

BOARD OF ZONING ADJUSTMENT MINUTES
MEETING OF MAY 7, 2007 - 2:00 P.M.
AUDITORIUM, MOBILE GOVERNMENT PLAZA

MEMBERS PRESENT

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

MEMBERS ABSENT

Vernon Coleman

STAFF PRESENT

Frank Palombo, Planner II
Mae Sciple, Secretary II

OTHERS PRESENT

David Daughenbaugh, Urban Forestry
John Lawler, Assistant City Attorney

Chairman Cummings 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:

The minutes of the meeting of April 2, 2007, were considered for approval.

A motion was made by Mr. Davitt and seconded by Mr. Davis to approve the minutes as submitted.

The motion carried unanimously.

HOLDOVERS

#5411

(Case #ZON2007-00748)

Michelle Frazier Harris

3157 Orleans Street

South side of Orleans Street, 215'± East of Paris Avenue.

Use Variance to allow a home occupation beauty shop in a detached accessory structure on an adjacent parcel of property; the Zoning Ordinance requires a home occupation to be conducted within the business owner's primary dwelling.

Note: This application was held over from the April 2, 2007 meeting to allow the applicant time to revise the site plan.

Michelle Frazier Harris, applicant, was present and stated that she had decided to move the subject building for her business and attach it to her existing residence.

Mr. Cummings stated that if Mrs. Harris moved the building and attached it to her existing residence on the other lot, and at that point continued the operation of her one-chair beauty salon under a home occupation license, she could petition the Board to allow withdrawal of this application.

Mrs. Harris requested that her application be withdrawn.

The Board entertained a motion to accept the withdrawal of this application.

Such motion was made by Mr. Davis and seconded by Mr. Guess.

The motion carried unanimously.

PUBLIC HEARINGS:

#5414

(Case #ZON2007-01093)

Jos. A. Bank Clothiers, Inc.

9 Du Rhu Drive

West side of Du Rhu Drive, 390'± North of Dauphin Street.

Sign Variance to allow six wall signs for one tenant (business) on a multi-tenant site; only one wall sign per business is allowed on a multi-tenant site.

Doug Anderson, attorney with the law firm of Bowron, Latta and Wasden, was present on behalf of the applicant to request a Sign Variance for a men's clothing store in Legacy Village. Mr. Anderson noted that he had provided each of the members of the Board with a packet of information and pictures in this matter. He referred to the first picture which showed the existing signage: the signage that exists on the store front, the Jos. A. Bank letters on the wall, and then three additional awnings with letters on them - each of which is considered a sign - and below that behind the lamp post are two small, bronze wall plaques on each side of the entrance. The next 7-pages of the packet of information gave the detail of all the signs, and this entire sign package was submitted to the City by their contractor. Mr. Anderson also noted a copy of a fax from the Land Use Section of Urban Development stating that this sign was approved. Their sign contractor assumed that this entire package had been permitted and he went ahead and installed the signs. It was not until after the signs had been installed that he was told that the approval in the permit was only for the lettering sign in the middle above the door. Everything else below that was not permitted, and they were now requesting a variance for the other signs. Mr. Anderson said that Legacy Village was a lifestyle shopping center. It was the first of its type in Mobile, but there was a similar one at Spanish Fort. He explained that this type of development tries to bring back the old shopping atmosphere of downtown or midtown where instead of driving to a big mall, people walk up and down sidewalks and it was very pedestrian-friendly. He noted that the additional signs were at eye-level along the sidewalks so people walking through the area could see what store they were in front of. Mr. Anderson noted that

the center had no pylon sign. He referred to several other pictures showing other stores in the center, noting that Talbot's had three individual signs on their facade, but that was because they had one big store operating under three separate business licenses. The picture of the Ann Taylor Loft showed their name on the façade above the door, as well as in the window. That was a different situation, however, because it was a decal placed on the inside of the window and not on the outside, which he understood was allowed by the Ordinance. The picture of the J. Jill Women's Clothier Store also showed their name on the façade above the door, as well as in the window. Mr. Anderson pointed out that all of the stores in this center had more than one sign. It was just that some of them had it inside the window, which was in compliance. He said his point was, that visually it was the same thing. It was his opinion that all of the signs were very pretty, eye-pleasing, classy looking signs, and none of them had a negative impact on the surrounding area. Mr. Anderson asked that the applicant be allowed to keep the signs that were now in place.

There being no one else to speak in favor of this application, Mr. Cummings asked if there was anyone who wished to speak in opposition.

No one came forward in opposition.

Mr. Cummings stated that this was an upscale retail specialty type center, or "lifestyle center" as referred to by Mr. Anderson, which he thought was very nicely done. He noted that the Ordinance was written before lifestyle centers were really developed as a retail way to go. It was kind of like an outdoor mall with signs along the walls and on windows and hanging over the door fronts.

Mr. Turner stated that he had seen a number of these stores throughout the southeast, and he did not see anything to indicate that the signs for this site were any different from the signs in other developments of this type throughout the country.

Mr. Anderson said the sign package for this store was a standard sign package for the Jos. A. Bank Stores all across the country. They have a national sign company that makes the signs and sends them to the local sign contractors to install them. In Mobile, their contractor is Signs Now.

Mr. Cummings wanted to make sure he understood that when the sign package from the national office came in to Signs Now it was their standard issue package, and they did not say that it would not work for this store.

Mr. Anderson said he did not know of any additional signs that would be in their standard package. He did note in one photograph, however, that there was one sign installed that sticks out from the building that they had agreed with the City to go ahead and remove before they requested this sign variance.

Mr. Cummings said he understood that the approval of this variance would allow the two plaques affixed to the walls, the letters on the bottom of each of the three awnings, and the wall sign above the main entrance.

Mr. Anderson said that was correct.

Mr. Davitt asked if the Jos. A. Bank Clothiers decals in the windows were on the inside or the outside.

Mr. Andersons said he did not know. The City inspector asked him that question a few weeks ago, but he never checked on that. He did not recall if they were included in the citation or not, but if they were in violation and the requested Variance is denied, they would remove them.

Mr. Davitt further stated that if the decals were inside the window, they were not in violation. He said that, typically, he would not be opposed to this. His concern, however, was if they approved this variance, then Talbot's and J. Jill could come back and want to do something with their signs.

Mr. Palombo explained to the Board that when the staff receives a sign package from a national retailer, they look at the sign package and send them information as to what the Zoning Ordinance allows. In this case, Mr. Palombo said he did not know if they had received a sign package. Mr. Anderson indicated that the package had been sent, but it could have been sent with the plan review, and the Planning staff does not even look at the elevations of the plan review. They look at the site plan only.

Referring to the pictures, Mr. Cummings said it was evident that the developer wanted to differentiate one store from the other, as opposed to just leaving it up to a long strip of either brick or a combination of brick and stucco façade with everybody having a box sign. In this case they tried to use color to differentiate one store from the other, which was very attractive. It allows identity for each store, and they insisted on using the standard logos that go with these instead of a box sign or a channel sign. For example, Talbot's has what you would consider a box sign, even though it was oval in shape, whereas Jos. A. Bank has individual letters. Mr. Cummings said it was an attempt to do something new and different for Mobile that the Ordinance apparently did not address. If you include the decals on the windows, they were talking about seven signs.

Mr. Davitt asked Mr. Anderson if their store in Spanish Fort had signs on the awnings.

Mr. Anderson said they had the bronze plaques by the doors, but he was not sure about the lettering on the awnings.

Mr. Palombo said they did not have the lettering on the awnings. They had the main Jos. A. Bank sign and the brass plaques. He also noted that Spanish Fort did have a sign ordinance.

Mr. Anderson said if the Board wanted to give them some relief, but not all, they would request that they be allowed to keep the two plaques, but remove the lettering from the awnings.

After discussion a motion was made by Mr. Davitt and seconded by Mr. Turner to deny the request for a Sign Variance to allow six wall signs for one-tenant (business) on a multi-tenant site at the above referenced location, but approve a Sign Variance to allow the one large logo

sign on the building above the front entrance, and the two bronze plaques on the building on either side of the entrance. The canopy signs will have to be removed.

The motion carried unanimously.

#5415

(Case #ZON2007-01095)

Mobile Area Water and Sewer System

4725 Moffett Road

South side of Moffett Road at the South terminus of Shelton Beach Road Extension.

Use Variance to allow a water bottling facility, heavy equipment parking, and above-ground fuel storage and dispensing in a B-3, Community Business District; the Zoning Ordinance requires I-1, Light Industry District for a bottling facility, B-5, Office-Distribution District for heavy equipment parking, and I-2, Heavy Industry District with Planning Approval for above-ground fuel storage tanks with dispensing facilities.

Mr. Davitt and Mr. Turner recused from discussion and voting in this matter. Ms. Collier, a supernumerary member, voted in the place of Mr. Davitt.

Lanny Russell, architect with Zito-Russell Architects, presented this request which would allow the renovation of the abandoned Delchamps building on Moffett Road to incorporate a West Mobile headquarters for the Mobile Area Water and Sewer System (MAWSS). Mr. Russell stated that the existing building contained 42,000 square feet. MAWSS proposed to renovate the entire building, leaving about 8,000 square feet for future retail expansion and/or lease and accommodating themselves in 33,000 square feet of that facility. Mr. Russell said that for a number of years MAWSS had wanted to go into West Mobile to better serve their clients in that area. Their current headquarters was on Catherine Street. In order to do of project of this size, they had to take a number of departments and a number of administrative and field functions into the space to make it viable. Included in the 36" x 48" set of plans he submitted, Mr. Russell said there was a floor plan of the facility that shows the various departments, which would include administrative and field crews. There would be over 100 people working out of this facility to adequately serve the customers in West Mobile. MAWSS would also like to relocate its bottling facility which was currently located off the Myers Plant. They bottle water for use at different functions and public events. This facility would account for only about 12 percent of the total square footage. They would have boxes of empty bottles, plastic bottles, bottle caps, labels and full bottles of water at this facility. The number of times the facility would have deliveries was far less that what the old Delchamps had as far as deliveries by old 18-wheelers of food supplies. In that regard, this would not have very much of an impact overall in this particular function or part of the facility. This would not be considered a bottling plant as described in the Zoning Ordinance for beverages such as Coca Cola or Pepsi, which bottles millions of bottles a year. This plant would bottle about 200,000 bottles of water a year. It would be a small operation and it would be incidental to the overall facility. Mr. Russell said they were also requesting a Variance for a parking area to park their combo trucks. The existing parking lot in front of the existing building would be re-stripped, and there would be some landscaped islands added and a new façade put on the existing building. There would be a small fountain in front. They had even pushed out the driveway in front of the building to accommodate a landscaped

area to soften it and make it very aesthetically pleasing. Mr. Russell said there were three types of vehicles associated with the different departments. One was a standard pickup truck. The next was a one-ton pickup truck, some of which pull camera trailers for their video investigation. The combo truck was 35 feet long, and its primary purpose was to push a nozzle into the sewer line with water going down the sewer line to clean it out. Mr. Russell said the number of crews that would have vehicles in the parking lot amount to 86 percent of the outside crews, and of that particular percentage, about 41 percent need the combo trucks. He noted that they would not be moving dump trucks or bulldozers or anything else to this facility, which the Zoning Ordinance identifies as heavy equipment. He would not argue the fact that this may or may not be heavy equipment, but it was a diesel powered, slightly larger vehicle, and it was no noisier than an 18-wheeler. Mr. Russell noted that the parking area where these vehicles would be parked was approximately 110 feet from the nearest residence, which would be on the east side. To mitigate the sound or anything visual that might be considered a problem in conflict with the Zoning Ordinance, they would construct a six-foot high privacy fence along the entire length of the parking area and past the fuel tanks just to the north and around on the side. In addition, the grading plan submitted shows that there is a change in elevation between the new asphalt paving and the adjacent residences. Mr. Russell also pointed out that the new asphalt parking area would be in a depression adjacent to the detention pond. It was fairly-well screened from the parking lot and from Moffett Road because of its lower elevation, but at the same time it was not at an elevation higher than the residences, so they would never really see what was going on in the parking area. In addition, their landscaping would include trees at that location.

Mr. Russell said their Variance request also included an above-ground storage tank for fuel to service the various trucks they use. They were proposing two 12,000-gallon tanks, with one of them having a split tank, so it would actually be two 6,000-gallon tanks. Being a steward of water quality, and being aware of stories about contamination of the water table with underground fuel tanks, MAWSS was proposing a category of 20/85 above-ground fuel tanks. This was the safest one made, and it was approved by the fire marshal, so much so that he would allow it to be installed within 5 feet of a property line. Mr. Russell said their tanks would be located 50 feet from the property line. They had submitted information to show that the tanks were UL listed. They can stand a two-hour petroleum fire, which is a gas spill and engulfment in flames. The tanks can withstand a 30-caliber round at 100 feet. The decision to go with the above-ground tanks was an historic decision made on MAWSS's part, but it was also an environmental issue. He noted that an underground tank was allowed in a B-3 district, and they would not be opposed to going underground, but they felt they would be doing a better service to the environment by staying above ground. Mr. Russell said Charles Hyland was present and would like to speak for MAWSS on the importance of this project for them.

Charles Hyland, representing MAWSS, said he appreciated the opportunity to speak to the Board concerning their Variance request. As Mr. Russell stated, he said their primary goal was to locate themselves in a position where they can better serve their customers today and into the future. They felt they had done a good job of addressing their customers' needs from their Catherine Street location, but as the service area has continued to grow from the West, they felt they needed to be in a position to give them better response, and to also be in a position where they can address whatever needs they have, whether it be their bill or coming into their mapping and connecting department to establish new service, or address any other type of issue. Mr.

Hyland said that moving West would also give them an opportunity to put their facility on higher ground, which would allow them to better serve the area in emergency situations such as hurricanes. He noted that their location on Catherine Street was not far from Three-Mile Creek. Water from the last hurricane came up from St. Stephens Road all the way up Lambert Street where they had the entrance to their facility where their trucks enter and their fuel storage and dispensing systems were located. It actually made it difficult for some time immediately after the storm for them to be able to come and go from that facility. Having the trucks and the fuel dispensing system on higher ground was very important and was a key to making this a more viable proposal.

Mr. Hyland further stated that after they learned of the staff's recommendation for denial of the heavy equipment parking and above-ground storage tanks with dispensing facilities, they looked at the zoning map to see if there were some other parcels they could possibly consider purchasing somewhere in the western area, close to this proposed facility, where they could possibly locate the combo trucks and the vehicle dispensing area. He said there were no other B-5 or I-2 parcels within miles of this site. Most of the parcels that would allow such a use were either down in the south part of the city or up in the north part of the city along the Interstate and close to the Prichard line. Mr. Hyland said if they had to try to purchase property, he was not sure they could find property zoned to accommodate the services proposed for their customers. He felt that in itself would be a hardship.

Mr. Hyland further stated that MAWSS felt they would be good for this neighborhood. He noted that in April of 2006 they put a temporary payment office in a very small storefront in this shopping center, and since that time the interest and the customers utilizing that payment office had increased. They were now averaging about 5,300 transactions a month, and 4,300 of those were actually walk-in customers. Since these facilities had been so well received, MAWSS felt the additional facilities they proposed to locate on this site would also be well received. Mr. Hyland thanked the Board for its consideration today, and offered to answer any questions.

Mr. Cummings asked a question about the height of the building.

Mr. Russell said the height was shown on the grading plans submitted with the entire set of plans. He also referred to photo #8, which was shot between the two residences on the east side. He pointed out that the woods are where the parking area would be, and way in the background you could barely see the building.

Mr. Guess asked if he understood that the wooded area would be cleared for the parking area.

Mr. Russell explained that the wooded area currently extends from the bottom of the detention pond on the south, all the way up to the bank. The section that would be taken out for the pavement was just in the pavement area. Everything on the detention pond would stay, and new landscaping would be created on the east side, just to the east of the privacy fence.

Mr. Cummings asked what the drop in elevation was from the east side parking area to the existing parking area on the east side of the existing building to the bottom of the new asphalt proposed for parking.

Mr. Russell said there was a 25-30 foot drop in elevation. He noted that the existing building was placed on a lot of fill. As far as the vehicular parking for the facility, he said there was no other place to put it. They felt it was better to place it in the depression, sort of out of sight. It would also have an 8-foot chain link fence around it for security.

Mr. Cummings asked if the area to the north of the proposed asphalt parking area would remain wooded, as well as the area south of that, which was now the detention pond.

Mr. Russell said that was correct. He further stated that from north on Moffett Road looking south, the driveway starts to slope down, and from the existing parking area down, there was a difference of 20-25 feet. It was in a depressed area, which was shown on the grading plan submitted. If it would affect anything, it would be the first three house on Forest Cove. Mr. Russell said they were trying to be good neighbors, and they had done studies with regard to the lighting, which indicated that they would not be putting any light on the adjacent property. One study showed there would be less than .1 foot candles after they light the parking lot.

With regard to the bottling facility, Mr. Cummings noted that it would not be a large manufacturing type facility. It would be incidental to the operation of the business. The staff recommended approval of that part of the Variance. Mr. Cummings asked if anyone on the Board had any comments, concerns or questions about this particular aspect of the Variance request.

Mr. Guess asked if the bottling was an existing service they were doing at another location.

Mr. Russell said MAWSS had a bottling facility currently housed in the Myers Plant in Mobile county west of the city line. He noted that "Bienville Water" was the name of their bottled water, which was the original name of the original water company for Mobile.

Mr. Cummings pointed out that this site was currently zoned B-3, which would allow a gasoline station with below-ground tanks and above-ground dispensing facilities. The applicant, however, wanted to have above-ground tanks, which would require a Variance.

Mr. Watkins asked what the preference was in having an above-ground tank as opposed to an under-ground tank. Also, if they had a 10,000 gallon tank above ground, he asked how tall the tank would be.

Mr. Russell said a 10,000-gallon tank was approximately 8 feet in diameter and would sit on a little curved concrete support that was about a foot high, so the tank would be about 18 inches above the ground.

Mr. Cummings pointed out that the height of the tank at its peak would be 9 ½ feet or so, but it would still be 10-12 feet below surface grade in terms of the overall parking lot. Mr. Cummings further commented that he understood the concern of MAWSS about being a good steward and trying to keep the tanks above ground, however, he asked Mr. Russell if he thought the

neighborhood to the east would feel better about a tank above ground as opposed to below ground.

Mr. Russell said they probably would. MAWSS preferred the above-ground tanks, but would consider going under ground if necessary, as long as the soil conditions, etc., allowed that.

Mr. Guess commented that he was familiar with USA's operations and he knew first-hand that above-ground tanks were easier to maintain and monitor, and probably easier to maintain services as such. He was concerned, however, about the location of the tanks to the property line, and the possibility of vandalism.

Mr. Russell noted that this was a fleet fueling dispensing station. The gas pumps could not be started without a card or a special code that is entered at the fuel dispensing location. So vandalism or any unauthorized use was not possible. In addition, Mr. Russell said some of the other safeguards included sheer cut-off valves and what-not in case of any type of accident, although there would be a lot of pipe bollards and truck bollards around the pumps and the tanks. The tanks would be screened from the neighbors with a privacy fence, and for security they were proposing an 8-foot high chain link fence. He also noted that a 30-caliber bullet would not penetrate the inner tank at 100 feet.

With regard to the pickup trucks with large trailers, and the combo trucks with the pipe hanging off of it, which 35 feet long, Mr. Cummings said that was not as long as an 18-wheeler that made deliveries to the Delchamps store when it was in operation.

Mr. Russell said that was correct. He also noted that the combination pickup truck and camera trailers were 40 feet long.

It was Mr. Cummings' opinion that if MAWSS were not allowed to operate this facility with the trucks mentioned, it would cause a hardship for them. Frankly, however, he said that was MAWSS's problem. This Board had to concern itself with the hardship of the property itself. In that regard, Mr. Cummings stated that since this shipping center was developed in 1986, retail had come and gone. Things had changed tremendously in the City of Mobile, and Delchamps was no more. He also pointed out that there was an operating grocery store across the street from this site, and now it was more of a neighborhood type facility as opposed to a chain. The prevalence of Wal Mart and the Super Wal Mart and Super Target and Sams had changed the way people effectively go for their retail. From his experience in the retail section of the City in the past, Mr. Cummings felt that the days when this shopping center could be viable down the road as a retail shopping center had come and gone. In that sense, he felt that would be the hardship for this property. He did not foresee any 40,000-square foot users for this property, or for the drug store, which was about 10,000 square feet.

Mr. Russell commented that MAWSS had actually experienced difficulty in trying to lease out this space. At one time there was a Rite Aid in that 9,000-square foot space. He said that it may be that it has to be broken down into smaller store fronts.

Mr. Guess asked where the combo trucks were currently parked.

Mr. Hyland said the combo trucks were parked at their Catherine Street facility.

Mr. Guess asked what would prevent MAWSS from continuing to park the trucks there.

Mr. Hyland said they could continue to store the trucks on Catherine Street, but they were trying to relocate some of them further west to be closer to the western part of their service area. He said they had actually looked at relocating two whole departments that were currently in a small annex building instead of in their business office location. They were outgrowing the space, so they were considering moving those entire departments, including the combo trucks and the pickup trucks with the camera units.

Mr. Russell further commented that it made good business sense to try to separate some of their assets and put them on higher ground in the event of hurricanes like Katrina, when they had five feet of water just to the north of them.

Mr. Hyland referred to several photos showing the entrance to the yard where their vehicles and equipment were currently stored, and where the fuel dispensing system was located, as well as their laydown yard, and then Three Mile Creek. The photos showed the results of a 10- to 11-foot storm surge. Mr. Hyland said they were trying to make sure they have some resources on higher ground so they can address their customers' needs in emergencies.

Mr. Russell stated that Mr. Cummings' comment about the sustainability of a retail center at this location was a valid one. If MAWSS were allowed to develop this property, he felt confident that they would be there for awhile.

Mr. Guess asked if the residents adjacent to this property had received notice of the Variance request.

Mr. Hoffman said that all residents within 300 feet of this site should have received notice.

Mr. Guess asked if the staff had received any responses from any of the residents who were notified.

Mr. Whistler no, the staff had not had any questions or comments from any of the residents.

Mr. Cummings noted that there was no one from the neighborhood, either to the east or to the south, present to speak in favor or against this application.

There being no further discussion, a motion was made by Mr. Guess and seconded by Mr. Davis to approve this request for a Use Variance to allow a water bottling facility, heavy equipment parking, and above-ground fuel storage and dispensing in a B-3, Community Business District, at the above referenced location.

In further discussion Ms. Collier asked if some of the trees on the east side of the site, especially large trees, would be retained. She was concerned about the residences adjoining this site on Forest Cove Drive.

Mr. Russell said most of the trees in that area were Pine trees. He referred to their landscape plan which showed that they would re-plant the buffer area on the East side with Willow Oaks and would sod that area as a landscaped area from the property line to the privacy fence, which was a distance of 21 feet. He also referred the Board to photos #7 and #8.

Mr. Daughenbaugh, representing Urban Forestry, stated that the staff would feel a lot more comfortable having a specific condition for the evergreen buffer on the East side of the new parking lot.

Mr. Cummings pointed out that their site plan showed the planting of a very dense strip of Willow Oaks, 10-12 feet, 3 ½ inch caliper, along the fence for 21 feet, and asked if that would not be sufficient to satisfy the concerns of a vegetative buffer there.

Mr. Daughenbaugh said it would be sufficient for a vegetative buffer, but the staff would also recommend going with an evergreen type of tree, which the applicant could coordinate with Urban Forestry.

Mr. Cummings said he did not think that would be a problem, because he felt the intent of the applicant when he drew up the plans was to provide as much buffer as possible, whether it was Willow Oak or whatever.

Mr. Russell commented that during their pre-development meeting with the City they were directed to observe the landscape ordinance with respect to that particular area, and the landscape architect, in concert with the landscape requirements of the Zoning Ordinance, established that particular design which they felt was in keeping with the Ordinance for landscaping. Mr. Russell said if necessary, they would be happy to change the species or try to get the thicker, quicker buffer.

After discussion Mr. Guess amended his motion to grant the Variance as requested, subject to coordination with Urban Forestry as relates to the greenspace and buffer areas.

Mr. Davis seconded the amended motion.

In further discussion Mr. Roberts, with Traffic Engineering, asked if the applicant could provide them with a parking plan for the site.

Referring to the overall site plan, Mr. Cummings pointed out that there were notes on the plan indicating that the entire parking area was to be resealed and re-stripped. They were also going to put in some additional landscaped islands which would necessitate the parking lot layout anyway.

Mr. Roberts said that was fine.

Mr. Guess asked if the access for the large vehicles would be off of Forest Hill Drive or off of Moffett Road.

Mr. Russell said if he was coming from the south and was coming up Forest Hill Drive, he would likely come in from Forest Hill Drive and go behind the center – which was where the 18-wheelers used to make their deliveries - and then come around and go into the lot. That would be an alternative to going up to Moffett Road, waiting at the traffic light, and then coming to the east and down from that direction.

Mr. Roberts said that would be acceptable with Traffic Engineering.

Mr. Daughenbaugh said he wanted to follow up with one thing he failed to mention earlier regarding the bottling facility. He said he did not have an opportunity to see the landscape plan proposed for the project. He asked if they could consider some frontage trees, and, since there were going to be landscape islands, if they could also consider some parking lot required trees to break up the asphalt. He felt this would be reasonable based on previous applications, and also parking lot trees as per the Zoning Ordinance.

Mr. Russell stated that this was an existing site that would have new landscape islands in the existing parking lot before it is resealed and re-stripped. The City committed in the pre-development meeting that the only required landscaping above and beyond what they were already planning would be to landscape to the east of the new paving area.

Mr. Daughenbaugh said that was correct based upon the interpretation of the Zoning Ordinance, but he said this Board had the jurisdiction and authority to go beyond that. He also pointed out that across the street on Moffett Road there was a sign variance granted within the last couple years that did require frontage trees. Live Oaks were to be planted on the shopping center across the street, so there was a precedent.

With about 700 feet of frontage on Moffett Road, Mr. Cummings asked how many trees would be required.

Mr. Daughenbaugh said 18 to 20 trees would be required.

Mr. Cummings noted that there was only about 30 feet of frontage on Forest Hill Drive, and the development of this shopping center pre-dated the landscape ordinance.

Mr. Daughenbaugh said that was correct. The landscape ordinance went into effect in 1992.

Mr. Cummings noted that the landscape plan submitted showed new islands at each end of the parking rows, and he understood that each one of those islands would have a tree in it.

Mr. Russell said that was correct. He said they were not concentrating necessarily on trees, because at the time of the pre-development meeting they were told they would have to comply with the landscape ordinance only to the east of the new asphalt paving area, because they already had a huge buffer to the south and to the north, and then the embankment to the west just

basically hid all of that anyway. They decided, though, that they wanted to make this as attractive as possible, and even though it was not required, they added landscape islands and trees. In addition, they were going to re-stripe and resurface the entire front parking lot, as well as push out the entry at the front of the building to create a soft landscape opportunity there, and also provide a fountain in front of the building. Mr. Russell said the elevation of the building was shown in the packet submitted.

Mr. Cummings said he felt that the addition of the landscape islands within the parking lot and the plans to reseal and re-stripe was certainly an attempt to go above and beyond the requirements of the ordinance, but he thought Mr. Daughenbaugh was referring to the addition that would be required if the site would be developed in terms of frontage trees along Moffett Road.

Mr. Russell said they were told they did not need to provide frontage trees.

Mr. Cummings said he understood, but asked if the applicant would be willing to do that.

After conferring with Mr. Hyland, Mr. Russell said they would agree to provide the frontage trees if necessary.

Mr. Cummings asked Mr. Guess if he would amend his motion to require that compliance with the landscape and tree planting ordinance as it pertains to frontage trees be applied in this case.

Mr. Guess agreed to amend his motion as stated by Mr. Cummings.

Mr. Davis seconded the amended motion.

After further discussion, Mr. Cummings called for a vote on the motion.

The motion carried unanimously.

#5416/4237/4096

(Case #ZON2007-01097)

Joe Vallee'

21 Edgefield Road

East side of Edgefield Road, 270'± North of Marquette Drive.

Side Yard Setback and Combined Side Yard Variance to allow a garage/den/breakfast room/covered porch/bedrooms addition to within 2" of a side property line with combined side yards of 9.9' for a single-family residential dwelling; the Zoning Ordinance requires a minimum side yard setback of 8' and combined side yards of 20' in an R-1, Single-Family Residential District.

Don Williams, Williams Engineering, was present representing the applicant. Mr. Vallee' was also present. Mr. Williams stated that in 1990 a Side Yard Variance was granted for this property to allow an open carport to within 2" of a side property line with combined side yards of 9.9 feet. The carport has a flat roof, but it has a type of a mansard effect to it. The applicant is

requesting a Variance to enclose the carport at the first floor level, come forward with a garage in front, also two inches from the property line, go to the rear and create a den to the rear of that, also two inches from the property line, and then go upward with a second floor. The addition would look like a traditional two-storey situation, although it would be indented back several feet so that it retains the mansard look of the existing house when viewed from the street. It would have two dormers to the side and one to the rear. It would allow light and egress from the two bedrooms upstairs. The addition would be just a bit wider and a little taller on the left side, but would still be underneath the ridgeline that is there now. Mr. Williams pointed out that the adjacent golf course extended not only behind this residence, but there was also a section on the side that was 50 feet at the closest point that splays out more to 100 feet towards the back of this lot. This was a wooded area. He said that Mr. Vallee' had spoken with a representative of Spring Hill College about the possibility of purchasing a 10-foot wide strip of land on the side to allow him not to have to come back to a buffer situation here. The college, however, was not interested, and the applicant felt that they wanted to keep that strip of land as a buffer situation from the golf course to the road and from the people. This Variance request, therefore, was being made to allow the applicant to build two inches from the property line to be able to construct this addition to more adequately provide the needed expansion for his family. Mr. Williams noted that they would not be exceeding the allowed 35 percent coverage.

There being no one else present to speak for the application, Mr. Cummings asked if there was anyone who wished to speak in opposition.

Sally Morrisette, a resident of 20 Edgefield Road, stated that she and her husband built their home in 1960. In the late 1960s Spring Hill College developed the area on the east side of Edgefield Road to what is now Dauphin Street, including Marquette Drive. The side setback of the section was only 10 feet, but the original sections of Yester Oaks have 20-foot side setbacks. Ms. Morrisette said they were opposed to this variance. The existing carport is a one-storey, flat roof supported by two columns matching the entrance porch of the home. It was open on three sides and set back from the front of the house. The proposed massive two-storey addition attached to a one-storey house would extend approximately 60 feet deep, beginning about 15 feet in front of the house. She said the entire addition would run two inches from the property line, and would counter the real purpose of having a side setback variance. It would be opposed to the present restrictions and would be entirely out of character with the neighborhood. Ms. Morrisette said they also felt that this setback precedence would negatively effect the neighborhood as a whole, and respectfully requested that the variance request be denied, as recommended by the staff.

Mr. Cummings noted that Ms. Morrisette referred to restrictions, and asked if there were any restrictive covenants applicable to this subdivision that are of record.

Ms. Morrisette said their setback was 45 feet from the street, and 20 feet from each side line, and she thought they were 10 feet from the rear property line. They bought their property in 1958, just shortly after the second section of the subdivision was opened, and this section of the subdivision was opened at a later date. With regard to the wooded area next to this property, Ms. Morrisette said that was reserved by Spring Hill College for an entrance to the golf course in case they ever needed it. That was reserved prior to Dauphin Street being built. She questioned

whether another entrance to the golf course could be made at that location if this variance was allowed for the construction of a house two inches from the side line.

Mr. Guess asked if the second section of Yester Oaks had the same covenants as the first section.

Ms. Morrisette said the first and second sections had the same covenants. This would be the third, or possibly the fourth or fifth. She was not sure, because Edgefield Road extended all the way to Claridge Road, but now Dauphin Street cuts it in half.

Jerry Curran, attorney for Spring Hill College, and Rhonda Shirazi, Vice-President of Finance for the college, were also present. Mr. Curran stated that the college owned the property immediately north of the applicant's property, and of course owned the Spring Hill College golf course. They were concerned that if this substantial house addition is allowed to be built within two inches of the property line, that in the future if the college wanted to open up this exit to Edgefield Road the residents of that house would be at risk. Mr. Curran said Spring Hill College owns property that runs from Dauphin Street all the way to Old Shell Road, but the only exit to the west would be on Dauphin Street, east of the end of Marquette Drive. The next exit would be on the Avenue of the Oaks on Old Shell Road. This one little 50-foot strip is the only other access they would have to the west. Mr. Curran noted that the staff, in their report, erroneously stated that: "This is a thickly wooded portion of the golf course and has approximately 50 feet of frontage along Edgefield Road. The argument is made that this will presumably always remain a wooded, undeveloped part of the golf course and will never allow residential construction within 50 feet of the applicant's north property line." Mr. Curran said Spring Hill College's property was one of their main endowments, and they have from time to time, reluctantly sold some property – not in recent years – and had also leased property to obtain money to help with their development. He said they did not have any immediate plans to do anything with the golf course, but it was wrong to assume that this would not change. Mr. Curran contended that there was enough property in the back yard of the applicant's house for their addition. The college had great concern about what could happen if they ever had to develop the 50' strip of land in question, and felt that the requirements of the Subdivision Regulations should be upheld. Further, in reference to the statement that the college refused to sell a 10-foot strip along the side of their property, Mr. Curran said he thought the college would definitely refuse to sell if they were asked to do so; however, he had talked to with the president and two vice-presidents of the college and no one had any recollection of anyone asking to buy the 10-foot strip referred to.

There being no one else to speak in opposition, Mr. Cummings asked Mr. Williams if he would like to address any of the comments made.

Mr. Williams stated that the applicant already had a 10-foot side yard on their other side. He said he had worked on some of the house on Marquette Drive and most of those houses had the normal 10-foot setbacks on the side yard. He said he was not familiar with the earlier covenants of the neighborhood, but he was sure that in this area there were a lot of houses with 10-foot side yards. None, however, were two inches from the property line. Mr. Williams further stated that the precedent had already been set, as the 1990 approval by this Board allowed construction of a carport with a roof over the top of it. The roof came within two inches of the property line. The

approval of this variance would allow the applicant to continue the two-inch setback that this Board had already approved.

There being no one else to speak, the Board went into deliberation session.

Mr. Cummings asked what the right-of-way width was on Edgefield Road.

Mr. Palombo said the right-of-way was 50 feet.

Mr. Cummings said it occurred to him that if in the future the college felt like having the golf course was no longer in its best financial interests, they would have the right to develop this property. They could re-arrange the golf course and perhaps have a nine-hole course and give up nine holes, and the only way into that property in this vicinity would be through the 50 feet of frontage on Edgefield Road. If that should occur, and this variance is approved, you would have a permanent structure within two inches of a 50-foot right-of-way, which at that point would probably be uncomfortably close to a well-traveled road.

Mr. Davitt said he was not sure how the Board back in 1990 approved construction two inches off of a property line. Possibly it was because it was just a carport, but this application was for a major expansion for a house and he was not in favor of approving this.

Mr. Guess commented that it looked to him like there was sufficient property at the rear of the house to construct something of a similar size and nature. He also questioned how the 1990 variance was approved.

There being no further discussion, Mr. Cummings called for a motion.

A motion was made by Mr. Davitt and seconded by Mr. Guess to deny this request for Side Yard Setback and Combined Side Yard Variances to allow a garage/den/breakfast room/covered porch/bedrooms addition to within 2" of a side property line with combined side yards of 9.9' for a single-family residential dwelling at the above referenced location.

The motion carried unanimously.

#5417

(Case #ZON2007-01098)

Melanie L. Friend

51 Kenneth Street

West side of Kenneth Street, 100' ± South of Old Shell Road.

Front Yard Setback and Rear Setback Variances to allow the construction of an arbor within 4.7' of a front property line and a covered porch within 20' of a front property line, and two rear porches within 2' and 6" respectively of a rear property line in a B-2, Neighborhood Business District; the Zoning Ordinance requires a 25' front setback and a zero or 5' ± rear setback in a B-2, Neighborhood Business District.

Ed Kilday, a partner in a contracting business called Great Expectations, was present on behalf of the applicant. Mr. Kilday stated that this site was behind the old Nixon Drug/Grocery Store on the north side. The property on the south was actually a vacant lot except for an Alabama Power Company sub station placed on the very back of the lot, which had a chain link fence around it. Mr. Kilday said the goal of the property owner was to take this pretty much abandoned, very run down property and beautify it and bring it up to the standards of both the neighborhood that of a business property. Mr. Kilday said he and his partner came in about half way through this project. Permits had already been taken out on some things, and it was done in several stages. There were three issues in this variance request, the first being the arbor, which was located at the very front of the property and went to the sidewalk. This was an unused section of land that was about 20-25 feet away from the back wall of the old Nixon Drugs, which was a very unsightly wall. Mr. Kilday said the arbor was for aesthetics only, and was not attached to the building in any way. The posts holding the arbor up were no bigger than the actual posts on the sides of the property for the fence, which was a see-through fence. He said the inspector who came out to check on the fence said the problem with an arbor was visual obstruction from the street. Mr. Kilday noted that the plans and pictures submitted indicated that the arbor in no way, either from the street or from the property owner's parking lot, does this arbor obstruct or block the view of any traffic coming or going. Again, the purpose of the arbor was for aesthetics and to provide shade over a small patio.

Mr. Kilday said the second issue was the roof structure above the front door. He explained that there was an old rotten flat roof section there, and this new structure over the door provides shade and a better front entrance to the building. From conversations with the inspectors, he said they were under the impression that the 25-foot variance was for the fence and things of that nature. He said the roof structure did not go past an existing part of the building that already juts out. They did that purposely to keep with the aesthetics of the building, and so they would not make a monstrosity of the roof structure, but still provide access as far as a shaded area for people to come in, including a ramp. He said there were about 2 ½ to 3 feet, but were not past the existing roof structure. They would like to put a commercial grade black tin roof on the building and completely trim it out. Regarding the two rear porches, Mr. Kilday said their architect looked at their plans and said the structures complied with the setbacks. The Zoning Department then reviewed it, and it was passed. He said they did get a permit on just that section, and did not understand why this was in the variance request today.

For clarification, Mr. Cummings said he understood the roof structure would not extend past the existing east end of the existing building.

Mr. Kilday said that was correct.

Regarding the arbor, Mr. Cummings said that, if it were allowed, it would be behind the building that currently sits on Lot 3 that fronts on the corner of Old Shell Road and Kenneth Street. It would not jut out to the east any more than the existing building that is not even on the applicant's property.

Mr. Kilday said that was correct.

Mr. Cummings asked if there was anyone present who wished to speak in favor of this request.

Terry Butts stated that he was Ed Kilday's partner. With regard to the fence, Mr. Butts said they had a permit for it, but did not know the property was zoned commercial, so they brought the fence back. While the inspector was there regarding the fence, Mr. Butts said they showed him the arbor. He then came down and talked to Mr. Robinson and Mr. Guy in Permitting and they said they could go ahead with the arbor. Mr. Butts said it was not until Mr. Shirazi came to inspect the roof structure that this all came about.

Melanie Friend, applicant, was also present in this matter. Ms. Friend said she was trying to take a very ugly piece of property and enhance it and make it attractive. Ever since she had moved onto the property, she said the neighbors had been thanking her for improving the property. They told her that before she purchased it there were drug deals in the parking lot and there was an abandoned vehicle on the site. She said her goal was to enhance the property.

Mr. Cummings asked if there was anyone present who wished to speak in opposition to the request?

No one came forward.

Mr. Cummings asked if anyone on the Board had any questions for the applicant or her contractors.

Mr. Davitt asked if he understood correctly that this variance was for the arbor and then almost an in-line extension for the covered porch.

Mr. Butts said that was correct.

Ms. Friend commented that they were allowed to finish the landscaping, so there were actually some plants there.

Mr. Cumming noted a grassy area, about 3 feet from the curb to the sidewalk, along Kenneth Street, and asked the applicant if she planned on putting any trees there.

Ms. Friend pointed out plantings along the south fence line, and a grassy area along the front of where the arbor was with some miniature Gardenias mixed in. Along the L-shaped inner part along the parking lot, she had planted some Yew trees. There was also some Holly, that goes along the back of the building as well, already existing. Everything else was tiny little plants.

One of the contractors added that there were six Japanese Yews, Miniature Gardinias, and some Heavenly Bamboo. Two of the trees were actually existing. The Japanese Yews were right up next to the building.

Mr. Cummings commented that from the pictures, as well as what he had seen as he had driven by the site from time to time, they were making some nice visual improvements to an otherwise drab and dreary looking corner. There were two issues. One was a variance request to allow the

roof line to be extended along with the columns support on the east side of the building, the end of which would be just slightly west of the current east end of the building. The second issue was to allow the arbor.

Mr. Davitt asked about the porches at the rear.

Mr. Cummings added that yes, a third issue was the two overhangs over the rear doors of the porches of the building. He noted that there was a salon to the west and two structures. He asked how this would affect that property.

Mr. Whistler said the northernmost one actually extends beyond the property line onto the property to the west. He could not quite tell on the southern one, but the eaves on the northern one definitely project onto the adjacent property.

Mr. Cummings said the Board could not permit an encroachment onto someone else's property.

One of the contractors said that the architect who came out and looked at the survey plans did not think that either one of those actually extended past the property line.

Mr. Cummings asked if there was a concrete stoop at the back.

One of the contractors said there was.

Mr. Cummings said it appeared that the southernmost concrete pad extends across the property line to the west. He asked Mr. Whistler if he had looked at this.

Mr. Whistler said yes. He believed that the dotted line would be the eave overhang on the northernmost one. This was just a small-scale drawing so it was hard to tell, but it certainly appeared to him that there was an encroachment.

Mr. Cummings emphasized that under no circumstances could this Board allow encroachment onto someone else's property. If relief were granted, the applicant may have to rearrange the structure in the rear on the west side of the building so there would be no encroachment.

The contractors said they understood.

Mr. Cummings asked if there were any further questions or comments.

With regard to the arbor, Mr. Guess said the Board had allowed this in the past, specifically at The Pillars. The extension of the roof line on the east side seemed to him to be a hardship. Mr. Guess said he had a question, however, regarding the overhangs on the two porches at the rear.

Mr. Davitt said he also had a question about the overhangs on the rear, and asked if they served any purpose other than a shelter for someone who walks out the back door.

Ms. Friend stated that she took her inventory in and out of the back doors of the structure, and this would give her some protection when it rains.

One of the contractors said it would also protect her property because it was a little lower and the water goes up underneath those doors. He said they had had some water issues with this building.

Mr. Cummings asked if there was any other method of construction, such as a canvas or metal awning, that would serve the purpose and yet would not have a column there attached to the ground.

One of the contractors said they could get rid of the columns and cantilever it and just put tin on it.

Mr. Cummings said something like that would serve the purpose of giving some shelter, shifting the direction of the water as it comes off the roof and falls off the back of the building, and yet it would not be attached to the ground in a permanent fashion.

After discussion a motion was made by Mr. Guess and seconded by Mr. Davitt to approve this request for a Front Yard Setback Variance to allow the construction of an arbor within 4.7' of a front property line and a covered porch within 20' of a front property line in a B-2, Neighborhood Business District at the above referenced location. The request for a Rear Yard Setback Variance at this location was also approved for the two rear porches, minus the columns, within 2' and 6" respectively of a rear property line in a B-2, Neighborhood Business District at the above referenced location.

Mr. Cummings asked about any tree requirements.

Mr. Daughenbaugh said that with the arbor being approved, there would not be a whole lot of space for any trees.

There being no further discussion, Mr. Cummings called for the vote.

The motion carried unanimously.

OTHER BUSINESS

There being no further business, the meeting was adjourned.

APPROVED: June 4, 2007

Reid Cummings, Chairman

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