

BOARD OF ZONING ADJUSTMENT MINUTES
MEETING OF MARCH 6, 2012 - 2:00 P.M.
MOBILE GOVERNMENT PLAZA, MULTI-PURPOSE ROOM

MEMBERS PRESENT

William Guess, Chairman
Sanford Davis
Jeremy Milling
J. Tyler Turner*
*supernumerary member

MEMBERS ABSENT

Vernon Coleman, Vice-Chairman
Adam Metcalfe
Russell Reilly*

STAFF PRESENT

Frank Palombo, Planner II
Caldwell Whistler, Planner I
Sondi Galanti, Secretary I

OTHERS PRESENT

John Lawler, City Attorney
Butch Ladner, Traffic Engineering
Gerard McCants, Urban Forestry
DC Billy Roach, Fire & Rescue

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

ROLL CALL

✓	William Guess, Chairman
✗	Vernon Coleman, Vice-Chairman
✓	Sanford Davis
✗	Adam Metcalfe
✓	Jeremy B. Milling
✗	Russell Reilly
✓	J. Tyler Turner

CALL TO ORDER:

Chairman Guess advised all in attendance as to the policies and procedures of the Board of Zoning Adjustment. He noted the number of members present constituted a quorum. He advised that it would require all four members to vote in the affirmative to approve any variance and then called the meeting to order.

HOLDOVERS:

#5725

(Case #ZON2011-02806)

Zion Baptist Church

2514 Halls Mill Road

(Northwest corner of Halls Mill Road and Pollard Lane).

March 6, 2012
Board of Zoning Adjustment

Surfacing, Access and Maneuvering, and Parking Ratio Variance to allow a church with a grass parking area, no designated parking spaces, and a 10-foot wide asphalt drive in an R-1, Single-Family Residential District; the Zoning Ordinance requires designated parking spaces equal to one space per four seats surfaced with asphalt or concrete, with two-way drive aisles a minimum width of 24 feet for a church in an R-1, Single-Family Residential District.

The Chair announced the matter, advising it had been recommended for denial.

Mr. Palombo stated that the applicant withdrew their Planning Commission application and also told him that they were going to withdraw this application. He further stated that they were not present. He recommended that the Board vote to deny the application.

The Chair asked if there was anyone present to speak in favor or in opposition to the matter. Hearing none, he opened the matter for a motion.

A motion was made by Mr. Milling with second by Mr. Davis to deny the above referenced request.

The motion carried unanimously.

#5733

(Case #ZON2012-00004)

American Family Care

5235 Rangeline Service Road South

(South side of Rangeline Road South, 160'± East of Halls Mill Road).

Sign Variance to allow three additional wall signs for a tenant and two additional wall signs for a corner tenant in a group business site in a B-3, Community Business District; the Zoning Ordinance allows one wall sign per tenant or one wall sign per street frontage for a corner tenant and one freestanding sign for the development on a group business site in a B-3, Community Business District.

The Chair announced the matter, advising that both he and Mr. Turner would have to recuse themselves for the matter so the board does not have a quorum for a vote.

A motion was made by Mr. Guess with second by Mr. Davis to holdover the above referenced request due to a failure of quorum.

The motion carried unanimously.

PUBLIC HEARINGS:

#5734

(Case #ZON2012-00384)

American Family Care

535 Schillinger Road

(Southeast corner of Schillinger Road and Thomas Road).

March 6, 2012
Board of Zoning Adjustment

Sign Variance to allow three additional wall signs per tenant on a group business site in a B-3, Community Business District; the Zoning Ordinance allows one wall sign per tenant and one freestanding sign for the development on a group business site in a B-3, Community Business District.

The Chair announced the matter, advising that both he and Mr. Turner would have to recuse themselves for the matter so the board does not have a quorum for a vote.

A motion was made by Mr. Guess with second by Mr. Davis to holdover the above referenced request due to no quorum.

The motion carried unanimously.

#5735

(Case #ZON2012-00392)

American Family Care

900 Montlimar Drive

(West side of Montlimar Drive, 615'± South of Airport Boulevard).

Sign Variance to allow wall sign for a single business that exceeds 30% of the usable wall area in a B-3, Community Business District; the Zoning Ordinance limits the size of wall signs to no more than 30% of the usable wall area in a B-3, Community Business District.

The Chair announced the matter, advising that both he and Mr. Turner would have to recuse themselves for the matter so the board does not have a quorum for a vote.

A motion was made by Mr. Guess with second by Mr. Davis to holdover the above referenced request due to a failure of quorum.

The motion carried unanimously.

#5736

(Case #ZON2012-00401)

Robert V. Kelly

7212 L and N Circle

(North side of L and N Circle, 500'± West of Smith Street).

Use Variance to allow a mobile home as second dwelling unit in a R-1, Single-Family Residential District; the Zoning Ordinance requires a minimum zoning of R-2, Two-Family Residential District with Planning Commission Approval to allow two dwelling units (with one being a mobile home) in an R-1, Single-Family Residential District.

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

The following people spoke in favor of the matter:

- 1) Robert V. Kelly, 7212 L and N Circle Road, Theodore, AL, spoke on his own behalf, and
- 2) Glenda Campbell, 7212 L and N Circle Road, Theodore, AL, spoke on her own behalf.

March 6, 2012
Board of Zoning Adjustment

They made the following points in support of the application:

- The older home that Mr. Kelly had was in poor condition, so he wanted to replace it with a mobile home;
- The mobile home was purchased from a lady in a mobile home park, and they only had 21 days to move it from the park;
- Mr. Kelly was in the hospital when it had to be moved, so a friend moved it for him;
- They knew that the area had been annexed by the City, but they weren't aware of the ordinances.

The Chair asked if there were any questions from the Board. Hearing none, he asked if there were those present in opposition to the matter and opened the floor to their comments. Hearing none and after discussion by the Board and staff, he opened the matter for a motion.

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

- 1) the submission and approval of a demolition permit for the existing dwelling;**
- 2) the submission and approval of an after the fact building permit for the mobile home; and,**
- 3) compliance with all other codes and ordinances.**

The motion carried unanimously.

#5737

(Case #ZON2012-00403)

Ian Thorneycroft

21 Hillwood Road

(East side of Hillwood Road, 600'± South of Old Shell Road).

Side Yard Setback Variance to allow necessary mechanical equipment within 4' of a side property line in an R-1, Single-Family Residential District; the Zoning Ordinance allows necessary mechanical equipment to project not more than 2' into any yard R-1, Single-Family Residential District, in this case no closer than 6' to the side property line.

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

The following people spoke in favor of the matter:

- 1) Frank Dagley, surveyor, 717 Executive Park Drive, Mobile, AL, spoke on behalf of the applicant, and,
- 2) B. J. Lyon, attorney, 9 Hillwood Road, Mobile, AL, spoke on behalf of the applicant;
- 3) Mark Colglazier, homebuilder, 1602 Stonehedge Drive, Mobile, AL, spoke on behalf of the applicant; and,
- 4) Dr. Ian Thorneycroft, 21 Hillwood Road, spoke on his own behalf.

They made the following points in favor of the application:

March 6, 2012
Board of Zoning Adjustment

- The application concerns air conditioners that were put in the 8' setback area;
- The air conditioners were on the site plan approved by the building department;
- Air conditioners are allowed to project 2' into the setback;
- The air conditioners being used have a 65 decibel rating;
- Less efficient units that are the correct size to fit into this space are rated higher at 70 decibels;
- They are unable to move the air conditioners the 2.5' and height required;
- They realize there is an intent to the code, but current air conditioners are smaller in size than earlier models of the same size;
- The neighbors are present to complain – there are court cases pending to resolve those complaints;
- The only issue to be brought before the Board is the location of the air conditioners;
- The site plans showed the units and were approved by the building inspector, Kevin O' Shea;
- The three units are drawn in on the plans that were approved on the main house, and the fourth unit shows that it is attached to the pool guest house;
- There is a back privacy fence on this site;
- The plans that were submitted contain 26 pages – he submitted them to the City for review/approval and was issued a building permit;
- Per his A/C man, the refrigeration lines are at their maximum run now – they can't be placed at any other location to get them operating without substantial expense;
- Approximately 3' from the fourth unit, there is a drainage unit with a mancover that they were required to install so the units can't be moved in that direction.
- Dr. Thorneycroft went through a painful process through the Planning Commission per the City's requirement to combine two lots together;
- Dr. Thorneycroft followed the rules - if the City told them they could do something, they did it – if they were told they couldn't do something, they didn't;
- The Hoffmans have planted bamboo so it is difficult for them to see and hear the air conditioner units;
- Every time there was something submitted to the Planning Commission, the Hoffmans come and complain and ask for a holdover – they will do that here as well;
- The applicant is willing to put a wood fence around the air conditioner units similar to the back wood fence if it would satisfy the Hoffmans.

Mr. Palombo stated that Mr. Lyon is correct that the building inspector does receive the full site plans to approve the plans, but typically they don't illustrate the location of the air conditioner and the building inspector is not concerned with that. His department didn't receive the complete site plans showing the location of the air conditioners until about a week before the temporary c/o was issued. The air conditioner units today are taller and quieter – typically 14-15 SEER units. He thought that the code required a distance from the wall of 18" or 20". It still requires a 6' setback if they are over 36" tall.

Mr. Lyon showed photographs and how the lot runs inward and south; he showed a footprint of the proposed location of the third that is a foot or less into the projected line of the southward jog. He was informed that the purpose of the 18-20" distance is to allow for the units to be serviced and operate more efficiently with the airflow. Even if these units were placed up

March 6, 2012
Board of Zoning Adjustment

against the wall of the house with no setback from the house, they still would not be within the 6' requirement. It should be noted that although it is probably 50 feet from the pool to the property line, and because these units are basically on the rear property line, these units are as far as they possibly can be along the back of the back of the Thorneycroft house to allow the head pressure of the units to be able to pump the freon through the house. The pool lines up with the side of the house and the columns on the porch, and the units themselves are 50" from the pool and probably 150" from the back of the house. The units are the only place they can be, the plans have been approved by the City, and the applicant has not willfully violated the location requirement. There is plenty of vegetation between the houses, and the units are high-efficiency units with low noise.

Mr. Lyon continued saying that his client had been in litigation with the Hoffmans for several years because Mrs. Hoffman objected to Dr. Thomeycroft's building permit, and the City required that he file with the Planning Commission to combine the two lots into one lot. Dr. Thomeycroft filed a subdivision application in the fall of 2009 to remove the demarcation line between the two lots, nothing else changed, and they went through three different hearings with Mrs. Hoffman upset about the drainage coming across part of one of the lots onto her property. The Hoffmans made allegations that his client has willfully ignored the City and violated the law. That is not true and is in litigation; there have been no citations issued by ADEM, the City, or anyone else. This isn't relevant; he just wanted it addressed before the Board.

The Chair asked if there were any more questions from the Board. Hearing none, he asked if there were those present in opposition to the matter and opened the floor to their comments.

Eddie Hawkins, 306 St. Francis Street, Mobile, AL, spoke on behalf of Heinz and Fran Hoffman; he made the following points in opposition to the matter:

- The questions they have are: 1) will there be no avoidable adverse impacts if the City lets the air conditioners stay where they are; 2) is there a compelling need for a special exception to the zoning law;
- He will submit to Mr. Turner other proof about the decibel level and will get that in by tomorrow;
- The Hoffmans' garden and pool area is directly across the fence from where the three air conditioners are so the sight and noise of the units will disturb any quiet activity in their garden and pool area;
- The adverse impact on the Hoffmans is greater than the adverse impact of having Dr. Thorneycroft move the units to the right or on the other side of the wall close to his house – the refrigerant runs are doable;
- In their submittal to the court, they have demonstrated that the spacing, size, and proximity of the building to the property line has been contested for quite some time;
- Dr. Thorneycroft's conduct over the course of the entire project has shown that he follows the rules only when it is convenient for him and he has no grounds for special consideration.

After finalizing the discussion, The Chair opened the matter for a motion.

March 6, 2012
Board of Zoning Adjustment

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

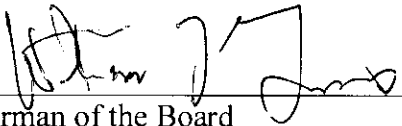
- 1) the placement of an 8-foot high solid wooden fence to be located around the A/C units implied in the variance.**

The motion carried unanimously.

OTHER BUSINESS:

There being no further business, the meeting was adjourned.

APPROVED:



Chairman of the Board

/lw