

BOARD OF ZONING ADJUSTMENT MINUTES
MEETING OF May 6 , 2013 - 2:00 P.M.
MOBILE GOVERNMENT PLAZA, AUDITORIUM

MEMBERS PRESENT

William Guess, Chairman
 Vernon Coleman
 Adam Metcalfe
 Jeremy Milling
 Russell Reilly*
 *supernumerary member

MEMBERS ABSENT

Sanford Davis
 J. Tyler Turner*

STAFF PRESENT

Frank Palombo, Planner II
 Bert Hoffman, Planner II
 Carla Davis, Planner II
 Charles Finkley, Planner I
 Gee Gee Watt, Planner I
 Marine Karapetyan, GIS
 Tchernavia Yow, Secretary I
 Lisa Watkins, Secretary I

OTHERS PRESENT

John Lawler, City Attorney
 George Davis, City Engineering
 Butch Ladner, Traffic Engineering
 Gerard McCants, Urban Forestry
 James May, 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 present to vote in the affirmative to approve any variance with the supernumerary voting and then called the meeting to order.

HOLDOVERS: (NONE)

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PUBLIC HEARINGS:

#5819
(Case #ZON2013-00606)

Soul Kitchen

219 Dauphin Street

(South side of Dauphin Street, 85' ± East of South Joachim Street)

Sign Variance to allow a total of 110.76 square feet of wall signage in a historic district; the Zoning Ordinance allows a maximum of 64 square feet of signage for a business in a historic district.

Council District 2

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

Maggie Smith, Soul Kitchen, 219 Dauphin Street, Mobile, AL, spoke on her own behalf and made the following points in support of the application:

- They have changed designs on the sign many times, and the final design that they liked looked too dainty for the size of the building when sign according to the size allowed;
- They went to the Architectural Review Board, and Devereaux Bemis also felt like a larger sign would be appropriate;
- The design submitted is the fifth or sixth design, and everyone is happy with it.

The Chair asked if there were any questions from the Board. Hearing none, he asked the applicant if she had seen the staff's recommendations.

Ms. Smith stated that she had not.

Mr. Ricky Armstrong, Modern Signs, P. O. Box 81174, Mobile, AL 36689, spoke on behalf of the applicant and made the following points in support of the application:

- The Architectural Review board and Urban Development Department asked that the sign be designed in keeping with the period of the building;
- After numerous changes, the submitted design was approved by both the Architectural Review Board and Urban Development.

The Chair asked if there were those present in favor of the matter. Hearing none, he asked if there were those present in opposition to the matter and opened the floor to their comments. Hearing none, he opened the matter for a motion.

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

- 1) approval of the Architectural Review Board; and**
- 2) full compliance with all other municipal codes and ordinances.**

The motion carried unanimously.

#5820

(Case #ZON2013-00608)

Laura Cantrell Rogers

1916 Airport Boulevard

(North side of Airport Boulevard, 405'± West of Myrtle Avenue)

Parking Ratio, Access and Maneuvering, Side Yard Setback, and Landscaping and Tree Planting Variances to allow a 3,420 square-foot commercial building with four compliant parking spaces, stacked driveway parking within a 9' wide one-way driveway and maneuvering within the right-of-way, with a 2' side yard setback from both adjacent commercial and residential properties, and no landscaping or tree plantings in a B-3, Community Business District; the Zoning Ordinance requires twelve compliant parking spaces for a 3,420 square-foot commercial building, no stacked parking, driveways to be at least twelve feet wide, and all maneuvering area to be out of the right-of-way, side yard setbacks to be a minimum of 5' off adjacent commercial and 10' off adjacent residential properties, and meeting all landscaping and tree planting requirements in a B-3, Community Business District.

Council District 2

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

The following people spoke in support of the application:

- 1) Mr. Clay Rogers, husband of the applicant, 10 Bienville Avenue, Mobile, AL, spoke on behalf the applicant, and
- 2) Mr. Tim Spafford, Architecture and Design, Inc., 1263 Lake Circle West, Mobile, AL, spoke on his own behalf;
- 3) Mrs. Laura Cantrell Rogers, 10 Bienville Avenue, Mobile, AL, spoke on her own behalf.

They made the following points in favor of the matter:

- They received the staff recommendations between the time that the last meeting was held over, and they had the survey completed in the meantime;
- Previously, they were working off an old survey that didn't have all the information on it, so they showed the building on the actual site plan;
- The staff recommendation was to allow a 10' setback in the rear from the closest residential property, so they moved the building forward a little which is now reflected on the site plan;
- The other staff recommendations are acceptable.

The Chair stated that he understood that Traffic Engineering had some concerns about access for parking and ingress/egress.

Mr. Butch Ladner stated that with moving the building forward, there might be a potential hazard with cars backing out. If there's not enough room for them to back out onto the property and exit onto the street with headlights first, is it possible to move the building to make that possible to do

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so? It doesn't look like there is enough room on the east side to do that. Traffic doesn't want people backing out into the right-of-way.

Mr. Spafford stated that currently they back out into the right-of-way.

Mr. Ladner stated that with this being a new building, it is preferable to bring it up to safety standards.

Mr. Spafford agreed that would be the desired route, but with the limited size of the property and the needs of the business, the building is further back than the building that was demolished. It does not allow the maneuvering that would be desired for a new building, but it's better than it has been. Now they do use part of the right-of-way of Airport Boulevard to turn around and merge onto Airport – not back out onto the street, but they do use part of the right-of-way. The two adjacent properties are also paved all the way to the street, and historically that's the way it's been done.

Mr. Ladner stated that would be preferable to backing out onto the street if there is room to back out and turn around. They just don't want to encourage people to back out onto the street. He appreciated the constraints on this property, but he did state it is important to give customers the opportunity to turn around without backing out into the street.

Mr. Guess verified that the design was changed to move the building back 10'. He asked what the original setback was.

Mr. Spafford stated there was a setback of 18.7' on the building that was demolished. Now they have 10' from the closest residential property to the north/rear. The adjacent building is in line with the original 18.7' setback. The previous building was stepped in two sections, and it aligned with the adjacent building on the east side, then it stepped forward because of the angle of Airport Boulevard and the property line. The new building will be rectangular and go straight across so there is more of a setback. It will start out at 18.7' and then go above 25' at the far corner. It's not as close to Airport Boulevard as the previous building, and 10' away from the closest residential property as requested on the previous staff recommendations.

Mr. Rogers stated that Cantrell Photography had been in business 22 years in Mobile. Applicant's father started the business before she started her business there. They have been taxpaying citizens, and they would love to stay at their current location. With the size of the building, if they back it up much more it will be too small to have a photography studio.

The Chair asked if there were any questions from the Board.

Mr. Metcalfe asked if since the last meeting the building was moved further forward or further back at the recommendation of the staff.

Mr. Spafford replied that it was moved forward.

Mr. Metcalfe asked if they did what they were asked to do, and if now that had created a further problem.

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Mr. Spafford stated that it was and still will be a problem with the maneuvering space, but it will be better than it has been. They are also trying to accommodate the requirements of the business due to the way applicant shoots her pictures with certain backdrops that require certain size building.

Mr. Metcalfe asked how far the building was moved.

Mr. Spafford stated that it was just a few feet. Their building will have the same setback as the adjacent building to the east which is just off the property line. It won't restrict anyone's sightline for traffic.

Mr. Palombo asked if they had thought about mirroring the building, pushing it to the property line which is zoned commercially, and making it even. They could have the 10' and aisle on one side. He asked if they would have more parking and maneuverability that way.

Mr. Spafford stated that they did several layouts. They would love to accommodate all the requirements, but due to the size of the property and that the rear yard is an integral part of the business for photography. Of all the layouts he did on site, this is the best to accommodate the needs of the business.

Mr. Palombo stated that if they moved to the west, even with the same amount of back yard, it would get rid of the short side of access and give them an alleyway.

Mr. Spafford stated that they would have the building right on the property line on the east side, and that's where the existing building is that has an unfinished face, so he thinks that this layout is the best they can do in this situation.

The Chair asked if there were any further questions from the Board.

Mr. Ladner stated that they might consider angling the parking, although they would lose a parking place, it would encourage people to back out at an angle and have room to turn around head first into the street.

Mr. Spafford said they could look at that.

Mr. Ladner stated that they could make it subject to requirements of Traffic Engineering.

The Chair asked if there were those present in favor of the matter. Hearing none, he asked if there were those present in opposition to the matter and opened the floor to their comments. Hearing none, he opened the matter for a motion.

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

- 1) revision of the site plan to indicate the exact building setbacks off all adjacent properties;**
- 2) revision of the Northeast corner of the proposed building to meet a 10' setback off all portions of the adjacent residential property to the East;**

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- 3) **revision of the site plan to provide as much compliance with the landscaping and tree planting requirements within the rear yard as practicable; to be coordinated with Urban Forestry;**
- 4) **full compliance with all other municipal codes and ordinances, including any firewall ratings required;**
- 5) **submission of two (2) copies of a revised site plan to Planning indicating the meeting of these conditions; and**
- 6) **approval of the site plan by Traffic Engineering.**

The motion carried unanimously.

#5821

(Case #ZON2013-00644)

Jennifer Vazquez

2488 Sayner Avenue

(North side of Sayner Avenue, 225'± East of its West terminus)

Use Variance to allow two horses on residential property in an R-1, Single-Family Residential District; the Zoning Ordinance requires an R-A, Residential-Agricultural District to keep horses.

Council District 4

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

Jennifer Vazquez, 2488 Sayner Avenue, Mobile, AL, spoke on her own behalf and made the following points in support of the application:

- Denial of her application would impose a severe hardship on her as she had already invested over \$275,000 into the house to make it a sanctuary for children to go to;
- There are no parks in the area for the children to go to;
- The children clean streets to swim in the pool;
- The children clean the what the City doesn't to be with the horses;
- She has a miniature horse the size of a Doberman pinscher weighing 141 pounds;
- She has a second horse;
- The house is a labor of love and her retirement;
- She has increased the value of everyone's property;
- She brought before and after photos of the property and house;
- The street was completely full of trash – it is clean now;
- City officials who come to her house are amazed;
- This isn't a committee or organization – these are all real people;
- She brought a petition signed by every neighbor except one (who is present to oppose the matter) requesting that she be allowed to keep the horses;
- When she applied to the City, she didn't see an ordinance against horses, so she thought she was in good shape when she pulled the permit for the stable;
- She thought it was okay as she is from Las Vegas, and they allow horses in the City limits as long as proper facilities are provided;
- She is into the stable \$14,000 and was unaware of zoning clause against horses until neighbor called about it;

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- This is not for profit, it is for love.

The Chair asked if there were any questions from the Board.

Mr. Milling asked Mr. Palombo when she pulled the permit to build a stable for the horses, would that not have triggered a question about the horses.

Mr. Palombo stated that it wasn't listed as a stable on the permit; it was stated as an accessory structure.

Ms. Vazquez stated that she told the permitting department what her intentions were, and the acreage was verified and made sense.

Mr. Milling asked Jerry Byrd if he did the layout for the site plan.

Jerry Byrd, Byrd Surveying, 2609 Halls Mill Road, Mobile, AL, stated that he did not do the plan to pull permits; he did the site plan for the preliminary plat.

Mr. Milling stated that he was just trying to find out what the disconnect was where she spent all this money.

Ms. Vazquez stated that the city told her that in order to build another structure, she had to include all her lots together because they were seven separate lots so she combined them. She just recently bought another one. She further stated that she will continue to do so and to bulldoze houses, because as long as there are all these vacant, abandoned homes then she can rid the neighborhood of crack houses. The neighborhood has been blighted, but there are good people who live there.

Mr. Milling asked if the horses are her pets.

Ms. Vazquez responded that the horses are like her gardens. She has over 300 cultivars of roses and grows vegetables for the elderly. She was a death-row corrections officer for 13 years; this is part of her repayment to the community.

Mr. Guess asked where she had the horses before.

Ms. Vazquez stated that she didn't have the horses before. She had the one Singleton horse before, and she bought the miniature horse. She bought them for the kids to learn about horses; she's up against every bling, nice cars and videogames where they can massacre each other. All she has to combat that is her flowers and horses. As far as manure disposal, she has a large composter that heats the manure. She can't keep manure on her property as neighbors want it for gardening.

The Chair asked if the Board had any further questions for the applicant. Hearing none, he asked if there were those present in favor of the matter.

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Tyesla Scruggs, 2496 Sayner Avenue, Mobile, AL, spoke on her own behalf, and made the following points in favor of the application:

- She has three little girls;
- The back of her property touches Ms. Vazquez's; she has a gate her girls can go through so they don't have to walk down the busy street;
- She and her girls enjoy Ms. Vazquez's company and that of the horses;
- Ms. Vazquez cleaned up the property;
- She doesn't keep horses for personal gain;
- The horses are not a problem;
- Ms. Scrugg's got an appraisal of her own property prior to Ms. Vazquez coming there, and it was very low– the next appraisal she got was higher due to improvements Ms. Vazquez has made to the community.

The Chair asked if there were those present in opposition to the matter and opened the floor to their comments.

Mr. Fred Hiles, P. O. Box 50517, Mobile, AL, spoke on his own behalf and made the following points against the application;

- His house is the second house to the west from Ms. Vazquez's;
- He has lived in same house for 55 years and area has been a peaceful single-family neighborhood;
- He doesn't appreciate two smelly horses blowing north wind to his house;
- He's concerned that if zoning is changed on Ms. Vazquez's behalf, if she sells property, the next person may do something else with the property, and he's concerned about repercussions.

Mr. Guess asked what the condition of the property was previously.

Mr. Hiles stated that it was maintained, A friend of his bought property to keep someone else from building apartments on it as that's what they heard was planned.

Mr. Guess asked how the property looked now.

Mr. Hiles stated that the physical appearance is fine, but it's the use of the property that he doesn't like. He doesn't care for the horses being there; one horse has already gotten out and gotten a ticket.

Mr. Guess stated that they are looking at current conditions and use of the property.

The Chair asked if the Board had any questions.

Mr. Metcalfe stated to Mr. Hiles that they aren't looking to change the zoning of the property, just the use. It doesn't run with the land, but rather the use of the land. If she stops using it for that purpose, it goes away, no one else can do it. The zoning stays with the property.

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Mr. Palombo corrected the previous statement in that if the next buyer had two horses, they could continue the same use.

Mr. Metcalfe agreed that the same use could continue, but nothing other than that.

The Chair asked if there were any other questions from the Board. He asked Mr. Lawler for clarification to be sure all parties understood that Ms. Vazquez is asking to keep the two horses and the current way the property is being used. If Ms. Vazquez sells the property, only that particular use would continue with the property, and that is what the Board is there to decide.

Mr. Lawler stated that was correct.

Mr. Hiles said he is 110% against the property being used for horses, hers or anyone else's, and the City must have had a reason for excluding farm animals within the City limits. He feels that should be adhered to.

The Chair asked if there was any one else in the audience that wished to speak in opposition. Hearing none, he opened the matter for discussion by the Board.

Mr. Guess stated that he thought this was a common issue, especially in annexed areas, with chickens, etc. He asked Mr. Palombo if this had come up before.

Mr. Palombo stated that he didn't recall it coming up before. He suggested that if the Board was leaning toward approval that they should add "compliance with all municipal codes and ordinances" as there could be an animal code ordinance regarding the size.

The Chair asked if there were any more comments from the Board, and he opened the matter for a motion.

Mr. Metcalfe stated that he applauded Ms. Vazquez's efforts, said it was beautiful, and knew that it took courage.

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

- 1) that the use be limited to one full sized horse and one miniature horse; and**
- 2) full compliance with all other municipal codes and ordinances.**

The motion carried unanimously.

#5822

(Case #ZON2013-00761)

Thermo King

5340 Willis Road

(South and East side of Willis Road, 320 ± West of US HWY 90 W)

Surface Variance to allow aggregate maneuvering and parking surface in an I-1, Light Industrial District; the Zoning Ordinance requires maneuvering and parking area

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surfaced with concrete, asphaltic concrete, asphalt or alternative parking surface as defined in Section 64-2 of the Zoning Ordinance in an I-1, Light Industrial District.
Council District 4

The Chair stated that the application had been withdrawn and required no further action from the Board.

#5823

(Case #ZON2013-00803)

Carla M. Sharrow

1001 Augusta Street

(Southwest corner of Augusta Street and Charles Street)

Administrative Appeal of a staff determination of approval regarding the nonconforming status of multiple dwelling units located on a property in an R-1, Single-Family Residential District; the Zoning Ordinance allows multiple dwelling units on a single site in an R-1, Single-Family Residential District, with staff approval of nonconforming use history evidence.

Council District 2

The Chair announced the matter, and advised the applicant should address the Board regarding the subject at that time.

Ms. Carla Sharrow, 1105 Augusta Street, Mobile, AL, spoke on her own behalf, and made the following points in favor of the application:

- She stated that she has lived at this address with her two daughters since 2008;
- Her house is the oldest house on Washington Square, and it was there prior to Mr. and Mrs. Cross's house;
- When she bought her home, the Cross's guest house was not rented, or she would have taken that into consideration when she purchased her property because the guest cottage is in such close proximity to her house;
- The guest cottage is five feet from her property line, ten feet from her rear deck, and fifteen feet from the main living area of her house;
- The guest cottage directly faces the rear of her home;
- Because of the close proximity, she hears and sees everything that goes on at guest cottage;
- From early 2008 until the fall, the Guest house was occupied by the Cross family because there were renovations going on in the Cross residence so they lived back and forth between the main house and guest cottage;
- This changed in the fall of 2012, when a man, woman, and a large dog became tenants at the guest cottage;
- When she realized this was not temporary, she contacted the Crosses about sharing the cost of a privacy fence because her privacy was an issue;
- He agreed to split the cost and seemed to not want to get the approval of the ARB, so she told him that she would get the approval which she did;
- She lined up the fence company and put a deposit down on the fence;

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- She got a call from Devereaux Bemis telling her that Mr. Cross had complained about the fence, and the ARB withdrew her permit;
- She had included an 8' section along the back shared property line, and Mr. Bemis explained that this was not typical use unless there a multi-family or business use next door;
- She explained to Mr. Bemis that her neighbor had recently begun recently begun renting the guest cottage;
- Mr. Bemis called in SRO on February 26, 2013 to report the illegal rental;
- She is concerned about the impact of her family's enjoyment of her property, devaluation of her home, and setting a precedent in her neighborhood for R-1 neighborhood to multi-use;
- The Polk Directories show that the guest cottage has not been used as a rental property for the last seven years;
- She reserves the right to respond to any future statements.

The Chair asked if there were any questions from the Board. He asked if the couple accompanying Ms. Sharrow had anything to add.

Mr. Heinz Hoffman, 5 Hillwood Road, Mobile, AL, Ms. Sharrow's father, spoke on his own behalf and made the following points in favor of the appeal:

- Their family knows the Cross property very well as the whole family was made homeless by Katrina, and when they looked at buying the property in 2005-2006, they were made aware of the guest cottage which was used by the Crooms (the previous owner) as a family guest cottage;
- His daughter bought her home in 2008, and they never had any problems with neighbors until the guest cottage was rented in 2012. The behavior of the tenants interfered with the use of their daughter's house.

Mrs. Fran Hoffman, 5 Hillwood Road, Mobile, AL, Ms. Sharrow's mother, spoke on her own behalf and made the following points in favor of the appeal:

- The basis of the appeal is that Urban Development erred in its approval in February, 2013;
- The staff report notes that typically the Polk Directories are used by staff to verify, and in this case they were not;
- The staff development report says "the Polk Directory does not in fact show a continuous rental history with no period of vacancy exceeding two years;"
- The February, 2013 approval was contrary to standard procedure and contrary to fact;
- The Cross affidavit of February, 2013, does not include any supporting evidence, but rather it affirms that it was used as a guest cottage by the Crosses, and it affirms its existence since 1979;
- On the issue of proper verification, even with the head of a City department reporting the illegal rental to an SRO, Urban Development did not investigate properly;
- The zoning ordinance requires that an investigation is done for compliance and non-compliance, and this was not done;

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- They are relieved that Urban Development made a mistake, and that is the basis for the appeal;
- The next issue is evidence and not documenting continued use— She has provided additional documentation from four missing years and evidence from Polk Directories that show based on name, not just address, and all of the evidence indicates that the house was only rented from 1999 to part of 2005 and that the use had been abandoned for seven years;
- The Board should note in Ms. Sharrow’s affidavit the sincerity, detail, and her unique vantage point;
- The site plan is somewhat skewed as it doesn’t sit on the south property line, it sits 5’ from the west property line and 10’ from the south property line and may be larger than shown on the plan;
- The evidence is clear that the non-conforming use was abandoned, and the guest cottage reverted to an accessory which is consistent with R-1 zoning;
- City code specifically says that once non-conforming use has been abandoned, it cannot be reestablished;
- The Board is aware of its obligation to apply the most restrictive standard in the event of ambiguities with the code/statutes;
- Ms. Sharrow openly presented all her evidence way ahead of time for everyone to inspect, and Mr. Cross hasn’t presented any evidence maybe the very end of last week, and she reserves the right to respond to anything Mr. Cross would say.

The Chair asked if there were any more questions from the Board. Hearing none, he asked if there were any others in the audience in favor of the applicant’s request for an appeal. Hearing none, he ask if there were any in the audience opposed to the matter and opened the floor to their comments.

Mr. Kevin Cross, 1001 Augusta Street, Mobile, AL, spoke on his own behalf and made the following points against the appeal:

- Ms. Sharrow’s assertion that he had given approval that he would split the fence with her is not true;
- What brought the Architectural Review Board and Mr. Bert Hoffman into this is that her application was for an 8’ foot fence;
- Ms. Sharrow’s claims that this is a single-family, R-1 zoned neighborhood are correct; however, the Oakleigh Garden District and several other historic districts contain many guest houses, spare rooms, and garage apartments currently in rental service;
- He agrees that the zoning ordinance is there for a reason, but Urban Development has taken the position that they will not approach people who are renting or prevent renting as long as there is not disapproval by neighbors;
- Ms. Sharrow has been their neighbor for five years, and he has never heard one word about the proximity of the guest house to her house, the chain link fence that separates their properties, and the “chicken-wire” extension to the fence that extends the fence from 3’ to 5’;
- He has brought the old Croom home back to a showplace;
- All the improvements on his property were there in the same form when Ms. Sharrow bought her home;

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- The rear of Ms. Sharrow's home is completely glass, has great views of the neighbors' yards and the rear of the property – she has done nothing to change that – there are no blinds, curtains, or shutters;
- Ms. Sharrow chooses to leave the rear of her house open to see out and allow others to see in;
- Her choice doesn't constitute deprivation of privacy by his family;
- The guest house has not been moved closer to her house than it was;
- If she was so uncomfortable with the proximity of the his guest house to the rear of her home, why would she choose to add on a 10-15' deck that would narrow the gap?
- She placed a large multi-person hot tub on the deck and now she's claiming that his family is depriving her family of peaceful enjoyment of her property;
- He would like to ask the Board to table this discussion until the following meeting contingent upon Ms. Sharrow being able to follow the instructions and requirements of the application as she failed to do so.

The Chair advised that he would refer that to the staff for consideration. He asked Mr. Cross if he'd ever lived in the guest house while he did renovations.

Mr. Cross stated that he had.

Mr. Guess asked if now the guest house was being utilized as a rental.

Mr. Cross replied that it has been rented as of last November.

The Chair asked if there were any more questions from the Board.

Mr. Guess stated that his understanding was that the staff's consideration for the appeal is whether or not it has non-conforming use. From what Mr. Cross has stated, he used it temporarily as a residence, so it did not continue as a rental.

Mr. Lawler stated that they had gotten off track. It is a guest house on a lot with another house; they have multiple dwellings on one lot that are used for residential purposes. It is zoned single-family, so the use as a guest house or as rental unit would both be in violation. The guest house has been there, not sure how long, but certainly long enough to qualify for non-conforming use. It is being put to a residential use that is not allowed on a similar property; you can't have two houses on one lot. To do so, you have a non-conforming use. If that use has existed back before the ordinance, then it can continue. The other feature of this that we're losing is that the zoning ordinance says that the abandonment of a non-conforming use for a period of two years, and the issue is whether or not it was abandoned. There can be a hiatus in use for a period of time, but no intention to abandon, and that's something that hasn't been discussed – whether or not there was the intention to abandon.

Mr. Guess stated that the question would be whether or not there was a lapse in non-conforming use for a two-year period.

Mr. Cross stated that if he heard correctly, it wasn't that if there was a lapse, but rather the intentional abandonment of the use.

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The Chair asked if there were any more questions.

Mr. Metcalfe asked what approval was given by the staff that triggered this as Ms. Sharrow contended that there was an approval given.

Mr. Bert Hoffman stated that his understanding was that the fence brought it all up and that for the fence to be 8' high, either the Mobile Historical Development Commission or the Architectural Review Board has to approve it. They will only approve it in an historic district unless it separates a single-family residence from a multi-family site. His understanding is that Mr. Cross came in to establish his multi-family use through the non-conforming document which was approved because they did find some limited evidence in the Polk Directories. His understanding is that is what appeared to trigger this appeal to the Board.

Mr. Metcalfe asked if Mr. Cross was trying to build the fence.

Mr. Bert Hoffman stated that the Architectural Review Board would not typically approve an 8' high fence in an historic district so by his showing that he had a multi-family dwelling use on his property, that would allow Ms. Sharrow to bolster the approval to get an 8' fence built.

Mr. Metcalfe confirmed that Ms. Sharrow wanted the 8' fence built because she was adjacent to a multi-family use.

Mr. Bert Hoffman replied that she wanted the additional level of privacy that an 8' fence would provide.

Mr. Cross stated that there were many attempts to provide a solution that met with both parties individually. The only reason that he went to Urban Development and the Zoning Board is because Devereaux Bemis said that right now it wasn't showing of record that his property had a multi-family classification, and therefore he couldn't allow the 8' foot fence. Because Ms. Sharrow would like an 8' fence, so Mr. Bemis suggested that Mr. Cross go to Zoning and sign an affidavit. The affidavit was prepared for him by the Zoning Department. He read it, and the language was accurate. It did not say that the home had not been used as a rental or multi-family in the last two years, it simply said it had not been vacant for two years which is the truth. These were attempts made by Mr. Cross and Zoning to give Ms. Sharrow what she wanted which was the approval for an 8' fence. So it is beyond anyone's ability to understand what she is trying to get because if she wins the appeal, she is then going to appeal the ruling of the ARB which disallows the 8' fence on the grounds that the proximity of his guest house, his renters, and his family create such an unpleasant environment that it is a hardship.

Mr. Guess asked Ms. Sharrow that if the fence had been approved, would they be here today with all this.

Ms. Sharrow stated that her concern is three-fold: her family's privacy, the devaluation of her property, and setting a precedent in a strictly residential neighborhood. Previously, there was one family on the adjacent property, now there are two families. One looks directly into the back of her house. The renters have a large dog in addition to the Crosses two large dogs. The dogs charge the fence when she goes into her backyard and that concerns her.

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The Chair asked if there were any further questions.

Mr. Byron Cruthirds, 306 Charles Street, Mobile, AL, spoke on his own behalf and made the following points against the appeal:

- His property abuts the Sharrows property;
- He wished Ms. Sharrow would get some privacy as anytime he goes to the door to let his 68-pound Springer spaniel out, he can look right into the back of her house and see what's on TV or anything else unintentionally, and he doesn't want to be accused of anything;
- He has lived there since 1996, and there have been renters in the guest cottage many times and they have never been a problem.

Mr. Guess asked if he had seen a two-three year lapse in the rental.

Mr. Cruthirds stated that when Mrs. Croom died, her grandchildren took it over and there was still a renter in the house up until Mr. Cross bought it.

Mr. Guess asked if Mr. Cruthirds would have any opposition to an 8' fence.

Mr. Cruthirds stated that if she wanted to block that view, it was fine with him.

Mr. Kay Cruthirds, also of 306 Charles Street, Mobile, AL, stated that after the renter moved out, Mrs. Croom's grandson did live in the house until Mr. Cross bought the house. Mr. and Mrs. Cross lived in the house while construction was being done on their house, and Mr. Cross's brother lived in the house while he was looking for a house to buy in Mobile. So there's been someone there almost ever since Mrs. Croom died.

Mr. Metcalfe stated that they weren't talking about a fence here. They were talking about an appeal of the staff's decision. He asked Mr. Lawler to clarify that what they were there to do is either accept or deny the contentions of Ms. Sharrow's appeal.

Mr. Guess stated that Mr. Lawler clarified that this is non-conforming, but it has two residences which may aid Ms. Sharrow in her request for consideration on the fence which is not part of our consideration today. Mr. Guess recognized the applicant for a brief statement.

Ms. Sharrow stated that the neighbors who just spoke have a 100' privacy fence between their yard and hers and cannot see inside the back of her house from their yard. Their house abuts Mr. Cross's property and her backyard. Her problem is the non-conforming use of this property, not that an occasional guest may stay there. It has not been rented since 2005; that is a seven year lapse. The Polk Directories and all the submitted documentation are consistent with that.

Mr. Guess recognized Mrs. Fran Hoffman for one minute.

Mrs. Hoffman stated that the evidence clear; the nonconforming use was abandoned. She reminded the Board of the strict interpretation of the code – nowhere does it talk about intention

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in the City code, but it states that if it has been abandoned for two years it cannot be resumed. We are asking for determination by the Board on the basis of the City code.

The Chair asked if the staff had any further comments.

Mr. Milling asked Mr. Lawler to verify if he understood correctly that there is some interpretation regarding abandonment.

Mr. Lawler stated that we're talking about multiple dwellings on one lot and that's the violation. That situation existed before the ordinance was passed so it's non-conforming. The question is whether it has been abandoned as a dwelling unit. He thought they were sidetracked talking about rent as there's no prohibition against renting.

The Chair stated they are reviewing the appeal of the staff's determination that this particular property had non-conforming status with multiple dwelling units located on the property in an R-1 district has not lost that non-forming use and whether or not the staff erred in their review of this situation. The Chair opened the floor for a motion.

A motion was made by Mr. Coleman, with second by Mr. Riley, to deny the above referenced request.

The motion carried unanimously.

The Chair stated that, for the record, the appeals process is through Circuit Court and that the staff could guide them if there were any questions.

Mr. Bert Hoffman asked the Chair to clarify that the Board supports the continuance of non-conforming.

The Chair verified that they did support the staff's decision.

#5824

(Case #ZON2013-00882)

Center for the Living Arts

301 Conti Street

(Southwest corner of Conti Street and South Jackson Street)

Sign Variance to allow two banner signs, one 264 square feet and one 300 square feet, to be hung for a nine-month period at a non-profits arts facility in a B-4, General Business District: the Zoning Ordinance allows one banner sign per business with a maximum size of 32 square feet for a duration of thirty days, three times per year, in a B-4, General Business District.

Council District 2

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

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Mr. Bob Sain, Executive Director of the Center for the Living Arts, 1125 Church Street, Mobile, AL, who spoke on his own behalf and made the following points in favor of the application.

- The application is for two banners for their upcoming exhibition, The Futures Project, opening this Friday;
- The banners are a part of a sense of visibility and vitality for downtown to generate people coming downtown, to generate cultural tourism, and to generate economic development through the arts.

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. Hearing none, he opened the matter for a motion.

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

- 1) **the obtaining of a banner sign permit for each banner;**
- 2) **the duration of display to be from May 8, 2013, to January 31, 2014; and full compliance with all other municipal codes and ordinances.**

The motion carried unanimously.

#5825/5722/5644/4775/4631/1836

(Case #ZON2013-00958)

Knight Sign Industries

107 St Francis Street

(South side of St Francis Street, extending from North Royal Street to St Joseph Street)

Sign Variance to amend a previously approved Sign Variance to allow a total of 568.33 square feet of wall signs on two facades of a multi-tenant building in a B-4, General Business District, and also within the Lower Dauphin Historic District; the Zoning Ordinance allows a maximum total of 64 square feet of signage per tenant in a B-4, General Business District, within the Lower Dauphin Historic District.

Council District 2

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

Mr. Cal Holt, Knight Sign Industries, 5959 Knight Avenue, Tuscaloosa, AL, spoke on this own behalf and agreed with the staff's recommendations.

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, he opened the matter for a motion.

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

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- 1) approval of the Architectural Review Board; and
- 2) full compliance with all other municipal codes and ordinances.

The motion carried unanimously.

#5826

(Case #ZON2013-00962)

Lyn Manz-Walters

2406 Prichard Avenue West

(North side of Prichard Avenue West, 200'± East of Mobile Street)

Use, Multiple Dwellings, and Surface Variances to allow five (5) single-family dwellings on a single lot (an R-3, Multi-Family Residential use), and gravel access and parking in an R-1, Single-Family Residential District: the Zoning Ordinance allows only one single-family dwelling per lot in an R-1, Single-Family Residential District, and requires compliant paved access and parking for R-3, Multi-Family Residential uses.

Council District 1

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

Mr. Jerry Byrd, Byrd Surveying, Inc., 2609 Halls Mill Road, Mobile, AL, spoke on behalf of the applicant and made the following points in support of the application:

- He had seen the staff's recommendations, and he requested that they be allowed to leave the fence where it is rather than moving it back for a 25' setback. It is placed there for security reasons as there is a window on each unit that is about 5-6 feet from the front of each house. The fence was placed on the street side of the window for privacy.

The Chair stated that the fire department's main concern was maintaining the right-of-way between each dwelling.

Mr. Byrd stated that the total length of all five buildings was about like the total length of an average size house as they are only 15-16 feet wide each.

Mr. Guess asked how long the buildings had been vacant.

Ms. Lyn Manz-Walters, P. O. Box 1592, Mobile, AL, replied that they had been vacant for quite some time. They were built in 1929, and they were rentals up until around the mid to late 80's.

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

Hearing none, he commented that it looked like a lot of work, and he verified that the only question the applicant had about the recommendation was about the position of the fence where it joins the house.

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Mr. Byrd stated that there was no fence currently, but the applicant wants to fence the property for security and have the fence in front of window.

Mr. Palombo asked if he could show the window on the survey for reference.

Mr. Byrd agreed that he could show the window on the survey.

The Chair asked if there was any further discussion. Hearing none, he opened the matter for a motion.

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

- 1) **revision of the site plan to depict the 6-foot privacy fence approximately 6-inches from the outside window on the exterior walls of each dwelling unit on the outside of the development;**
- 2) **revision of the site plan to relocate the proposed understory trees at a point near the right-of-way, midway between each dwelling, so that access between the dwellings can be preserved for fire-safety reasons;**
- 3) **revision of the site plan to include a note stating that any heritage tree planted within 15-feet of an overhead power line must be a live oak, and any understory tree planted within 15-feet of an overhead power line must be a crepe myrtle;**
- 4) **revision of the site plan to show parking bumpers or landscape timbers around the gravel parking and maneuvering area;**
- 5) **revision of the site plan to depict a sidewalk along the right-of-way of Prichard Avenue West;**
- 6) **placement of a note on the site plan stating that site lighting must comply with Section 64-4.A.2. and Section 64-6.A.3.c.the Zoning Ordinance;**
- 7) **compliance with Engineering comments (*The Engineering Department did not receive any request to review an alternate surface. Any development, whether gravel or paved, would require a Land Disturbance Permit and would be reviewed for conformance to the Storm Water Management and Flood Control Ordinance prior to any construction of proposed site work.*);**
- 8) **submission of a revised site plan prior to any request for land disturbance, right-of-way or other permits necessary to improve the site or the structures; and full compliance with all other municipal codes and ordinances.**

#5827

(Case #ZON2013-00963)

H & H Motorcars, Tom Horst, Agent

5706 US Highway 90 West

(West side of US Highway 90 West, 56'± South of Plantation Road)

Access and Parking Surface Variances to allow gravel access and parking for a business in a B-3, Community Business District; the Zoning Ordinance requires access and parking areas to be paved with asphalt, concrete, or an approved alternative paving surface in a B-3, Community Business District.

Council District 4

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

Tom Horst, 5706 Highway 90 West, Theodore, AL, spoke on his own behalf and made the following points in support of the application:

- Before leasing this property to be used as a used car lot, he did research to be sure it would keep the non-conforming status as it's been a used car lot for over 20 years;
- Over 20 years ago, it was a total gravel/aggregate parking lot;
- The gravel has been beat down and grass has grown up;
- He wishes to return it to the original state of a straight gravel parking area similar to the Mitchell Center's parking where it will look nice yet still drain water.

The Chair asked if there were any questions from the Board.

Mr. Metcalfe asked if Mr. Horst was just planning to top off what is currently there.

Mr. Horst acknowledged that was correct.

Mr. Metcalfe asked if that would require a permit.

Mr. Palombo responded that it would require a land disturbance permit because it may change the topography. He asked Mr. Davis to confirm.

Mr. Davis added that any additional of gravel on that site would require a land disturbance permit.

Mr. Metcalfe asked if that was what triggered the notice.

Mr. Palombo stated that it has non-conforming status for the gravel parking lot; however, any resurfacing would require the Board's approval.

Mr. Jerry Byrd, Byrd Surveying, 2609 Halls Mill Road, Mobile, AL, noted that that this site is in an area that was newly annexed by the City in January or February.

The Chair asked if there were any more questions from the Board.

Mr. Coleman asked that if it is approved, will there be a requirement to keep the loose gravel from infringing on the highway.

Mr. Palombo stated that Traffic Engineering would probably require some sort of barrier between the gravel and the right-of-way.

Mr. Horst stated that they have already planned to put in a barrier.

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Mr. Davis commented that there is a pretty large ditch running along the side of Highway 90 so gravel won't run onto the road, but during the land disturbance process, they would be sure to grade it so that it wouldn't wash into the right-of-way.

Mr. Guess stated that he was looking at pictures in the file that showed posts and asked if that would be the perimeter of the lot.

Mr. Horst confirmed that the posts would be the perimeter, and no gravel would extend beyond the posts.

Mr. Guess stated that no cars could be parked in the right-of-way easement.

Mr. Palombo replied that the location of the gravel, property line and any barrier required by Engineering would be illustrated on the site plan permit.

Mr. Ladner asked if there would be any work done in the right-of-way.

Mr. Horst replied not yet. He has spoken to ALDOT about asphaltting from the edge of Highway 90 up to where the knee-rail is shown.

Mr. Ladner asked if ALDOT is not requiring a concrete apron.

Mr. Horst replied that the only requirement ALDOT would have is to put asphalt in from Highway 90 up to the property line would be a concrete culvert which is already there. The asphalt company simply has to fill out forms for that, but they aren't at that stage yet.

Mr. Ladner asked if they were doing anything on Plantation Road.

Mr. Horst replied no.

Mr. Ladner stated that the only thing that Traffic Engineering would be concerned about was having room to negotiate and that they might want to consider using wheel blocks/stops/concrete to show people where to park and to make sure that they have enough room behind them between obstacles, like 24', to allow them to back and turn around.

Mr. Horst replied that there is plenty of room.

The Chair asked if there were any further comments from staff.

Mr. Palombo asked if his inventory is delivered by transport trucks/18-wheelers.

Mr. Horst stated that transport trucks will deliver, and there is enough room for them to park across the street on the opposite side Plantation Road.

The Chair asked if there were any further questions from the Board. Hearing none, he asked if there were those present in favor of this application and opened the floor to their comments. Hearing none, he asked if there were those present in opposition to this application and opened the floor to their comments.

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Mr. Guess stated that the non-conforming use obviously continues as the gravel is evident in the pictures; he was concerned as to whether or not there was an apron or something to keep the gravel in. He asked if there was a standard setback on how much is required.

Mr. Ladner said that there is, and the applicant can talk to the Engineering Right-of-way Department as they inspect those, but more importantly, ALDOT should be involved. He stated that his department could help.

Mr. Horst stated that although he hasn't measured it, it's probably 30-35' from the property line to the edge of Highway 90, so there's plenty of room.

Mr. Guess stated that normally the Board takes issue with having a delivery truck utilize the other side of the highway for deliveries.

Mr. Palombo said he would have a technician available to help them.

Mr. Horst stated that they could actually pull through on his property as there is enough room.

Mr. Guess stated that that would be the preferred solution.

Mr. Davis suggested that if the Board approves this that they condition it "subject to" a land disturbance permit.

The Chair opened the matter for a motion.

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

- 1) **revision of the site plan to show parking bumpers or landscape timbers around the gravel parking and maneuvering area;**
- 2) **compliance with Engineering comments (*The Engineering Department did not receive any request to review an alternate surface. Any development, whether gravel or paved, would require a Land Disturbance Permit and would be reviewed for conformance to the Storm Water Management and Flood Control Ordinance prior to any construction of proposed site work.*);**
- 3) **Coordination with ALDOT and Engineering regarding any work in the right-of-way; and**
- 4) **full compliance with all other municipal codes and ordinances.**

The motion carried unanimously.

#5828

(Case #ZON2013-00964)

Tom Myers

4306 The Cedars

(North side of The Cedars, 315'± West of Dilston Lane)

Side and Combined Side Yard and Rear Setback, and Increased Site Coverage Variances to allow a car shelter at a single-family dwelling to be on one side property line with 4' of

side yard on the other side of the dwelling, with a combined side yard total of 4', a proposed workshop/exercise building 3'-6" off a rear property line, and 37% total site coverage in an R-1, Single-Family Residential District; the Zoning Ordinance requires at least an 8' side yard setback and a combined side yard total of 20', an 8' rear setback, and allows a maximum site coverage of 35% in an R-1, Single-Family Residential District.

Council District 7

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

Mr. Don Williams, Williams Engineering, 6300 Piccadilly Square Drive, Mobile, AL, spoke on behalf of the applicant and made the following points in favor of the application:

- Mr. Tom Myers purchased a large home in the Springhill area, and there are four issues involved;
- He agrees with three out of the four issues;
- The first is the side yard setback variance. The applicant inherited a large canvas-type carport cover that goes over the driveway and has zero clearance from the property line. They realized that would be an issue, but it isn't what they came for. It was put by the previous owner without a building permit, so they will take that down;
- The second issue is the combined yard setback variance; it is four feet from the property line on one side so combining the two and based on the width of the lot, it is okay;
- Number four is increased site coverage from 34% to 37% which is occasioned by the actual project which is putting a building in the back yard – staff okayed this as it is a minor amount;
- The third issue is the issue of the rear setback variance. They have drawn 3'6" which based on the building code means they would have to fire rate that exterior wall. They are okay with that, but the staff says to be in line with other rulings of the Board, they have asked for a 5' rear yard setback. They would like to stay with 3'6" in the back. There is a field and the bank of the Springhill Reservoir behind them, so they feel confident that there won't be another house or anything to impact them. The ground is level so there will be no problem controlling the water. They will do a 5' setback if they have to, but the applicant would like to stay with 3'6' if possible.

Mr. Palombo said there was no problem with that as long as they meet the fire code.

Mr. Guess asked if there was a hardship with the 5'.

Mr. Williams stated that it just allowed for a larger rear yard.

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

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Mr. Guess stated that in looking at the drawings/layout of the neighborhood as it relates to the other residents, it looked like some of the properties have some buildings on the property line and one even appears to be over the line. He asked if that was kind of consistent with the neighborhood. He did state that it was standard practice of the Board as a compromise in setback issues to approve a 5' setback.

The Chair asked if there were any further questions from the Board. Hearing none, he opened the matter for a motion.

A motion was made by Mr. Milling, with second by Mr. Metcalfe, to **deny the Side Yard and Combined Side Yard Variances, approve the Site Coverage Variance, and amended the Rear Yard Setback Variance modified to 5-feet, subject to the following conditions;**

- 1) the removal of the car shed;**
- 2) the provision of gutters and downspouts on the rear of the proposed structure; and**
- 3) full compliance with all other municipal coded and ordinances.**

The Chair verified that it was conditional on removing the canvas canopy.

The motion carried unanimously.

#5829

(Case #ZON2013-00971)

Tracey Glover

7125 Hitt Road

(Southwest corner of Hitt Road and Cody Road South)

Use Variance to allow a commercial meal preparation and delivery service at an existing church in an R-1, Single-Family Residential District; the Zoning Ordinance does not allow a commercial meal preparation and delivery service at a church in an R-1, Single-Family Residential District.

Council District 6

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

Tracey Glover, 7625 Cumberland Drive, Mobile, AL, spoke on her own behalf, and stated that she didn't know that it had been recommended for denial and didn't understand why.

Mr. Guess advised that with a variance request, hardship has to be demonstrated with the property.

Ms. Glover made the following points in support of her application:

- The property in question is a church;
- It is zoned residentially, but it has a commercial grade kitchen;
- She has had the health department inspector out, and it passed inspection;
- She wants to run a small, commercial, vegetarian meal food delivery service;
- She anticipates 6-10 orders a week;

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- It will be like Meal-On-Wheels, but it's not non-profit nor for seniors;
- It is her understanding that she can't operate the business in that location because it is residentially zoned;
- She has gotten her state license, and then she had zoning problem getting her City license without applying for a variance.

The Chair asked what her affiliation was with the church, and how she became aware of the kitchen.

Ms. Glover stated that she'd been looking for a commercial kitchen to use for a while, and she knew that this church had built a kitchen about three years ago that was up to code. The church has not used the kitchen in this capacity before; they are an active church and use it for their own events.

Mr. Metcalfe asked for verification that this was not a ministry of the church, but strictly a commercial venture. He also asked if the church still used the kitchen.

Ms. Glover said it was not a ministry of the church and is a commercial venture. The church still uses the kitchen. She is just looking to use it for limited hours – like Sundays and Mondays from 9:00-5:00. She stated that it is big enough that she and the church members can both be in there at the same time.

Mr. Metcalfe asked if she would be entering into a contractual relationship with the church and pay them rent.

Ms. Glover stated that was correct.

The Chair asked if there were any further questions from the Board. Hearing none, he asked if there were those present who wished to speak in favor of the matter and opened the floor to their comments. Hearing none, he asked if there were those present who wished to speak in opposition to the matter and opened the floor to their comments.

The Chair verified that from reading the staff notes, Ms. Glover was not planning to have any employees or visitors to the facility so there would be no traffic of that nature.

Ms. Glover stated that this was correct.

Mr. Coleman asked if this was in another restaurant as opposed to in a church if there would be any differentiation.

Mr. Lawler stated that there should be no problem with it unless it affected the community in some way. The church there uses the kitchen for purposes of people coming in, and it's just another person using it, although commercially, there shouldn't be a negative effect on the community.

Mr. Coleman asked if they approved this contingent on her pulling a business license, would it make any difference.

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Mr. Palombo said that they would definitely lock it in as submitted for Ms. Glover only, with no employees, and specific hours. Once it has been approved by the Board and goes through the plan review process illustrated to the fire marshal, building code, and that it is a viable

commercial kitchen, she'll get the permit, business license, and zoning clearance from Urban Development.

The Chair asked if there were any more questions from the Board. He stated that she was starting out small, but if she saw this becoming popular and the business growing, she needed to consider the limitations and find a permanent location. He opened the matter for a motion.

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

- 1) **that the business is open on Sundays between the hours of 12:30 PM and 6:00 PM and Mondays between the hours of 9:00 AM and 5:00 PM;**
- 2) **no employees other than the owner of the business occupy the premises; and**
- 3) **full compliance with all other municipal codes and ordinances.**

#5830/5465/1793

(Case #ZON2013-00969)

Christopher C. Knowles, IV

650 Palm Street

(Northeast corner of Palm Street and Cotton Street)

Use, Side Yard Setback and Rear Setback Variances to amend a previously approved Variance to allow a carwash with a carport 5' off a side property line and 5' off a rear property line in an R-1, Single-Family Residential District; the Zoning Ordinance requires a minimum B-2, Neighborhood Business District, for a carwash, and requires a 10' side yard and 10' rear setback from adjacent residential properties for commercial uses in an R-1, Single-Family Residential District.

Council District 1

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

Mr. Christopher Knowles, 2224 River Forest Road, Mobile, AL, spoke on his own behalf and made the following points in support of the application:

- He remodeled the building in 2009;
- He has built houses in that neighborhood;
- There is a salon operating there, and he put the carwash there to wash cars as a convenience for the ladies who come to the salon;
- They have never had any problems;
- He built the house at 671 Rice Street that is on the east side of the salon, and the lady hasn't been there but a year – the shop has been there for six years.

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The Chair asked if there were any questions from the Board. He stated that obviously the issue is the setback as this is right on the property line. He asked where the runoff from the carwash went.

Mr. Knowles stated that there is a drain system that goes into the sewer. It doesn't go into the street. It is connected to the building. He did have a plumbing inspection done. (He passed pictures for the Board's review.)

Mr. Palombo stated that if the Board decided to approve, it should have a separate system put in. They could approve it subject to "all codes and ordinances" and that would catch it.

Mr. Guess stated that he wanted to see what was already in existence. He addressed a gentleman accompanying Mr. Knowles and asked if he had anything to add.

Mr. Aaron Tucker, 2710 Betbeze Street, Mobile, AL, spoke on his own behalf and stated that he washed the vehicles at the site.

Mr. Guess verified that this was Mr. Tucker's employment.

The Chair asked if there were any questions for the applicant or his co-worker.

Mr. Ladner asked how much room there was in the aisle space behind the angled parking between the back of the cars and the edge of the asphalt.

Mr. Knowles stated that there was 15' on the side of the building. He added that the Board could see from the pictures that even on a rainy day, there was no standing water due to the drain. He built the house on Rice Street, and the previous occupant of the house never had any problem. He stated that the current occupant hasn't been there a year yet.

The Chair asked if there were any others present who wished to speak in favor of the matter. Hearing none, he asked if there were those present in opposition to the matter and opened the floor to their comments.

Mr. Palombo advised Mr. Guess that a City employee, Mr. Terrell Washington, was present to speak on the matter.

Mr. Guess said he would get to Mr. Washington after the lady coming to the podium finished.

Ms. Joyce Calhoun, 651 Rice Street, Mobile, AL, spoke on her own behalf and made the following points in opposition to the matter:

- She lives at the corner of Rice and Cotton, facing Rice.
- The carwash gives the address of Palm Street, but it is the long building that faces Cotton Street, not Palm Street;
- It is adjacent to her property, and she has had water standing in her yard that she believes came from the carwash;

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- When she had a contractor build on a two-car garage, her contractor told her he would speak to the gentleman at the carwash about his drainage and that she need not to say anything about it;
- There have been chemicals blowing from the carwash getting onto their cars which is not a problem now as she has a two-car garage;
- There is a noise problem with the carwash – it is loud and long.

The Chair asked if there were any questions for Ms. Calhoun.

Mr. Metcalfe asked Mr. Palombo if he could show which house was Ms. Calhoun's on the diagram.

Ms. Calhoun stated that her garage opens onto Cotton Street, the same as the carwash faces Cotton Street.

The Chair called upon Terrell Washington.

Mr. Terrell Washington, Municipal Enforcement Supervisor with Environmental Services for the City of Mobile, stated that he had a complaint at the site a while back about the parking. He ended up putting up "no parking" signs due to the traffic of the regular residents and the beauty parlor. Since that time, he has been checking out other carwashes in the City to see if they had additional drainage rather than just going into the stormwater drain. He went to the location last week, and they were using a power washer which is so close to the neighbors' houses that there is a lot of noise as it is just 1-2' from the property line. There are other items in question that he is still checking out because he just got the report last week.

Mr. Guess what was the zoning for a facility of this type and for the salon.

Mr. Palombo replied that they are both B-2.

Mr. Albert Chaney, 652 Palm Street, Mobile, AL, spoke on his own behalf and made the following points in opposition to the matter:

- His property is adjacent to the beauty shop/carwash;
- Since it is facing Palm Street, he is next door;
- He thinks that the problem with the water is that when the carwash was installed, Mr. Knowles raised it up 1'.
- The difference in elevation causes the water drainage issue.

The Chair asked if there were any others questions from the Board.

Mr. Metcalfe stated that the carport appeared to already be there instead of being proposed. He asked what triggered the application.

Mr. Hoffman stated that either a complaint was received through 311, or he applied for a business license, not sure which. It triggered one of the zoning technicians to go out to the site, and it was already in operation. They were advised to remove the shelter to come into compliance or go through the variance process.

May 6, 2013
Board of Zoning Adjustment

Mr. Metcalfe asked if he got a permit to install the drain into the stormwater.

Mr. Hoffman stated that they did not find any permits for the shelter or any work relating to the shelter.

The Chair verified that there was already an initial variance on this property for the site to be operated as a salon. He asked Mr. Knowles how long he'd been operating the carwash.

Mr. Knowles stated that they had been washing for about three months.

Mr. Guess asked how long had it been since he'd sought permits.

Mr. Knowles stated that all he had to do was put the cover over it that was done around last October. The gates were already there.

Mr. Guess asked if he had a current business license for this operation.

Mr. Knowles replied that he did not because it was really just for salon clientele. He applied for a business license after he got complaints. The carwash is not for neighbors or anyone else.

The Chair asked if there were any more questions from the Board. Hearing none, he opened the matter for a motion.

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

- 1) **the applicant has failed to show that the requests are based upon a hardship relating to the property;**
- 2) **there is an existing use allowed by Variance that can operate on the site;**
- 3) **the variance will be contrary to the public interest due to the potential to encumber adjacent property rights with vehicle loading/unloading activities, or the parking of customers or employees; and**
- 4) **special conditions do not exist that a literal enforcement of the use provisions of the Zoning Ordinance will result in an unnecessary hardship.**

The motion carried unanimously.

#5831/5655

(Case #ZON2013-00972)

Mobile Terrace Christian Center (William T. Partridge, Agent)

7154 9th Street

(North side of Ninth Street, 200'± East of Lincoln Boulevard)

Tree Planting and Buffer Fence Variances to amend a previously approved Variance to allow no heritage tree plantings and no wooden privacy fence along a side property line adjoining residential use at an existing church youth annex in an R-1, Single-Family

Residential District; the Zoning Ordinance requires five heritage tree plantings and a 6'-high wooden privacy fence buffer along a side property line adjoining residential use at a church youth annex in an R-1, Single-Family Residential District.

Council District 7

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

The applicant, Mr. Jerry Williams, 7210 14th Street, Mobile, AL, was present..

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, he opened the matter for a motion.

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

- 1) **Obtaining of a land disturbance permit to complete site improvements, including tree planting and paved parking, within 6 months of approval of the variance.**

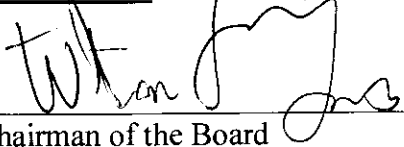
OTHER BUSINESS:

Mr. Palombo and Mr. Hoffman introduced new members of the Urban Development staff to the Board:

- 1) Carla Davis;
- 2) Charles Finkley;
- 3) Marine Karapetyan;
- 4) Gee Gee Watt;
- 5) Lisa Watkins.

There being no further business, the meeting was adjourned.

APPROVED: March 10, 2014



Chairman of the Board

/lw