the subject property from being used as a residence.

August 2, 2004

Mr. Roberts noted that Traffic Engineering would have to review a parking plan for the site to determine if a safety hazard existed.

Ms. Pappas stated that the applicant applied for building permits to enclose the garage for office space. A site plan was received Late last week a site plan was received indicating that construction would no longer take place, and the two parking spaces that were to be in front of the garage would now be inside the garage.

Mr. Casey stated that he hired a contractor in May to enclose the garage. The contractor failed to get licensed and obtain a building permit. Because the construction was of poor quality, Mr. Casey called for an inspection by the City. The contractor was issued a stop work order. Mr. Casey subsequently applied for a building permit to have a second contractor complete the work. The permit was denied until the variance request was ruled on.

Mr. Davitt noted that there were two permit applications submitted.

A motion was made by Mr. Guess and seconded by Ms. Collier to deny the request for Use and Parking Ratio Variances to allow a law office and four parking spaces in an R-1, Single-Family Residential District

The motion carried.

#5255

(Case #ZON2004-01545)

Greg & Pam Breedlove

66 Turnin Lane

(West side of Turnin Lane, 422' ± South of Wimbledon Drive West)

Side Yard, Total Combined Side Yard, and Fence Height Variances to allow additions and renovations to a residential structure within five-feet of a side property line, a total combined side yard of 15 feet, and a seven-foot high fence/wall within 22-feet of the front property line; an eight-foot setback is required from a side property line, a total combined side yard of 20-feet is required for residential structures on a lot 60 feet wide or wider, and a 25-foot front yard setback is required in an R-1, Single-Family Residential District.

The site plan illustrates the existing building and landscaping, along with the proposed buildings, walkways, and setbacks.

Mr. M. Don Williams of Williams Engineering represented the applicant and asked for a holdover until the September 13, 2004, meeting.

Mr. Todd Martin of 14 Turnin Lane stated that the neighbors were opposed to the request at present because they could not determine the wall would extend.

A motion was made by Mr. Lee and seconded by Mr. Guess to holdover the application until the September 13, 2004, meeting.

The motion carried unanimously.

August 2, 2004

#5256

(Case #ZON2004-01546)

Tom & Donna Henderson

4257 Stein Avenue

(Southeast corner of Stein Avenue and Dilston Lane)

Side Yard Setback Variance to allow a 34' 6" x 32' garage 16' from the side (west) street property line; a 20' side yard setback is required for a corner lot that is 60' or wider in a R-1, Single-Family Residential District.

Mr. M. Don Williams of Williams Engineering represented the applicant and stated that the rights-of-way for this area were typically 30 feet to 33 feet wide. He did not feel there would be any need for widening the streets in the future because this was the sole vacant lot within two blocks. Mr. Williams went to say that the residences in close proximity to the subject site were constructed with setbacks based on the 30 foot and 33 foot rights-of-way. As a result those residences could be within 20 to 25 feet of the right-of-way line. He presented photographs of the residences and the subject property and noted that the existing residences appeared to be nearer the setback line than 20 to 25 feet. The subject lot was subdivided approximately five years ago with the conditions of dedicating 10 additional feet of right-of-way to Dilston Lane and 8 1/2 additional feet to Stein Avenue. This resulted in the subject property having deeper setbacks than the surrounding properties. Mr. Williams said that the request was to allow a garage to be constructed 16' from the side street property line and requested approval.

There was no on present in opposition.

In discussion, consideration was given to the location of the garage on the property in relation to the former right-of-way line and its affect on the line of sight issue.

A motion was made by Mr. Lee and seconded by Mr. Guess to approve the request for a Side Yard Setback Variance to allow a 34' 6" x 32' garage 16' from the side (west) street property line at the above referenced location subject to the following condition:

1. that the structure and driveway be approved by Traffic Engineering to ensure that the improvements do not pose a line-of-sight hazard.

The motion carried unanimously.

#5257

(Case #ZON2004-01588)

City Of Mobile Urban Development Department

North side of Old Shell Road, 550' ± East of Pine Street

(adjacent to the South of LifeTouch Portraits—957 Springhill Avenue)

Administrative Review to determine if the staff erred in granting legal, non-conforming status to an unpaved, commercial driveway in an R-1, Single-Family Residential District.

Ms. Cochran reminded the Board that this case was not a request for a variance, but rather an appeal of a staff decision to grant non-conforming use status.

August 2, 2004

Mr. Olsen explained the chain of events that led to the staff's decision to grant non-conforming use status for the subject property. The subject property was located on the north side of Old Shell Road approximately 550' East of Pine Street, adjacent to LifeTouch Portrait Studios, which fronted Springhill Ave. The property was the subject of a Use Variance in 2000 to allow a less than standard parking facility. The variance was denied. In 2003 the owner submitted documentation stating that the driveway was used prior to 1967 and had been used continuously. Based on that documentation, the staff granted non-conforming use of the driveway across the residential properties to the rear of the commercial property. In 2004, an application to resubdivide the property to incorporate all properties into one-lot. The Planning Commission did not recommend rezoning, but approved one-lot for of the commercial property on Spring Hill Avenue, and to maintain the three existing residential lots on Old Shell Road. At that point the neighbors learned of the non-conforming status granted for the driveway and have since submitted conflicting documentation regarding the continued use of the driveway. The staff was requesting the Board to determine if it erred in granting the non-conforming use for the driveway.

Ms. Cochran referred to paragraph 4 of the Zoning Ordinance, which defined the loss of non-conforming use status. She went on to say that the Board was tasked with making a determination as to whether the driveway was abandoned for two or more years from 1967 to date.

Mr. Dan McCleave of 1010 Old Shell Road stated that the area was a residential neighborhood. There were houses on the vacant lots in question in 1979 when he moved into his home. M&M Florist on Springhill Avenue went out of business in 1995 or 1996. Until that time they would occasionally cut through from Springhill Avenue to Old Shell Road, beside one of the houses they owned. It was not regularly used. The cut through was not used after M&M went out of business. Mr. McCleave stated that the current tenant attempted to obtain a Use Variance in 2002. It was not used until the staff granted a non-conforming use status in January 2004.

Ms. Cochran asked if Mr. McCleave knew the dates the florist operated at the Springhill Avenue site and the date the current tenant began operation.

Mr. McCleave said he only knew that the florist business was not in operation in 2000. The Revenue Department confirmed that M&M Florist was not in business in 2000.

Mr. Davitt asked Mr. McCleave to confirm the exact location of M&M Florist on the site plan.

Mr. Wes McCleave of 1010 Old Shell Road stated that he was in the market for a residence on Old Shell Road. He went on to say that M&M Florist ceased to operate as a business four to five years prior to the current tenant taking possession of the property. To his knowledge the driveway was not used from the time M&M Florist ceased to operate and LifeTouch began to utilize the driveway. The current tenant used temporary fencing to separate the subject site from the residential lots. There were no gates to allow traffic to flow across the residential lots. The portrait studio used larger trucks than the florist. The driveway on Old Shell Road was not conducive to use by the large trucks. Mr. McCleave requested a reversal of the staff decision.

Ms. Cochran asked if Mr. McCleave if he had specific dates of use by M&M Florist and by the current tenant.

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Mr. McCleave said no. It was his recollection that the driveway was not used for approximately five years prior to the portrait studio occupying the building.

Mr. Mike Ward, owner and vice-president of LifeTouch Studios, stated that they purchased the building in April 2000. The building and driveway were continuously used since the purchase. There were 50-60 employees for the administrative office on Springhill Avenue. He presented photographs of the driveway prior to his purchase of the property. There was no gate or fence depicted in the photographs. He also presented a survey, which depicted a concrete pad for the driveway. He was willing to change the time of the dumpster pickup if it was a problem for the neighbors on Old Shell Road. Mr. Ward felt that he complied with all requests for documentation and that the staff's decision should be upheld.

Ms. Cochran asked if Mr. Ward purchased the property in April of 2000.

Mr. Ward said yes.

Ms. Cochran asked what documentation Mr. Ward had about the continued use of the driveway prior to April of 2000.

Mr. Ward said the owner of M&M Florist signed the affidavit presented.

Ms. Cochran said that the driveway existed and was used since 1967. Neither affidavit stated that the driveway was in continuous use.

Mr. Ward stated that Mr. Jerald Allen, who was in attendance earlier, was able to testify to the continued use. Mr. Ward said he would be able to have Mr. Allen reappear to testify if necessary. Mr. Allen lived next to the subject property for 50 years.

Mr. Guess asked if Mr. Ward knew when M&M Florist went out of business.

Mr. Ward said no.

Mr. Guess asked if there was a tenant between M&M Florist and the portrait studio.

Mr. Ward said no.

Mr. Guess asked if Mr. Ward's operation used the driveway or the main access from Springhill Avenue.

Mr. Ward said they used both entrances. The front access was not utilized at the moment due to the number of large Oak Trees, which posed a traffic hazard.

Ms. Cochran asked if the front of the business was blocked off.

Mr. Ward said yes.

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Ms. Cochran recommended a holdover of the case until the September 13, 2004, to allow time for the staff to obtain business license information. She also suggested that the previous owner also be asked to appear before the Board to testify about his affidavit.

A motion was made by Ms. Collier and seconded by Mr. Guess to approve the request for a holdover until the September 13, 2004, meeting.

OTHER BUSINESS:

Ms. Pappas announced that there would be a BOA seminar on Thursday, August 26, 2004. The members would be notified one-week prior to advise of the location of the meeting.

There being no further business, the meeting was adjourned.

APPROVED: November 1, 2004

/s/ Vice-chairman of the Board

/rm