

BOARD OF ZONING ADJUSTMENT MINUTES
MEETING OF DECEMBER 3, 2007 - 2:00 P.M.
MOBILE GOVERNMENT PLAZA, MULTI-PURPOSE ROOM

MEMBERS PRESENT

Reid Cummings, Chairman
William Guess
Vernon Coleman
Martha Collier*
Sanford Davis
Stephen J. Davitt, Jr.
J. Tyler Turner*

*denotes supernumerary member

MEMBERS ABSENT

STAFF PRESENT

Frank Palombo, Planner II
Caldwell Whistler, Planner I
Tiffany Green, Secretary I

OTHERS PRESENT

John Lawler, city attorney
David Roberts, Traffic Engineering
David Daughenbaugh, Urban Forestry

The chairman 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.

HOLDOVERS

#5433

(Case #ZON2007-02256)

Norman R. Higgins, Jr.

951 Linlen Avenue

(East side of Linlen Avenue, 400' ± North of Chandler Street)

Mr. Higgins spoke to the Board again regarding the carport he had constructed on his property a little over a year prior. He stated he has spoken with the landowner of the property adjacent to his in an effort to secure the easement, and that the landowner was currently more interested in selling the entire parcel, not simply the easement. He added they were still in discussion over the sale of the property. He stated that between the patio cover and the fence there was 20 feet and from there to the adjacent property owner's home there was an additional 8 feet, making it a 28 feet separation in all.

Mr. Carl Butler, 5500 William and Mary Street, spoke on behalf of Mr. Higgins and in favor of the carport.

Ms. Collier stated that though the argument had been made with regard to precedent, however, the Board, as it was structured today, was not responsible for those things that had gone before, but was responsible to the neighborhood as it stood today.

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Mr. Cummings advised that this case, as were many of the other cases that would come before the Board that day, were situations where citizens had acted prior to consulting the appropriate governing agencies with regards to permitting.

Mr. Cummings asked the applicant that if he were to acquire the adjacent property, would it be his plan to take his original property and the newly acquired property and subdivide them in to one new parcel.

Mr. Higgins stated he would like to, however, as the current offer on the property was only given approximately two hours prior, at this time he was not in a position to state yes or no.

Based upon this, Mr. Cummings said that, due to the current circumstances, it might be in the best interest of the Board and all parties concerned to hold over the matter for another month, because if he was able to purchase the property and begin the subdivision process, the issue would go away on its own. Mr. Cummings asked the applicant if he would be interested in such a hold over.

Mr. Higgins stated that he would prefer to have final resolution on the matter today.

Mr. Cummings noted for the record the applicant's desire and proceeded to ask for a motion from the Board regarding the matter, asking for some clarification regarding footage from Mr. Palombo.

Mr. Palombo advised that the structure was half a foot away from the property line.

Mr. Cummings stated again that the Chair would entertain a motion regarding the variance request to allow an existing carport half a foot from the side yard setback line and two feet from the rear yard setback line.

Ms. Collier moved to deny the variance.

Mr. Palombo stated that there were 7 members of the Board in attendance this day, two of which were supernumerary members. He asked for clarification as to who would be voting and who would not.

Mr. Cummings stated that all regular members would be voting, except in the case of a recusal, and in as much, Ms. Collier's motion was invalid.

Mr. Guess moved to deny the variance, with second by Mr. Cummings.

Mr. Cummings called the vote, with Mr. Guess, Mr. Cummings, and Mr. Graham voting to deny the variance, and Mr. Coleman, and Mr. Davis voting not to deny the variance.

The motion carried 3 to 2 and the variance was not approved.

Mr. Lawler stated the motion should be worded in the affirmative so as to not create confusion regarding the wishes of the Board.

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Mr. Cummings then moved to approve the variance application, with second by Mr. Guess

The Chair called the vote again.

Mr. Guess and Mr. Cummings voted against the motion, with Mr. Coleman, Mr. Davis, and Mr. Graham voting in favor of the motion.

The Chair announced the motion failed with 3 votes for it and 2 votes against it.

The applicant asked what he could do from this point.

Mr. Cummings advised that he could go to Circuit Court and appeal the matter, try to purchase the property adjacent to his and proceed with the subdivision process, or tear down the carport and re-build it in accordance to the city's ordinances.

#5441

(Case #ZON2007-02355)

Chris Bowen

2712 Old Shell Road

Northeast corner of Old Shell Road and Randolph Street

Chris Bowen, 1702 Dauphin Street, addressed the Board regarding his 27 years of property management in the city of Mobile, adding that in January of 2006, he purchased the property in question. He stated he contacted Zoning to confirm that the property was indeed B-2. After renovation, he was approached by Ellis Studios with an offer to rent the property in March of 2007. In June of 2007, the City issued Ellis a warning regarding his signage and his failure to have a business license. The tenant came to the city, got the appropriate sign permit, but was denied a business license based upon the property not having a zoning certificate. Mr. Bowen stated that this was the first time he had ever heard of a zoning certificate, even though he had numerous "B-something" zoned properties in the Old Shell and Florida Street areas. In his inquiry to the city regarding this, he was advised that he would need variances for parking and maneuvering. Mr. Bowen added that he could only find 1 or 2 businesses the whole length of Old Shell Road, down to Upham Street, that had parking compliant with the city ordinances. He stated that the parking and maneuvering ordinance would create a hardship for the property, as the structure currently in place is 70 years old and that the lot is considered substandard by today's requirements. He went on to state that due to the substandard size of the lot, the landscape requirements would be very difficult to address as well. He also addressed the issue of the necessary fencing, stating that the property currently has fencing along the easy property line that was installed by the neighboring business and that there is also fencing along the back of the property. He noted that the back fencing appeared to be maybe some 20 to 30 years old. He stated that fencing missed the back property line, in all probability due to the fact that the line is skewed. He added that currently on the back property line there were old growth trees along that line.

Mr. Cummings stated that in looking at the property and the issue of hardship, he acknowledge there were definitely issues with regards to parking.

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Mr. Palombo advised the Board that the staff had not previously seen a site plan, so many of the issues brought up in the meeting had not been addressed by the staff.

Mr. Bowen stated that there had been much time spent dealing with the property.

Mr. Palombo stated that in 2004 and 2006 permits had been issued regarding construction and renovation to a single family residence.

Mr. Cummings advised that the problem lies within the fact that permits had been pulled with the stated purpose of renovating the property for continued use as a single family residence.

Mr. Bowen stated that was due to the confusion of his contractor, who simply didn't know any better than to agree with permitting when asked if this was a sing family house, which was based upon its construction.

Mr. Cummings asked Mr. Palombo if prior to Ellis Studios, were licenses to operate a business issued for the property in question.

Mr. Palombo said no.

Mr. Bowen stated that in the past 20 years, he had never known of the property to be used as anything but commercial.

Mr. Cummings stated that due to the City's records, nobody had operated a business in that location, and that was the information the Board had to go on.

Mr. Coleman moved to approve the variance.

Mr. Cummings asked if Mr. Coleman was moving to approve every variance requested.

Mr. Palombo expressed concern regarding the allowance of "back out/head in" parking on Old Shell Road.

Mr. Roberts of Traffic Engineering expressed his department's concern about this as well.

Mr. Palombo advised the Board that the property had ample area in the rear for parking, which would bring that aspect into compliance.

Mr. Coleman asked if using the front area for parking would help alleviate some of the parking and maneuverability issues.

Mr. Palombo stated that it would help in some fashion, but that he would still have to provide rear parking. He also expressed a need for a curb cut on Randolph Street and Old Shell Road.

Mr. Cummings asked Mr. Coleman to restate his motion, and after discussion, Mr. Coleman restated his motion to approve the variance as requested with the exception of "nose in" parking

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and that there be a curb cut on Randolph Street to accommodate parking in the rear. Mr. Guess seconded this motion.

Mr. Cummings clarified that if the applicant proceeded pursuant to this variance that there would be no parking along Old Shell Road.

Mr. Guess asked if Mr. Coleman would amend his motion to allow one "non nose-in" handicap parking space in the front with a ramp, meeting all AASHTO criteria, to which Mr. Coleman agreed.

Ms. Collier asked if Mr. Coleman would amend his motion to require a 6 feet wooden privacy fence from the northwest corner of the property on Randolph Street back, as is typically required when commercially zoned property abuts residentially zoned property, to which Mr. Coleman agreed.

The Chair called the vote, which passed unanimously.

#5442

(Case #ZON2007-02435)

Brad Green & Amy Mitzner

3269 Stein Street

South side of Stein Street, 55'± East of Batre Lane

Brad Green spoke on behalf of himself and his wife, Amy Mitzner, regarding their desire to install a carport stating the location in question was the only logical place to put the carport. He also added that none of their neighbors, especially then next door neighbor, who would be directly effected, had any negative issues with its installation. He also advised the Board that the person he had hired as his contractor had advised them he would see to all necessary permits. Mr. Green said he checked and the individual did possess a state of Alabama contractor's license. However, it had now come to light that this person had no city license and Mr. Green believed was currently incarcerated by the City for fraud.

Mr. David Shivers, 3276 Stein Street, spoke as well in support of the variance.

Mr. Cummings reviewed the case and voiced his opinion that this case was very similar to a case denied that same day, with regards to building without getting the necessary permits. Mr. Cummings also suggested modifications to the placement of the carport, with Mr. Guess concurring. The suggestions were made and the applicant advised that following these suggestions would give him the opportunity to build the proposed carport. He was also advised that, based upon the current variance request, if the vote went against him, he had two options, (1) tear it down and forget it, or (2) file a motion in Circuit Court and spend his time and money fighting the City of Mobile in a case that could take six months to a year to be heard.

The applicant agreed to a modification of the variance.

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Mr. Guess moved to approve the variance with a setback of no more than 4 feet as the property line worked with the existing structure and from the rear a setback of no more than 8 feet, which was seconded by Mr. Coleman.

The Chair called the vote which carried unanimously.

#5443

(Case #ZON2007-02440)

Raynald Holder

114 North Catherine Street

East side of North Catherine Street, 350'± North of Old Shell Road

Stacy Walton spoke on behalf of the applicant in their request to use the property as a duplex in a R-1, single-family residential district; two family dwellings require R-2 zoning

Mr. Cummings advised Ms. Walton regarding the staff report and asked if she had history on the property showing two separate people living on the property.

She stated that when the property was purchased on May 5, 2007, one of the real estate agents involved said there were currently two persons living on the property.

Mr. Cummings also stated that the staff had recommended that the variance be approved, subject to the modification of the parking and maneuvering area on site be compliant and provide a minimum of 3 parking spaces.

Ms. Walton said this had already been done and that it was concreted area located at the back of the property.

Mr. Palombo and Mr. Whistler both stated that a revised site plan and survey were needed.

Ms. Walton and the applicant stated that these had been submitted to Mr. Whistler, and that those documents indicated the parking area in the rear of the property.

The Chair held discussion and said he would entertain a motion to approve subject to the applicant striping the concreted parking area to accommodate up to 3 parking spaces.

Ms. Collier expressed concern over whether or not the house had a history of two family usage as the pictures presented did not show a kitchen on the second floor.

The applicant advised that there were two kitchens in the house and that both of them were located on the first floor.

The Chair again asked if there was a motion to approve as stated before. Mr. Coleman so moved with Mr. Guess's second.

The Chair called the vote which carried unanimously.

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#5444

(Case #ZON2007-02451)

Marshall & Michelle Sanford

1251 Lake Circle West

Southeast corner of Lake Circle West and Lake Circle North

Marshall Sanford spoke on behalf of himself and his wife regarding approval of a privacy fence that had been built without getting the necessary permits.

Mr. Cummings recognized the applicant and asked if there were others in attendance who wished to speak in favor of the application.

Evan Goldson of 4110 North Lake Circle spoke, saying that the couple has bought the property from an elderly couple and had done much work to their yard, including building this fence inside an existing chain link fence on the property. She voiced no objections to the fence whatsoever.

Mr. Cummings advised them that the staff report recommendation was for approval subject to compliance with where the property begins to level off.

Mr. Whistler stated that a hardship did exist on the property due to its topography, but that the slope appeared to be gentle enough and the ground level enough to comply with the 20 feet set back.

Mr. Coleman expressed his deep concern over why it was necessary to move the privacy fence in 20 feet from the chain link fence. He felt that would indeed be a hardship and unnecessary.

After a short discussion, the Chair stated he would entertain a motion on the matter.

Mr. Guess moved to approve the variance with no modifications to the site and Mr. Graham seconded.

The Chair called the vote which carried unanimously.

#5445/5255

(Case #ZON2007-02498)

Gregory Breedlove

66 Turnin Lane

West side of Turnin Lane, 430'± South of Wimbledon Drive West

Don Williams, Williams Engineering, spoke on behalf of the applicant. He discussed three issues of concern as follows:

- (1) line of sight; this would be addressed by not pulling out the fence the full width of the property, just a little front around the driveway entrance, which is pretty much the middle of the lot. This would be done to perform the function of a

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- gate situation and then pull it right back again, so they have about a 22 feet set back on the majority of the fence. There is no line of sight issue to the north, but as the property to the south is vacant, line of sight may become an issue later;
- (2) backing out from the property that is 100 feet wide; Turnin Lane is a substandard width road, and in as much, the travel lanes are narrow with only about 3 or 4 feet from the edge of the concrete gutter, so they have elected not to back out and instead provide an entry/service court which will allow them to pull in, do a 3 point turn in the garage and come back onto Turnin Lane straight;
 - (3) out of character for the neighborhood; due to the vegetation, the actual fence and gate will not be very obvious and there are other mechanical gates in the neighborhood, albeit they are wooden.

Mr. Williams stated that from his reading of the staff report the biggest, real concern is that cars may stick out in traffic when they are turning into the driveway, as they come to rest, prior to the gate opening. It is true that issue could be solved by eliminating the gate, but that would also eliminate the homeowner's wish to allow a dog free roam of the front yard as well as the additional security the gate would provide the homeowner. Mr. Williams stated that the pictures he had brought for the Board's review show that the Breedlove's car is approximately 15.5 feet long and that with a 10 to 12 feet set back, the vehicle would be totally out of the travel way, but not out of the right of way. In as much, Mr. Williams requested that they be allowed a twelve and a half feet setback on the fence, according to the site plan, making a total setback for the gate being 14 feet and 6 inches.

Mr. Cummings asked for clarification regarding where a car would stack, based upon a picture provided by the applicant, if the 14.5 ft setback were to be approved.

Mr. Williams stated, that based upon location previously measured, a 15 foot long car would probably be a foot to two feet further off the right-of-way. Also, based upon their calculations, if the Board approved the 14.5 feet, the vehicle would be within 6 inches of being totally off the right-of-way and about 3 feet away from the edge of the asphalt and concrete gutter, making it totally out of the travel way.

The Chair asked if there were any present who wished to speak in favor of the application.

B. J. Lyon, 63 Warwick Road, spoke, saying he had traveled Warwick for the past 25 years. He stated he felt the proposed fence would be an enhancement to the neighborhood and should not pose a safety problem.

Hearing no questions from the Board for Mr. Lyons, the Chair asked if there were any who wished to speak in opposition to the requested variance. Hearing none, the Chair asked if the Board had any other questions.

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Mr. Guess stated that it appeared that the first setback for the columns was about 3 feet. He asked Mr. Williams if there had been any consideration given to moving the entire proposed construction back that much?

Mr. Williams said it had but due to the fact it would make it harder to maneuver backward with rearview mirrors, they had chosen the design before the Board.

Mr. Guess then asked Mr. Roberts with the City's Traffic Engineering department, what would be acceptable with regards to stacking?

Mr. Roberts stated that Traffic Engineering was in line with staff regarding that issue and stood by the recommendations published in the report.

Mr. Coleman moved to approve the variance as recommended.

Mr. Cummings questioned whether or not that was Mr. Coleman's intention as the recommendation was for the construction of stucco columns within twelve and a half feet of the property line, which the staff had suggested the Board deny.

After a discussion of details by Mr. Cummings, Mr. Coleman, Mr. Whistler, and Mr. Palombo to determine the exact wording needed for the staff's recommendation, the Chair confirmed that the staff recommended a 22 feet setback from the front property line for this variance request, as opposed to the required 25 feet setback as stipulated by the ordinance.

Mr. Cummings commented to Mr. Williams that to follow the staff's recommendation would change the design of the overall fence.

Mr. Williams said yes, that following the recommendation would change not only the design of the fence, but also its intent, as the fence would then be straight across because it would not allow them to have the radiuses of a driveway coming in.

Mr. Cummings asked if the applicant might be open to the idea of reversing the radius, making it so that if went out from the garage and flared in so that the gate and stacking area were a little farther off of the street.

After hearing that suggestion, Mr. Coleman amended his motion to approve the variance of a total of 20 feet, with second by Mr. Davis.

Hearing this, the chair called the vote, from which Mr. Graham was recused. The vote carried unanimously.

#5446

(Case #ZON2007-02499)

Ngoc Nguyen

2756 Mauvilla Drive

North side of Mauvilla Drive, 100' ± East of Sullivan Avenue.

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B. J. Lyon, owner of the property, spoke on behalf of the applicant, Ngoc Nguyen. He said Mr. Nguyen was an automobile wholesaler who stored automobiles at the location. Mr. Lyons said no work was done on the vehicles, and based upon his reading of the ordinance, Mr. Nguyen was in compliance regarding the use. However, the City of Mobile has cited Mr. Nguyen for temporary storage of cars inside the building, which they told him had to be within B-3 zoning. The property is currently zoned B-2. Mr. Lyons said the B-2 zoning ordinance specifically states automobile storage (commercial, including parking lots) as acceptable usage. Mr. Lyons expressed his confusion as he did not understand where the city was coming from as Mr. Nguyen was not using the warehouse for commercial use; he was not using it as a parking lot, charging people to park their cars on the location. Mr. Lyons said Mr. Nguyen uses the building to store a few cars that he brings in from time to time. Mr. Lyons also provided the Board with pictures and other materials to show that, even though the city states the area is zoned B-2, a number of businesses in the area are clearly B-3 zoned operations. Mr. Lyons expressed concerns over the staff's statements that Mr. Nguyen's use of the property would have a disruptive effect on the neighborhood, as he had proven the neighborhood already supported B-3 usages, even though the area was not zoned as such. He then went on to ask the Board to grant a use variance to allow for inside storage of vehicles only, with a maximum of 10 vehicles allowed.

Mr. Cummings responded by saying the staff's report indicated that work, repairs were being done on the vehicles, which is clearly not allowed in B-2 zoning. Mr. Cummings asked definitively were repairs being made to the vehicles on site.

Mr. Lyons affirmed they were not. He did say that Mr. Nguyen did, on occasion, wash the vehicles, which might be an issue for one of the neighbors.

Mr. Cummings asked if the applicant was running a car wash at the location.

Mr. Lyons said Mr. Nguyen was not, that the location simply had a hose and a washing pit.

Mr. Cummings then asked the staff if there was an auto repair shop located at the corner of Brookley and Government, as labeled on the map.

Mr. Whistler advised there were a lot of non-conforming B-3 uses in this B-2 district. He also stated that what had not been mentioned was that the vehicles being stored were in conjunction with automobile sales and that any activities associated with automobile sales have to be in B-3 zoning. Mr. Whistler advised that the automobile sales business was not located in Mobile at all; it was located in Baldwin County. Mr. Whistler stated that the applicant did not have any business licenses in Mobile whatsoever.

Mr. Lyons responded to that by saying part of the problem Mr. Nguyen was having with getting a business license involved having a location. The property in question is the location, but since it is not technically, according to the city, zoned for it, Mr. Nguyen can't get a license until either the Board granted the variance or the applicant was able to get it rezoned.

Mr. Cummings asked if the applicant had gone to the Planning Commission to have the property rezoned to B-3.

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Mr. Lyons said they had not as it was their opinion that due to the fact B-3 is a heavier, more intense use, the applicant would probably not succeed, so they chose to request a variance.

Hearing no questions of the applicant from the Board, the Chair asked if there were any others who wished to speak in favor of the request. Hearing none, he asked if there were those who wished to speak in opposition to the variance.

John Parker, Esq., spoke on behalf of his clients, Walter and Susan Scott, owners of the property adjacent to the property in question. He stated that the applicant had indeed been working on vehicles at this location for quite some time. Mr. Parker stated that when Mr. Nyugen bought the property in September of that year, he knew it was not zoned for the particular purpose and use he intended. Mr. Parker said the building in question had been broken down in to separate rooms. He said there was no hardship on the property for use as B-2 and in as much his clients, the Scotts, wanted the Board to deny the variance.

The Chair asked if there were any questions by the Board for the speaker. Hearing none, the Chair asked Mr. Lawler what the city's attorney had to say on the matter, as the Board had just heard from two separate attorneys with different opinions on the same ordinance.

After a brief discourse regarding the interpretation of the ordinance, Mr. Lawler expressed that he felt the intention of the ordinance was to prevent heavier impact usages out of neighborhood business districts. Mr. Lawler also expressed his interpretation that the ordinance was referring to commercial parking garages or parking lots.

Mr. Coleman asked if the fact that there were other businesses in this B-2 district that are clearly operating businesses that are of a B-3 nature was germane to the applicant's argument.

Mr. Lawler answered that not with regards to the current variance request. If the applicant had chosen to go before the Planning Commission and request a change of zoning for the property to B-3 and that had been refused, then the fact that other businesses around the applicant were allowed to operate B-3 businesses and he was not, might constitute a hardship and thereby give him cause for a variance.

Mr. Cummings questioned out loud if it might not be better for the applicant to request a hold over of this matter, because if it is denied by the Board and the applicant appeals the decision, then he would continue operating in violation until such time as the Circuit Court ruled either in his favor or against. A hold over would allow the applicant time to go before the Planning Commission to request re-zoning of the area. Mr. Cummings expressed his ideas that this might be the best plan in as much as if the Commission ruled in the applicant's favor, then there would be no need for the variance and it would also bring the businesses currently operating outside of the ordinance into compliance.

The Chair then asked for comments from the Board.

Mr. Coleman expressed his concern that the applicant is operating without a business license and said he could support the variance if the Board required the applicant to get the necessary business licenses.

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Mr. Palombo stated the staff would be satisfied with the Board approving the variance with the inclusion of Mr. Coleman's requirement that the applicant have the necessary and applicable business licenses.

Mr. Coleman also stated he wanted a condition of no work, including washing, be done on site, and that it be limited to 18 cars kept on the site at any given time.

Mr. Palombo added that the staff would require a correct, up-to-date, site plan.

Mr. Davis seconded the motion.

The Chair stated there was a motion on the floor to grant a variance for the applicant to store vehicles inside this building only, to do no work on the vehicles, either in the building or on the site, to include mechanic work and/or washing of the vehicles, subject to the applicant obtaining the applicable business license from the city, and compliance with all local, state, and federal codes, and that said motion had been duly seconded. The Chair asked if there was any further discussion.

Mr. Graham asked Mr. Parker to confirm whether or not the building was partitioned off in the interior, thereby limiting the space for vehicle storage. He also asked if there was a roll-up door at the location.

Hearing no further discussion, the Chair called the question. Mr. Cummings, Mr. Coleman, and Mr. Davis voted in favor. Mr. Guess and Mr. Graham voted against the motion. The Chair announced that the variance had been denied with a vote of 3 to 2.

PUBLIC HEARINGS:

#5447

(Case #ZON2007-02671)

Derrick Trever Fowler

15 Benedict Place

East side of Benedict Place, 420'± South of Dauphin Street

Derrick Fowler spoke on behalf of himself and his wife, Shae. They requested a variance to build a single car garage within 3 feet of their north property line, as there was a very large, old, live oak tree growing in that area. He stated that where the foundation for the garage would go in, it would have to cut into those roots and therefore effect the health of the tree.

Mr. Cummings advised the applicants that the staff had recommended approval of the variance in the setback, but not where their site plan showed, instead the staff recommends an 8 foot rear set back and a 5 foot side setback, which pushes the structure 2 feet close to the oak tree.

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The applicant expressed his concern that the roots of the tree would still pose a problem with putting in the proper foundation for this single car garage. He stated the construction of the foundation would still impact the roots of the tree.

Mr. Palombo stated that the Board could approve it with the contingency of approval by Urban Forestry. Urban Forestry would then send a forester out to do a critical root zone analysis to determine the correct distance needed for the best interest of the tree.

Mr. Coleman moved to approve the variance subject to a site visit by Urban Forestry, which was seconded by Mr. Guess.

The Chair stated there was a motion on the floor to approve a side yard set back, exact width of which would be determined by a site visit by Urban Forestry to determine the relative impact on the root zone of the tree on the other side of the proposed structure, as well as an 8 foot rear yard set back and provision of gutters and downspouts along the north side of the structure, which had been duly seconded.

Hearing no discussion, the Chair called the vote, which carried unanimously.

#5448

(Case #ZON2007-02677)

Golden Gate Properties

109 Bradford Avenue

East side of Bradford Avenue, 300'± North of Government Street.

Tuan Titlestad, owner of the property, spoke. He advised the Board that when he purchase the property, it was his understanding that it was a 4-unit apartment building that had been built in the 1920's and had been used as such ever since. He said, however, as the property had been vacant for more than the past 2 years, it now was in a non-conforming status, which has created the need for a variance.

The Chair advised the applicant that the staff had recommended approving the use, access, parking and maneuvering variances, but preferred that the applicant brought the property into compliance with regards to landscaping and tree ordinances.

The applicant stated he was agreeable with those stipulations.

The Chair then asked if there were any present who wished to speak in favor of this or in opposition.

Ruby Tadlock, 107 Bradford Avenue, addressed the Board saying she had issues with parking. She let the Board know that the occupants tried to park 8 cars on that street as no one wanted to park in the back of the property. She told the Board that over a three week period, she has had 5 cars towed.

Mr. Cummings advised Mrs. Tadlock that the site plan showed where 8 parking spaces were proposed.

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Mr. Titlestad stated that his goal was to make the entire backyard parking and had already removed some old, existing structures to accommodate that.

Hearing no further discussion, Mr. Coleman moved to approve the variance request for the use, access, parking, and maneuvering, but not to approve the variance request regarding landscape and tree planting, subject to a site plan review and approval by Urban Development, which was seconded by Mr. Guess.

The Chair called the vote, which carried unanimously.

#5449

(Case #ZON2007-02701)

Lamar Advertising

2032 Airport Boulevard

Northwest corner of Airport Boulevard and the Illinois Central Gulf Railroad right-of-way

Troy Tatum, General Manager of Lamar Advertising spoke on behalf of the applicant regarding the installation of a combination off-premise/on-premise sign. The current, existing off-premise sign is a grandfathered board which has been there for approximately 30 years. The property owner is building a new shopping center and wants to use the combination signage on his property. He would like to use this one sign instead of there being two separate signs, one being the 30 plus year old off-premise sign and the other being the on-premise sign for tenants. At this time, the sign proposed would be unique in Mobile. He went on to explain that the off-premise portion of the sign will only face west and have one side, only the on-premise, tenant portion of the signage will be dual faced and seen by both east and west.

Nick Cantranis spoke on behalf of himself and his family, the owners and developers of the site. He stated the family members were very strong proponents of the Loop area and they encouraged the Board to approve the requested variances.

Mr. Cummings asked what the overall height of the sign was to be.

Mr. Palombo and Mr. Whistler said it was proposed at 40 feet.

After determining the sign was within the 50 feet maximum allowable height for a multi-panel on-premise tenant identification sign and the 35 feet maximum allowable height for an off-premise billboard, Mr. Cummings stated he felt the proposed signage would be neat and hadn't seen anything like it in Mobile before.

Mr. Tatum said that this would indeed be the first one for the Mobile market and that all parties involved were excited about it.

Mr. Coleman asked where the sign would be in relation to the two buildings.

Mr. Tatum stated it would be on the far right hand side of the property, completely out of the right-of-way and on private property.

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Mr. Palombo asked if the Board was to approve the sign, could the condition of removing the current billboard be included.

Hearing all of this, Mr. Coleman moved to approve the variance, with second by Mr. Guess.

Ms. Collier asked for clarification that the sign in no way would interfere with the sidewalk and was assured that was the case.

Hearing no further discussion, the Chair stated there was a motion on the floor to approve the variance subject to the existing off-premise sign being removed prior to this one being permitted and installed. He stated it had been duly seconded and called the question.

The motion carried unanimously.

#5450

(Case #ZON2007-02707)

Crichton Church of God in Christ

200 Ogden Avenue

East side of Ogden Avenue, 380'± South of Spring Hill Avenue.

Pastor Robert L. Davis, 859 Midfield Drive, spoke on behalf of the applicant.

The Chair advised the applicant that the staff had recommended approval of their application, subject to the variance being limited to one year, with the applicant to submit the required Planning Commission application within that time period. The Chair asked if the applicant was agreeable with those conditions.

Pastor Davis asked if the staff was referring to landscaping.

The Chair advised him no, the staff was referring to the actual plan that needed to be presented to the Planning Commission, but that the Pastor and the church could continue with their plans as long as those plans were submitted to the Planning Commission within the year.

Mr. Palombo offered clarification saying the staff was allowing the applicant to make the addition to the front of the building without being in compliance with zoning ordinances with regard to the front yard setback and parking surface.

The applicant said he would be happy to put in additional landscaping as well as pavement.

Hearing no further pertinent discussion or questions from the Board, the Chair stated he would entertain a motion on the matter.

Mr. Coleman moved to approve the variance with the stipulations as stated, with second by Mr. Guess.

The Chair called the vote which carried unanimously.

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#5451

(Case #ZON2007-02720)

Robin W. Tankersley

115 North Ann Street

West side of North Ann Street, 310'± North of Old Shell Road

Robin Tankersley, 1152 Dauphin Street, spoke on her own behalf asking the Board to approve the variance so that she might use the property in question as a 3-unit rental property. When she purchased the property as a foreclosure, it had 3 distinct kitchens and 3 distinct bathrooms. She stated that it had been used continuously as an apartment complex since approximately 1995. At the time she purchased the property, it was in very poor shape. In as much, she applied to the city for permits to do needed repairs on the structure, at which time she found out it had never been legally zoned for apartments.

Mr. Cummings asked when the property had last been occupied by tenants as an apartment complex.

Ms. Tankersley said, from her research, it had been continually occupied as such since 1995. In fact, she had the names and phone numbers of former tenants who very much wanted their units back. She advised the Board that these people had been evicted because the property owner was foreclosed upon.

Mr. Cummings asked when Ms. Tankersley bought the property.

Ms. Tankersley stated she bought the property in June of 2007.

Mr. Cummings asked if she knew when the tenants had been evicted.

Ms. Tankersley stated she believed it was in March of 2007.

The Chair asked if there were others who wished to speak on the matter.

Debra Miller, 100 North Ann Street, spoke. She said she had lived at that address for the past 25 years and that the house was never an apartment. She stated it had started out years ago owned by two elderly sisters, who each lived on separate sides of the home with their own kitchens. She stated she had a petition from the neighbors with over 40 signatures requesting that it remain a single family home.

Mr. Cummings asked Ms. Miller if during the period of time that she has lived on Ann Street, did she know that the property had been rented to one or more people at the same time.

Ms. Miller said at one time several people lived there.

Mr. Cummings asked Ms. Miller if there had been someone living there as late as last Thanksgiving.

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Ms. Miller said she did not believe so.

Mr. Cummings asked Ms. Miller if there had been someone living there the previous Thanksgiving.

Ms. Miller said she thought there probably was someone in the apartment about 2 years ago.

Mr. Cummings then advised Ms. Miller, that though she and the neighbors wanted to keep the property zoned as R-1, which there was no question that according to all records it, indeed, was zoned as R-1, that if there was proof that more than one person or families had rented those 3 apartments in the past 2 years, it really didn't matter. The floor plan and documentation show the property clearly set up as multi-family use.

The Chair then asked Ms. Tankersly questions regarding her intentions to deal with parking and access.

Ms. Tankersley said that she had put gravel on the site as that was what she was told was appropriate when she got the permit to do so. However, that was with the city understanding the property as R-1. She stated she was now aware she needed to do something different.

Mr. Cummings also addressed the issue of landscaping.

Ms. Tankersley said she had pictures to show she had increased the landscaping, but had concerns regarding putting the two heritage trees (i.e. live oaks) in the front yard due to the water line.

Mr. Cummings responded that with all of the property she had available, she should be able to accomplish a great deal in all of these areas.

Hearing no further pertinent discussion, the Chair stated he would entertain a motion on the matter.

Mr. Coleman moved to approve the variance request for use, subject the restrictions and stipulations as presented by the staff, but the applicant would have to bring the site into compliance with what was required code wise for R-3 use, including trees and landscaping subject to Urban Forestry, and 5 paved parking spaces. Mr. Cummings seconded the motion.

The Chair called the vote which carried unanimously.

#5452/5158/3153

(Case #ZON2007-02724)

Dale Halladay

1570 Dauphin Street

North side of Dauphin Street, 335'± East of North Monterey Street.

Dale Halladay spoke on his own behalf. He stated that he bought the property in 1992 with the intent to rent the back two units. He did so without conflict until 2003, when he found out that it

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was inappropriate for him to be renting the units to non-family members. At that time he hired an attorney to resolve the issue and thought the situation had been resolved. He stated that in March of 2003, he had a stroke and it was not until last year that it was brought to his attention that this matter had, indeed, not be resolved. He also stated that he had over 25 signatures of neighbors who supported him.

Mr. Cummings stated that from the staff's comments, that a variance issue with regards to construction on this property had come up 1976 and that matter had been resolved by the Court, allowing construction of the additional buildings with rental allowed to family members only.

Mr. Halladay stated that when he bought the property, he was unaware of that stipulation, especially since the additional units were being rented to non-family members by the then property owner.

Mr. Cummings said that he thought that at title policy search should have reflected any court ruling that dealt restrictions on this property.

Mr. Lawler spoke on the matter saying he remembered the case. During a brief period that he was not working for the City, Mr. Halladay came to him with an application pending to expand the size of his main house. Mr. Lawler stated he filed an appeal on behalf of Mr. Halladay in that matter. Wanda Cochran, representing the City, answered. After discussion, Ms. Cochran withdrew any objection to the matter the City had. After that, Mr. Lawler said he advised Mr. Halladay if he wished to add on to his house that he could.

Mr. Halladay advised the Board that there had been no structural changes required and that parking was adequate as he had two acres of land at that location.

The Chair then asked if there were others who wished to speak on this matter.

Jewel Minnich, a property owner on Fearnway as it backs up to the Dauphin Street property, discussed the property as it pertained to legislature some 50 years before. She said the previous owner's wife had two elderly aunts the family did not want to put into a nursing home. As the family had the money and the property available, they build garden apartments, similar to those found in New Orleans. None of the neighbors objected to this and the aunts lived on the property until their deaths. At that time the property was put on the market and sold to the current owner. The owner, not aware that the property had specific restrictions with regards to who was allowed to live on property, rented the smaller units to non-family members, which has caused disputes and disruption in the neighborhood.

The Chair asked the Board if there were any questions for Ms. Minnich. Hearing none, he thanked her for her time and asked if there were any others who wished to speak.

Marion Titlestad, 1569 Fearnway, spoke to the Board, saying their concern was that no other units and/or additions be allowed on this property, and that the property not be put in a position that would make it favorable for re-zoning.

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The Chair responded that as most of that area is zoned R-1 and that the majority of the property in the area is, indeed, single family, residential, that he did not anticipate a re-zoning of that property in the future. He also stated that it had been the Board's policy not to allow the creation of apartments in single family, residential areas just for the sake of providing additional living space for family members.

The Chair made a final request for anyone who wished to speak on the matter.

Lydia Bennett, owner of the home on the east side of Mr. Halladay's house, spoke on Mr. Halladay's behalf. She expressed that when she purchased her home, it was advertised as having a rental unit in the back with a potential of "X" in rental income. Currently she was not using the unit for rental purposes, but, as she has known Mr. Halladay since high school and was aware of the issues he was having with this regard, she contacted the real estate company, Dauphin Realty regarding her property. Apparently, the real estate company's lawyer determined that a variance would have to be obtained. She stated she had helped Mr. Halladay with landscaping on the property. She finished by saying as his next door neighbor, she had no problems with his request and that in speaking with many of her neighbors, they felt the same.

The Chair clarified that the variance requested is for only to be able to allow the owner to rent the units to non-family members.

Mr. Coleman asked if the previous court order applied to the current property owner.

Mr. Lawler replied yes, the variance ran with the land and that the court had approved a variance saying the units could only be rented to family members and that would apply to any owner until that condition was changed.

Mr. Cummings stated the variance had effectively become a deed restriction.

Mr. Halladay stated there was nothing in his deed regarding restrictions, including the title policy.

Mr. Guess asked the staff if the other structures shown on the existing zoning map that were not marked were insularly apartments and were they occupied.

Mr. Palombo answered that it was not possible to answer those questions with the information available to the staff. Mr. Palombo added that if the Board was leaning in favor of approval, the staff would ask for compliance with parking and buffer requirements.

Mr. Cummings stated that he wanted to move to deny the request as the Court had ruled on this some 30 years before. He felt that the Board put themselves in a negative position if they rendered any decision that altered the Court's previous decision.

Mr. Davis seconded the motion.

Mr. Lawler advised the Board that, over time, the Board did have the power to make changes to the Court's ruling, if conditions had changed and merited such a change.

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Hearing no further pertinent discussion, the Chair called the vote on the motion to deny the variance request.

The motion to deny carried unanimously.

#5453

(Case #ZON2007-02733)

Lewis F. Mayson

North side of Church Street, 100'± West of Chatham Street.

Linda Mayson, 120 McGregor Avenue South, wife of Lewis F. Mayson, spoke on behalf of herself and her husband. She said they wanted to build their personal residence at the Church Street location and were asking to be able to come up 4 feet closer to the street in order to accommodate all the parking for their cars in the back of their property between the house and the Storage Max facility. This would allow them to keep from parking on the street, which would look nicer in the neighborhood. She said they would also like some relief with the rear yard set back as there is a little bit of a ditch between their property and the Storage Max, in order to build an outside storage shed for items such as tools and that type of thing.

The Chair advised the applicant that the staff could see some room for a variance, but they lean toward “site lining” it, in other words, instead of giving the applicant the requested 15 feet set back, it is suggested that it be 20 feet. The Chair asked the applicant if that would work with their site plan.

Mrs. Mayson said she believed it would, however, she reminded the Board that part of the Oakleigh Garden District charm came from the fact that most of the homes were not aligned.

Mr. Cummings addressed the issue of maneuverability with the staff as it related to the driveway, the proposed storage building and HODO requirements.

Hearing no further pertinent discussion, Mr. Cummings moved to allow a set back line on the front property in compliance with the Church Street Historic District, 19 feet and to allow the side and rear set backs for the storage building to be 5 feet each. Mr. Guess seconded the motion,

Hearing no other discussion, the Chair called the questions and the motion passed unanimously.

OTHER BUSINESS:

Hearing no further business, the Chair adjourned the meeting.

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APPROVED: November 3, 2008

Chairman of the Board

/jl