

BOARD OF ZONING ADJUSTMENT MINUTES
MEETING OF DECEMBER 6 - 2:00 P.M.
MOBILE GOVERNMENT PLAZA, MULTI-PURPOSE ROOM

MEMBERS PRESENT

Stephen J. Davitt, Jr., Vice-Chair
William Guess
Rev. Clarence Cooke
Martha Collier
H. Lamar Lee

MEMBERS ABSENT

Reid Cummings, Chairman
Horace Christian

STAFF PRESENT

Margaret Pappas, Planner II
Frank Palombo, Planner I
Mae Sciple, Secretary II

OTHERS PRESENT

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

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. Lee and seconded by Rev. Cooke to approve the minutes of the meetings of September, October and November, 2004, as submitted.

The motion carried unanimously.

PUBLIC HEARINGS

#5278

(Case #ZON2004-02283)

Advantage Sign Company (Koll Bren Fund VI LPA, Owners)

1110 Montlimar Drive

(West side of Montlimar Drive, 1/3± mile North of Michael Boulevard)

Sign Variance to allow two wall signs for one tenant on a multi-tenant site with only one street frontage; only one wall sign per tenant, per street frontage is allowed on a multi-tenant site.

Laura Vautier was present representing the applicant and explained the request for an additional set of letters for a multi-tenant site with only one street frontage. She said this was a situation in that Televox has the only business in this building that had ever been considered allowing signage. They were leasing over half of the building and had intentions over the next several years of occupying the entire building, and possibly purchasing it from the current owners. Ms. Vautier said a lot of their business would be from out of town and they felt that the side elevation

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facing Airport Boulevard would give them a little additional visibility. She presented some additional photos which were not previously provided to the Board.

Ms. Collier noted that there were apartments to the north of this site and trees. She would hate to see the landscape ruined with a sign.

Ms. Vautier said the property referred to was actually for sale and vacant. She contended that if someone purchased the property they would take the trees down anyway.

After discussion a motion was made by Ms. Collier and seconded by Mr. Lee to deny this request.

The motion carried.

#5279

(Case #ZON2004-02309)

Sahori Properties #2

1363 Government Street

(Southeast corner of Government Street and Everett Street)

Front Setback to allow a 38' x 55.5' canopy to be constructed 12' from the front (North) property line in a B-2, Neighborhood Business District; a minimum 25-foot front setback is required in all commercial districts.

Mike Kaoui, attorney, was present on behalf of the applicant. He said the applicant was prepared to meet the requirements of the landscape and tree planting sections of the Ordinance as recommended by the staff.

Mr. Guess asked if the Board had reviewed this property previously.

Ms. Pappas explained that this had previously come before the Board, however, this was a modified request which they were allowed to bring back before the Board within a six-month time frame. She noted that as outlined in the prior staff report, it was suggested that the canopy be somewhat reduced in order to provide more of a setback from Government Street. The Board denied that application. The applicant has since modified his request, submitted additional information regarding how they were redoing the access between the gas pumps for handicapped accessibility and so forth, and had moved the canopy back a little over two feet. Based on that, the staff had recommended approval.

Ms. Collier asked if there was any possibility of raising the canopy.

Mr. Kaoui said the canopy was being raised to 16' 6". It would be over the top of the building.

Ms. Collier said when she visited the site she noticed that it was too close to the sidewalk. She observed several cars that went across the sidewalk and one car that actually parked on the sidewalk so that pedestrians would not have had an appropriate place to walk.

Mr. Kaoui said they had taken the islands down so the pumps were flush with the ground creating better handicapped accessibility to the pumps.

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Ms. Collier asked if there was something that could be done to designate the walking space for pedestrians versus the space where cars stopped at the pumps. She suggested something like a planter.

Mr. Palombo suggested that curbing could be put there.

Mr. Kaoui said that would not be a problem. The staff said a barrier could be coordinated with Traffic Engineering.

After discussion a motion was made by Ms. Collier and seconded by Mr. Guess to grant this variance subject to the following conditions:

- (1) provision of a permanent barrier or curb to separate the sidewalk and the pump island lanes, the location and design to be coordinated with and approved by Traffic Engineering; and
- (2) full compliance with the landscaping and tree planting requirements of the Zoning Ordinance.

The motion carried.

#5280

(Case #ZON2004-02313)

Patricia Moulds (Southtrust Bank, Owner)

5113 Overlook Road

(South side of Overlook Road, 170'± East of Forest Dale Drive)

Use and Substandard Access Variances to allow a Beauty Salon with an 18' wide, two-way drive in a R-1, Single-Family Residential District; only single-family residences are allowed in a R-1, Single-Family Residential District and a 24' wide drive is required for two-way traffic.

Patricia Moulds, applicant, was present and said she would like to open a beauty salon at this location with parking in the rear and a two-way drive, 18 feet on one side and 10 feet on the other side. The front yard would be landscaped. Ms. Moulds said the residence was currently unoccupied and had been for about a year. She chose this property because she felt it would be a good location for a business in a high traffic area. She felt this would be an asset to the community.

Asked if she saw any property in the area already zoned that could have qualified for her needs, Ms. Moulds said she did not.

Mr. Davitt asked if 10 feet proposed on one side for a drive would be adequate. He also noted a canopy that extended into the 10' easement.

Ms. Collier questioned whether this encroachment of commercial property should take place, pointing out that there were 10 homes that would be affected almost directly.

Ms. Moulds contended that they would not be affected, and they planned to put up a privacy fence. She said there were other businesses in the R-1 area that had variances, and across the street from the property was commercial.

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Liz DeLarme, a resident of Forest Dale Drive, said her back yard backed up to Ms. Moulds' back yard and she did not have any objection to it.

Mr. Lee expressed concern about what could go in there if the variance was granted but the business --additional variance requests could be made.

Ms. Cochran stated that the only thing that was different from this site and some of the others, was that the residential house was the only one in the block that faced Overlook Road. The other residences to the east faced Druid. Nonetheless, the people on Forest Dale were adjacent to it.

Mr. Davitt asked if there was an alley behind the house. Ms. Pappas said it was an unopened alley.

Mr. Guess asked how this arrangement would fit into the Smart Growth plans.

Ms. Cochran said right now the Board had to look at the property and decide whether there was a hardship, because the Smart Growth plan may or may not ever happen.

Ms. Pappas added that while a Smart Growth plan had not been adopted, there was an adopted outline to guide Smart Growth. There were currently no ordinances or code amendments that allowed it. It was simply up to the Board to decide whether or not there was a hardship associated with the property.

After discussion a motion was made by Mr. Lee and seconded by Ms. Collier to deny this request

The motion carried.

#5281

(Case #ZON2004-02322)

Cardinal Sign Corporation (Colonial Properties Trust, Owners)

410 Bel Air Boulevard

(West side of Bel Air Boulevard, 1,100'± South of Airport Boulevard)

Sign Variance to allow two walls sign for one tenant on a multi-tenant site with only one street frontage; only one wall sign per tenant, per street frontage is allowed on a multi-tenant site.

Doug Anderson, attorney, was present representing the applicants and presented some handouts to the Board. Mr. Anderson explained that this building was in the middle of the parking lot at Colonial Bel Air Mall, out in front of Parisians, Target and Sears. It was formerly occupied by T.J. Maxx. The building had been completely renovated and Dollar Tree had been moved into the premises on the west end of the center. They were asking for a variance for a 132 square foot wall sign on the west end, which he pointed out in the photos presented. He noted there was no pylon sign for this building. He noted that the staff report stated that there was only one street frontage on this building. He respectfully disagreed with that, submitting that this property was actually surrounded by four streets: Bel Air Boulevard and the interior streets located within the parking lot at the mall. He noted that the site plan in the staff report showed roadways going on the north, south and west sides of the building. Mr. Anderson said it was their position that it did not matter whether it was a private or public right-of-way, and he did not think the Sign

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Ordinance specified that you have to have frontage on a public right-of-way, but just said "roadway". So the site plan itself showed that they had frontage on four separate roadways, which was one reason he thought this variance should be granted. He said they were in the middle of a parking lot. They were not backing up to any woods or any other commercial building or any residential subdivisions. Mr. Anderson said the staff report also referenced that none of the other tenants in the building had a sign on a side or rear elevation. He pointed out that there was only one other tenant currently in the building; that was Bel Air Cleaners on the east side of the building. When he submitted this application he said the cleaners had a sign on the front as well as on the rear elevation as shown in the photos submitted. Mr. Anderson noted the businesses in every direction at Bel Air Mall and across Bel Air Boulevard, as well as at Springdale Mall, had at least two signs on their respective buildings, which he showed in the photos submitted. There were several means of access to Bel Air Mall from Airport Boulevard, Bel Air Boulevard and International Drive. Mr. Anderson said they needed the second sign so people coming through the parking lot past Target and Parisians would know where they were. They were asking for the same opportunity that these other businesses had been given to have multiple signs. Mr. Anderson further referenced the staff report, which stated that another purpose of the Ordinance was to protect the right of citizens to enjoy Mobile's natural scenic beauty. He contended that there would not be any natural or scenic beauty that would be negatively affected by allowing this sign. With reference to the statement in the report that the variance shall not be approved unless the spirit and intent of the Ordinance was observed in substantial justice done to the applicant in the surrounding neighborhood, he said the surrounding neighborhood was malls and shopping centers with other stores that had multiple signs. They would therefore not be doing any injustice to any of their neighbors by allowing this sign. In conclusion, Mr. Anderson said that every out parcel, at both malls and up and down Bel Air Boulevard, whether they were multi-tenant or single-tenant, had two signs, with the exception of one. In addition to the photos presented, Mr. Anderson named three other tenants in the immediate area of Airport Boulevard and Bel Air Boulevard that had two wall signs in addition to a pylon sign. He said they were just asking to be treated like their neighbors.

Mr. Lee asked about the size of the proposed sign.

Mr. Anderson said they were asking for 132 square feet of additional signage. It would be 42 inches high.

Mr. Lee asked if the sign had to be that large.

Mr. Anderson said if the Board saw the need to approve a smaller sign, the applicant would agree to whatever they felt reasonable.

Ms. Collier asked why it was necessary to have signs all the way around when you could only enter the building from the north side.

Mr. Anderson said they were not asking for signs all the way around. They did not have a pylon sign like a lot of businesses. The sign on the front of the building could only be seen coming from Airport Boulevard and not from vehicles coming from Bel Air Boulevard and the Cottage Hill Road area. If they were in the parking lot they could not see the Dollar Tree sign on the north side.

Ms. Collier asked if they were asking for a sign larger than the one they had.

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Mr. Anderson said no. This sign would be about a third the size of the one they had now.

Mr. Davitt asked why they wanted to put the sign on the side facing the mall.

Mr. Anderson said that was what the retail manager from Dollar Tree wanted.

Mr. Davitt asked what the total square footage of the building was, and what percentage did Dollar Tree make up of that building.

Mr. Anderson said there were four spaces. Dollar Tree had a total of about 40 percent of the building. He said he did not have the total square footage of the building.

Ms. Cochran said she would let the staff address the others signs Mr. Anderson mentioned, but stated that the word in the Zoning Ordinance was "street". "Street" was defined as a public right-of-way. The Ordinance did make a distinction.

Mr. Palombo referenced the signs mentioned by Mr. Anderson, noting that many of them were non-conforming, which meant they were up prior to the adoption of the Zoning Ordinance in 1992. There were several single-tenant sites that were mentioned which were under the Ordinance. Barnes & Noble was one he mentioned that he said was non-conforming.

Ms. Pappas explained that at the time Barnes & Noble was permitted Springdale Plaza existed as one lot and had multiple street frontages. So it was non-conforming because they have since subdivided it. They were in compliance at the time they were permitted, which was in the mid-'90s after the adoption of the Ordinance.

Mr. Davitt asked if Bel Air Mall was one lot, or was it multiple.

Ms. Pappas stated that all of the Springdale Mall real estate until the summer of 2002 was one lot with multiple out parcels. Because the overall mall had three street frontages, each tenant in the mall was allowed one wall sign per street frontage, so that automatically gave everyone a minimum of three wall signs based on the number of street frontages. In 2002, when Sam's Club came in, they purchased their own piece of property. Springdale Mall now exists as multiple lots. Sam's has their own lot, thus they were allowed a minimum one free-standing sign and two wall signs.

Ms. Pappas emphasized the fact that the signs that had been permitted recently do comply with the Ordinance requirement. There was a different set of regulations for single-tenant sites like Toys R Us, versus multi-tenant sites such as the mall and the shopping center here.

Ms. Collier noted that there were other tenants in the building and none of them had a sign on the side or rear elevation.

Ms. Cochran said if the Board found it to be a hardship for this tenant, then wouldn't it be a hardship for everyone?

Mr. Anderson said he felt that this entire discussion in the complexity of these issues showed the hardship his client was faced with. There were so many technicalities and issues relative to each

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commercial property out there that his client was having to comply with on a retail basis, yet because of some technicality they had the right to have multiple signs. Mr. Anderson said the Ordinance says it is to do social justice to the applicant and the neighborhood, and to create a fair, competitive field. To do that, he said they needed this second sign. He said that was their hardship.

Ms. Collier asked if they would be open to a small directional sign.

Mr. Anderson said that for this situation, that would not work.

Mr. Davitt asked if the property was owned by the same owner of Bel Air Mall.

Mr. Anderson said that was correct.

Mr. Davitt asked if they could have another pylon on the side street in between this building.

Ms. Pappas replied that they could have a free-standing sign, if they were a separate lot.

Mr. Anderson stated that this was not a separate lot. It was part of Bel Air Mall property. He said there was no designated out parcel on Bel Air Boulevard as far as separate legal lots of record. The only separate lots on that entire parcel were Target and Dillards. What Ms. Pappas was saying earlier about Springdale Mall tenants having the right to have "X" number of signs, he said if they were the same legal lot as the mall itself, owned by the same owner, did that not apply to them?

Mr. Palombo said he understood that this was a separate lot. If it was not, then the staff would have to look at the linear footage. In light of this information, he suggested that this application be held over.

Mr. Anderson requested a holdover based on the staff's request.

A motion was made by Mr. Guess and seconded by Rev. Cooke to holdover this application until the meeting of January 10, 2005.

The motion carried.

#5282

(Case #ZON2004-02326)

M. Don Williams, III (Karlous & Sonyia Roberts, Owners)

54 North Sage Avenue

(East side of North Sage Avenue, 310'± South of Ishee Street)

Use, Access/Maneuvering, Parking Surface and Protection Buffer Variances to allow a tax preparation office, a 9-foot wide, two-way driveway, gravel parking surface, and no buffer protection in a R-1, Single-Family Residential District; only single-family residences are allowed in a R-1, Single-Family Residential District, a 24-foot driveway is required for two-way traffic, parking spaces must be paved with asphalt, concrete or an approved alternative paving surface, and a minimum buffer of a 6-foot high, wooden fence are required.

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Don Williams was present to speak on behalf of the applicant, Mrs. Sonyia Roberts, who was also present. Mr. Williams presented this request which would allow the applicant to use this residence as a tax preparer's office. He asked for clarification of the staff's recommendation in regard to buffering.

Ms. Pappas stated that buffering would not be required in the front yard, as the site was directly across the street from commercial. With residential on either side of it, however, buffering would still be required down the side of the property, and within the 25' setback it would need to be dropped to three feet continuing to the front to the property line.

Mr. Williams contended that that would be a very detrimental situation for traffic flow. He pointed out that on the east and west sides of Sage Avenue in this area there were no fences as the staff proposes. They felt a fence would block the traffic view of the neighbors on either side of them. The neighbor to the south of them was jam up to the property line, so his driveway would be one foot from the applicant's property line. It would be the same situation for the neighbor to the north. Mr. Williams felt it would be very difficult traffic-wise for the 50' lots on either side of them to have to contend with a fence. He proposed that they be allowed to pick up the fence at the house itself and pick it up at the rear of the property and continue that 6' high wood fence along the back side. This would buffer the entire back yard where the parking was to be.

Mr. Davitt asked what the staff thought about starting the fence flush with the house.

Ms. Pappas said that starting at the front façade and continuing it around the rear would be fine.

Mr. Guess asked how many parking spaces were proposed and how many employees there would be.

Mr. Williams said there would probably be four parking spaces, with two employees. It would be more in tax season, but it would be staggered.

Ms. Collier said the bottom line was that this was a R-1 zoned area.

Mr. Williams pointed out that there was a lawyer's office about three doors to the north, what was a trophy shop two doors to the south, and a beauty parlor four doors to the north. Across the street was an environmental inspector, an engineering company, the Junior League, and a dry cleaners and a florist.

Ms. Collier said the point was that the applicant was separated from those businesses by Sage Avenue, and the lot they were proposing a business on in a primarily residential section.

Mr. Williams said the lawyer, the inspector and the trophy shop were all on that particular part of the block they were in. They were bounded on the south by the armory and Sage Park.

Mr. Davitt commented that it seemed to be an area that was growing toward commercial.

Mr. Guess stated that from the photos presented it appeared that the front yard of the house was being utilized for parking already.

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Mr. Williams said in the past there was activity that came in on the gravel driveway and people had been parking in the front. He said they were blocking that off and would not allow parking there. They planned to put in an asphalt driveway and have grass in the front.

Ms. Pappas stated that a zoning study had been initiated to look at the feasibility of North Sage Avenue, from Dauphin to Old Shell, being rezoned to B-1. In so doing, however, that would not address other site development constraints such as buffering, parking and things of that nature.

Mr. Guess asked if parking would be prohibited in the front yard if it were paved. He felt the current parking situation was not going to be sufficient.

Mr. Williams said it would probably be required in the front yard if it were developed commercially.

Ms. Pappas said the entire front yard would be a sea of asphalt. She said the Board could require that if they thought parking was insufficient.

Mr. Lee asked what the minimum required parking was for a B-1 use.

Ms. Pappas said it would be one space per 300 square feet of gross floor area. With the building being over 900 square feet, a minimum of four spaces would be required.

Mr. Roberts asked what the applicant's intention was for the existing drive.

Mr. Williams said the drive was now on the property line and they intended to move it over about four feet, which would give them a 12' wide entrance. They felt by shifting it, asphaltting it and making it wider, after moving the power pole, it would make it safer for cars turning in. He noted the high speed of traffic on Sage Avenue.

Ms. Pappas noted that the driveway narrowed at the fence going into the back yard and asked if the gate would be removed.

Mr. Williams said they planned to remove the chain link fence and the gate.

Mr. Roberts asked how far in the drive would be widened to 12'.

Mr. Williams said it would go 10' past the right-of-way line as shown on their plot plan.

Mr. Davitt asked about the requested parking surface variance.

Mr. Williams said there would be gravel in the back. It had been there for a long time and was actually embedded in the ground. They felt it unnecessary to remove it as it provided a hard, stable surface as it was right now.

Mr. Guess asked if there was an alley on the east side of the property.

Ms. Pappas said there was a platted alley there, which was rather common east of I-65. The alley was not maintained, and was really indistinguishable from the adjacent property.

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After discussion a motion was made by Mr. Lee and seconded by Rev. Cooke to grant the requested variances subject to the following condition:

- (1) provision of buffering starting at the front façade of the dwelling and continuing eastward around the perimeter of the property.

The motion carried.

#5283

(Case #ZON2004-02331)

Foresite LLC (Mobile County School Board, Owners)

(South side of Girby Road, ½ mile± East of Hillcrest Road)

Use, Height, Setback, and Separation Buffer Variances to allow the construction of a 160' Monopole Communication Tower in a R-1, Single-Family Residential District, towers are prohibited in R-1 Districts; to allow the tower to be 160' in height, the maximum height allowed in a R-1 District is 35'; to allow the construction of said tower to within 50' from a lease parcel line, a minimum setback of 160' is required; and to allow construction of the tower within 160' of residentially zoned property, a minimum separation buffer of 240' is required.

The staff recommended that this application be held over until the next meeting.

A motion was made by Rev. Cooke and seconded by Mr. Guess to holdover this application until the meeting of January 10, 2005.

The motion carried.

#5284

(Case #ZON2004-02338)

Foresite LLC (Mobile County School Board, Owners)

(North side of Cottage Hill Road, ¼ mile± West of Azalea Road)

Use, Height, Setback, Separation Buffer and Access Variances to allow the construction of a 160' Monopole Communication Tower in an R-1, Single-Family Residential District, towers are prohibited in R-1 Districts; to allow the tower to be 160' in height, the maximum height allowed in a R-1 District is 35'; to allow the construction of said tower to within 40' from a lease parcel line, a minimum setback of 160' is required; to allow construction of the tower within 160' of residentially zoned property, a minimum separation buffer of 240' is required; and to allow unimproved parking and access to the site, paved parking and access is required for all towers except those located in I-2 Districts.

The staff requested that this application be held over until the next meeting.

A motion was made by Mr. Guess and seconded by Rev. Cooke to holdover this application until the meeting of January 10, 2005.

The motion carried.

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OTHER BUSINESS:

Ms. Pappas stated that at the November meeting the Board asked that the staff draft a resolution to give to Council Member Johnson regarding the absenteeism of Mr. Christian. She said the resolution had been drafted and presented it to Mr. Davitt. She said once again the staff tried to get in touch with Mr. Christian but was unsuccessful. They did speak with Rev. Johnson and let him know that this was becoming an issue. Ms. Pappas said action could be taken today or it could be deferred for a month.

After brief discussion a motion was made by Mr. Lee and seconded by Rev. Cooke to approve the resolution.

The motion carried.

There being no further business, the meeting was adjourned.

APPROVED:

/s/ Vice-Chairman of the Board

/ms