

**BOARD OF ZONING ADJUSTMENT MINUTES**  
**MEETING OF JUNE 3, 2013 - 2:00 P.M.**  
**MOBILE GOVERNMENT PLAZA, AUDITORIUM**

**MEMBERS PRESENT**

William Guess, Chairman  
Vernon Coleman  
Sanford Davis  
Adam Metcalfe  
Jeremy Milling

**MEMBERS ABSENT**

Russell Reilly  
J. Tyler Turner

**STAFF PRESENT**

Frank Palombo, Planner II  
Bert Hoffman, Planner II  
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  
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 clarified the recent changes to the Board's voting structure. He noted that in the past the Board consisted of five voting members with two supernumeraries, and now the Board is a seven voting member Board. This change was just passed three weeks ago, so now it takes a five person supermajority to pass a motion. He called the meeting to order at 2:04 p.m.

**HOLDOVERS:**

#5799/5572

(Case #ZON2012-02825)

**Jeff Quinnelly**

East side of North McGregor Avenue, 170' South of Springhill Avenue

**Vehicular Access Variance to allow the construction of a 16' wide drive in a Traditional Center District; the Zoning Ordinance requires a minimum access width of 24' for developments invoking the Traditional Center District overlay.**

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.

Doug Anderson, Burr and Foreman Law Firm, 11 N. Water Street, Mobile, AL, represented Mr. Quinnelly on the extension and asked that that Board go along with the staff recommendations and approve the applicant's request for a six-month extension.

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. Adam Metcalfe, with second by Mr. Vernon Coleman, to approve the above referenced request.

The motion carried unanimously.

**PUBLIC HEARINGS:**

#5832/4934

(Case #ZON2013-01150)

**M & E, Inc.**

**3240 Moffett Road**

(North side of Moffett Road, 410'± East of Smith Street)

**Parking Surface Variance to amend a previous Parking Surface Variance to allow gravel surfacing for maneuvering area in an I-1, Light Industrial District; the Zoning Ordinance asphalt or concrete for all parking and maneuvering surfaces in an I-1, Light Industrial District.**

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:

Frank Dagley, Frank Dagley and Associates, 717 Executive Park Drive, Mobile, AL, spoke on behalf of the applicant and made the following points in support of the application:

- He agrees with the staff recommendations except for condition #4;

**June 3, 2013**

**Board of Zoning Adjustment**

- Requiring applicant to provide a sanitary sewer drainage system for an existing dumpster that has been there for 12 years is “like blackmail;”
- Gravel has already been put in and now applicant would have to spend several thousand dollars to run sewer line;
- His client hopes that the Board has the authority to waive this requirement at the request of the applicant.

Mr. Guess asked if there were any questions for the applicant, and there were none. He noted that there was a previous request for a variance in 2000 and asked if at that time there was a provision for a dumpster pad with drainage.

Mr. Hoffman stated that it is now a requirement that all new dumpsters be connected to the sanitary sewer to protect water quality and meet federal water quality requirements. It is his understanding that the engineering department is slowly working with existing property owners to bring existing dumpsters into compliance.

Mr. Guess asked if the current dumpster sits on a concrete pad.

Mr. Dagley replied that he didn't think it was on a pad.

The Chair asked if there were those present in opposition to the matter and opened the floor to their comments. There were none. He noted that the applicant stated that he was in agreement with all staff recommendations except number four regarding the dumpster site/drainage. He asked if there were any more questions/comments from the Board.

Mr. Metcalfe asked Mr. Lawler if the issue regarding the sewer fell within the purview of the Board as Mr. Dagley asked.

Mr. Lawler replied that it did fall within the Board's purview to have reasonable regulations and conditions regarding a variance application and that policy generally is to bring things up to the standard. The standard now is to be connected to a sewer. He further stated that every time a regulatory body gets the opportunity to bring something up to standard regarding land use that is what is recommended and that is what is being recommended in this case.

The Chair opened the matter for a motion.

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

- 1) revision of the required parking spaces calculations to indicate twelve parking spaces for office use (1/300 square feet, rounded up to twelve spaces), and revision of the required parking spaces calculations to indicate two parking spaces for warehouse employees (1/3 employees, rounded up to two spaces), for a total of 14 parking spaces required;**
- 2) revision of the site plan to provide a total of 14 compliant parking spaces;**
- 3) revision of the site plan to remove the dumpster from the front yard and drive aisle;**
- 4) revision of the site plan to provide compliant screening for any dumpster(s) on site;**

June 3, 2013

**Board of Zoning Adjustment**

- 5) **revision of the site plan to indicate compliant over-story frontage trees for the adjacent lot to the East;**
- 6) **submission of a revised site plan to the Planning Section to include the above-listed revisions and any revisions required by the Administrative Planned Unit Development; and full compliance with all other municipal codes and ordinances.**

The motion carried unanimously.

**#5833**

**(Case#ZON2013-01240)**

**Cynthia Johnson**

**115 North Catherine Street**

**(West side of North Catherine Street, 290'± North of Old Shell Road)**

**Use, Surfacing, and Buffer Variances to allow a salon with gravel surfacing and no residential buffer to the North in an B-1, Buffer Business District; the Zoning Ordinance requires a minimum of a B-2, Neighborhood Business District to allow a salon, all required parking to be concrete or asphalt surfacing, and full compliance with all residential buffer requirements.**

Council District 2

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.

Derek Peterson, Peterson Company, 8081 Oakhill Drive, Semmes, AL spoke on behalf of the applicant and made the following points in support of the application:

- His client, Ms. Johnson, owned a salon for years on Holcombe Avenue which was impacted by the Christmas tornado;
- She looked for new location to re-open her salon as quickly as possible and found property on Catherine Street;
- Ms. Johnson's real estate agent assured her that it would be allowable to use the Catherine Street property as a salon;
- He stated that there are several businesses in the area with large parking lots that are zoned B-1;
- The previous use of this property was that of an educational counselor's office which was appointment-based as the salon would be;
- There are medical offices, a hospital, a gas station in the area, and the few houses that are near/adjacent to the property are all dilapidated and it is highly unlikely that they will ever be used as residences again due to the changing nature of the area over the years. It is now largely a commercial area with commercial zoning. He added that a lesser zoning class of T-B allows for a salon – he felt that the salon should be allowed in B-1 as it fits with the other uses in the area, and there should really be no need for a use variance.
- The application also requests not to have to pave the parking lot. He met with David Daughenbaugh, and they agreed that any pavement would compromise the root system of the large trees as is it above ground and extends out about 30 feet and paving would certainly kill the trees.

**June 3, 2013**

**Board of Zoning Adjustment**

- The property line on the North extends a few feet from the structure and building a buffer fence there would be difficult and there is also a big tree along the property line so any fence that could be constructed there would be very small and is unnecessary.
- The salon will offer little impact to the area, and the City should recognize a small business that is deserving of a fair shake.

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

Mr. Coleman asked the staff that if the Board decided to allow gravel/aggregate, would there be any buffer or special requirement to keep it from spreading to the street?

Mr. Palombo responded that typically they do want some kind of barrier, wooden seal or metal stripping, something to keep the aggregate from migrating to the right-of-way and sidewalk, and he noted that Mr. Peterson mentioned that there is some exposed root system.

Mr. Palombo asked Mr. McCants of Urban Forestry how parking could be accomplished.

Mr. McCants stated that it would have a negative impact on the trees/roots.

Mr. Coleman asked if anything needed to be done to protect the existing roots.

Mr. Hoffman responded that when he asked Mr. Daughenbaugh about this site, he said he did not want to see any vehicular parking within 10 feet of the oak tree trunk so ideally you'd want to put some sort of barrier at least 10 feet away from the trunk to prevent vehicles from getting that close.

Mr. Guess asked if there is a curb or an apron before the gravel.

Mr. Peterson replied that there is no actual curb.

Mr. Hoffman stated that he did think there was a curb, but the street is paved up to the top of the curb.

Mr. Guess asked if it's just the sidewalk that serves as the apron.

Mr. Peterson said that there has been gravel there for years.

Mr. Guess said that in looking at the pictures it looks like it is obviously a concrete curb-cut and then a sidewalk that serves as the apron to the gravel-base. (He passed out pictures to the Board to review.)

Mr. Peterson stated that they intend to widen that curb-cut where it's at 20' right now – it's supposed to be 24'.

Mr. Guess suggested that if they widen it, they could add more concrete for an apron.

Mr. Peterson acknowledged that they could.

**June 3, 2013**  
**Board of Zoning Adjustment**

Mr. Palombo asked for verification that the plans were not showing improvements.

Mr. Peterson asked that, given the circumstances, they wanted the Board to review first.

Mr. Palombo suggested that the case be held over to July to allow Mr. Peterson time to illustrate on the site plan how he proposes to protect the tree roots.

Mr. Guess stated that the Board would take that into consideration then asked how many stations there would be at the salon.

Mr. Peterson replied that there would be two stations.

Mr. Guess asked if that meant there would be 2-3 workers, then 2-3 customers.

Mr. Peterson replied that the salon would be appointment-based.

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

Mr. Hoffman stated that he wasn't sure whether or not this site would require improvements to the interior to make an accessible bathroom and that would also necessitate providing an accessible parking space on the property. He didn't know if gravel is considered an acceptable surface for an accessible parking space.

Mr. Guess addressed Mr. Peterson stating that Mr. Palombo had recommended holding over the application to give Mr. Peterson opportunity to provide more detail to the Board. He did understand that Ms. Johnson is anxious to get moving with her business, but he felt like the Board needed all the facts to fully consider the application.

Mr. Peterson asked if the use would be allowed provided he coordinated out the surfacing with Urban Forestry and Traffic Engineering.

Mr. Guess stated that it was up to the Board to consider and opened the matter for a motion whether to holdover, approve or disapprove.

Mr. Coleman stated that he needed to ask one question from staff before proceeding. He asked if staff was recommending that provisions be allowed for ADA act if it does not exist.

Mr. Hoffman stated that the issue is whether or not the improvement to the building for building code requirements would require making the bathroom accessible per ADA or similar requirement to the building code. If so, they may also need to provide one ADA-compliant parking space on the site which may require pavement of the parking space and the access aisle so that when you have a van-accessible space you can get in the wheelchair and roll up to the building.

Mr. Metcalfe asked why that affected what is being considered.

**June 3, 2013**  
**Board of Zoning Adjustment**

Mr. Hoffman stated that it is a concern because it affects the siteplan, and a variance is siteplan specific.

Mr. Coleman asked if the use of the building by the educational counselor was allowed before or after the ADA.

Mr. Hoffman replied that he didn't know when it came in, but because it is before the Board potentially requiring changes to the building itself to accommodate the proposed use of the salon, that may trigger at least the compliance inside of the building, and since we're looking at a surface parking variance, you have to provide accessibility for the building itself, if that includes having to provide a ramp, he didn't know, then you're looking at having to provide a space on the site so that someone can actually get into the building.

Mr. Guess asked if there were any further questions.

Mr. Milling asked Mr. Peterson if there are interior renovations required that have been done or are yet to be done-it seems that there is a laundry list of improvements and unanswered questions of things that may or may not need to be done. If this were to be approved, had he looked at some of these things, and did he have answers to that, or is it something yet to be determined?

Mr. Peterson answered that without approval of the Board (on the use) it's difficult to hire an architect and get into building code issues. He felt it was imperative to get the approval on this first and accommodating whatever gravel/surface is required then get changes to the site plan to see how it affects anything that could be done, then he could work with Traffic Engineering as they would be the ones to see the containment.

Mr. Milling asked if the applicant didn't look into any of that prior to buying the property.

Mr. Peterson said that the changes weren't really required. It's only because they are coming before this committee that this is being discussed, because any other use would be limited B-1 and none of this would come up. They wouldn't have known to research this subject for B-1 use.

Mr. Milling stated that prior to buying, the applicant knew it was to be used for a salon. It was previously used as an office, so he would think they did take some steps to see what it would cost to put in stations and whether it needed to be brought up to ADA. He asked if any of that was looked at before or was this the first they've heard of it.

Mr. Peterson replied that they did look into how much would cost to make changes, and in his experience, a salon and office are of the same occupancy classification, so if it was allowed in B-1, zoning would just sign off on it and there would be no questions asked. He did agree that there should be some ADA compliance.

Mr. Milling asked if they have looked at that and are they prepared to do that, or is that unknown.

Mr. Peterson that they would do it; they are just trying to get the use approved. They are not trying to get away from paving other than being concerned about killing the tree.

**June 3, 2013**  
**Board of Zoning Adjustment**

Mr. Guess stated that the other issue which has not been discussed is the Historic Development Commission review (or not). He stated that the Architectural Review Board may address some of these issues, like the ramp.

The Chair asked again if there were any from the Board for the applicant.

Mr. Sanford Davis addressed Mr. Lawler and asked for help since the agent said some items are not relevant, yet he needs a use variance to get started. He thought that Mr. Metcalfe seemed to think that some items not relevant to the Board's purview, yet Mr. Peterson stated he needs use variance to clear up some of the questions. He asked Mr. Lawler's advice on the debate.

Mr. Lawler responded that Mr. Peterson needs to have the use variance before getting to the other issues. He asked Mr. Palombo if he could think of a way to solve that.

Mr. Roach stated that it would be treated as a business, so the building and fire code would look at it the as same category of business as it was before, so it's not going to be considered a change of occupancy in either code.

Mr. Hoffman suggested that they contact a building official to verify if the only provision for the proposed use would be a hair trap and if they don't have to make any improvements for accessibility, then that may not necessitate any other site improvements, like paving, and that would make their application that much easier. They don't have to have an architect to consult with a building code official on that issue.

Mr. Guess and Mr. Coleman agreed that the use could be approved "subject to....".

Mr. Guess asked if there were any further questions, and hearing none, he opened the matter for a motion.

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

- 1) **subject with coordination with staff regarding containing gravel surfacing on-site; and,**
- 2) **full compliance with all other municipal codes and ordinances.**

Mr. Guess noted that this was to include an updated site plan.

The motion carried unanimously.

**#5834**

**(Case #ZON2013-01247)**

**Wrico Signs, Inc.**

**516 Springhill Plaza Court**

**(East side of the Northern terminus of Springhill Plaza Court, 560'± North of Springhill Avenue)**

**Sign Variance to allow a second freestanding sign (86.6± square feet) for a total of four signs for a single business location in a B-3, Community Business District; the Zoning**



**June 3, 2013**  
**Board of Zoning Adjustment**

**Ordinance allows a maximum of three signs with only one being a freestanding sign in a B-3, Community Business 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.

The following people spoke in favor of the application:

- 1) Mr. Wade Wright, Wrico Signs, 3345 Halls Mill Road, Mobile, AL, spoke on behalf of the applicant;
- 2) Mr. Jai Patel, managing partner, Windgate by Wyndham, 516 Springhill Plaza Court, Mobile, AL, spoke on his own behalf.

They made the following points in favor of the application:

- The sign was inherited in the purchase of the property;
- In 2003, Mr. Patel received plans from the seller of the property. The print was reviewed by the City of Mobile for code compliance, and it showed the sign on the property so the sign has been there since 2005, and they just received a notice of violation;
- The property was purchased March 19, 2013, and buyers had no idea there were sign violations;
- He contacted Wade Wright at Wrico upon receipt of the notice of violation;
- They had had fire and health inspections, etc. done on property and this never came up;
- The sign is at the entrance to the property, and the building is at the end of the street. Customers who make reservations have difficulty finding them, and they don't see many walk-ins;

Mr. Guess asked if the sign in question was the pylon sign or the freestanding sign.

Mr. Palombo stated that there are two freestanding signs – one pylon and one monument.

Mr. Wright stated that one sign shows from the interstate and one shows as people turn off Springhill Avenue so they can find the property.

Mr. Guess verified the number of signs presently on the property: pylon that faces the interstate, two existing wall signs and one monument sign. He asked if the monument sign was the one the applicant wished to keep.

Mr. Patel responded yes.

Mr. Guess asked if the landscaping/trees obscured the signs.

Mr. Patel replied that he believed the tall standing sign was obstructed right off the interstate. He noted that it is hard to see the hotel off the interstate and that the freestanding sign does help a little bit.

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

**June 3, 2013**  
**Board of Zoning Adjustment**

Mr. Milling asked Mr. Wright when the sign was installed.

Mr. Wright replied 2005, and he further stated that this group just bought the property three months ago and just received notice of violation.

Mr. Milling asked Mr. Palombo if he knew what triggered the notice.

Mr. Palombo replied that when a business changes hands/ownership, the business owner applies to revenue to receive a new zoning clearance. Urban Development sends a zoning technician to check for any changes to the site, and the zoning technician found the violation for an unpermitted sign.

Mr. Coleman asked if the plan Mr. Patel had showed the sign on it.

Mr. Palombo replied that typically, developers from all different states put four, five, or ten signs on a plan. The site plan approval is for the building only. The site plan is probably just a generic site plan and probably not the site plan turned into the city. He remembered this site very distinctly. He thought that Quality put the high-rise sign there, and the original owners had issues with it because on the cul-de-sac where it's located, there's hardly any traffic that gets to it. Basically, the only sight line they have is through the interstate. He thought the interstate sign was 65' feet high and wasn't high enough. He further commented that they would be allowed a 100' sign.

Mr. Coleman asked if we had anything to indicate when the sign in question was installed.

Mr. Palombo stated that it was after 2005 after the plans were finalized, approved and the CO issued.

Mr. Coleman asked if we are penalizing the applicant for something he had no control over, and asking him to remove a sign he had nothing to do with.

Mr. Palombo stated that if he had an illegal building or something that was a fire hazard, he'd have to remove it.

Mr. Wright stated that the trees to the south are on the adjoining property, which is another hotel property, so he doesn't think that getting them cut is an option.

Mr. Guess stated that he travels this area frequently, and he did know that the landscaping and the adjacent properties really obscure the entrance to this property unless driving east on Springhill – otherwise, it wouldn't ordinarily be seen. He asked the Board to consider this information as well.

The Chair asked if there were further questions. 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 opened the matter for a motion.

**June 3, 2013**

**Board of Zoning Adjustment**

A motion was made by Mr. Adam Metcalfe, with second by Mr. Sanford Davis, to approve the above referenced request.

The motion carried unanimously.

**#5835**

**(Case #ZON2013-01248)**

**BRR Architecture**

**6575 Airport Boulevard**

(South side of Airport Boulevard, ¼ mile West of Hillcrest Road)

**Sign Variance to allow two informational signs larger than 20 square feet ( in a B-3, Community Business District; the Zoning Ordinance does not allow informational signs larger than 20 square feet in a B-3, Community Business District.**

Council District 6

The Chair announced the matter.

Mr. Palombo asked if Mr. Guess had received the letter from the applicant to withdraw the application.

The Chair asked if there were those present who wished to speak either in favor or in opposition to the matter and opened the floor to their comments. He noted that the application had been withdrawn.

**#5836**

**(Case #ZON2013-01249)**

**Gary D.E. Cowles**

**1601 Dublin Street East**

(Northeast corner of Dublin Street and Dublin Street East)

**Front Yard Setback Variance to allow reduced setbacks of 20' along the South property line, and 5' along the North property line; the Zoning ordinance requires a 25' Front Yard Setback along all street frontages.**

Council District 2

The Chair announced the matter, advising it had been recommended for holdover to the meeting of July 1<sup>st</sup>. He advised the applicant should address the Board regarding the subject at that time.

Gary Cowles, 457 St. Michael Street, Mobile, AL, spoke on behalf of the applicant and made the following points in support of the application:

- The owner of the property wishes to build a small grocery on it and have a couple parking spaces on it. However, the triangular shape of the lot and the current setbacks will reduce the square footage of buildable area to about 193 square feet.

Mr. Cowles noted that the case had been recommended for holdover and asked if the 40' right-of-way on East Dublin Street and Dublin Street would be recommended by staff to be increased to 50' as a condition of the subdivision.

**June 3, 2013**

**Board of Zoning Adjustment**

Mr. Hoffman replied that the staff report for the case to be heard later this week by the Planning Commission did recommend for 25' from the center line on East Dublin Street and Dublin

Street. He also stated the report also recommends that any setbacks on the subdivision plats be subject to either the standard 25' or whatever the Board of Zoning Adjustment determines should apply to this site.

Mr. Cowles stated that if they increase it by 5' on either side on the North and South, then without a variance that would reduce the buildable area to zero. He asked what might be acceptable as setback variances.

Mr. Guess stated that they have to consider what is determined at the Thursday Planning Commission and said the Board may holdover.

Mr. Cowles stated that he suspected that the subdivision is going to require 25' on either side of the center line, so he asked if they could discuss a little of the variance request now.

Mr. Guess replied that the Board would have to consider the hardship of the property since it does have a unique layout and look at what they are trying to do with the property. There are additional questions regarding trees/landscaping that the staff has recommended that would need to be considered.

Mr. Cowles stated that they were in agreement with those items, and they would have plenty of room for landscaping and trees once they get to that point. He stated that he hoped to get some feedback as to whether the Board felt like this would be feasible to get a reduced setback on the Dublin Street (south) side to even zero feet so that he can be prepared for how he'll address once the subdivision conditions were determined. If not, his client has a piece of property he can't do anything with.

Mr. Coleman asked what would happen if they went back with the footprint that is already there.

Mr. Hoffman stated that since the previous building has been gone for more than two years, any non-conforming setbacks have expired. Now all that is there is a slab.

Mr. Coleman said that some of the walls are still there as this is in his neighborhood.

Mr. Hoffman suggested that the applicant prepare a drawing of the site accommodating the right-of-way dedication that may be expected at the Planning Commission meeting, and then look at what sorts of setback he would then need for the proposed development. At the Planning Commission, request that the subdivision setback meet what is going to be needed so that can be on the recorded plat if approved. He can then come back to the BOA Board and request those setbacks as a variance request from the zoning requirements.

Mr. Cowles stated that they are agreeable to everything else in the staff recommendations, but if they lose that additional 10', it puts them down to nothing.

Mr. Metcalfe asked if the site can be developed the way the applicant wants to with the current setbacks but without any anticipation of additional right-of-way being taken by the Planning Commission.

**June 3, 2013**  
**Board of Zoning Adjustment**

Mr. Cowles replied “no.”

Mr. Metcalfe verified that the property is not even usable that way, and stated that if the Planning Commission does what is expected, then there will be no question that the property can't be used. He asked for verification that what the staff is saying is that if they go to the Planning Commission and they take the 50', knowing that that will kill the development. Then he asked if he understood correctly that they will come back to the BOA and ask for waiver of what the Planning Commission decided on Thursday.

Mr. Hoffman stated that there were two different sets of regulations. On Thursday, the Planning Commission is only looking at subdivision regulations and that has a 25' setback requirement. Mr. Cowles can request that the 25' setback requirement be reduced to perhaps 10' along both streets, so that would take care of the subdivision plat issues. But there is still the over-arching zoning ordinance requirements; the variance should address the zoning ordinance requirement.

Mr. Palombo asked Mr. Cowles if he had checked about shifting the building to gain a few feet that way.

Mr. Cowles said they have considered that and will probably have to, if they can get to a zero setback.

Mr. Palombo stated that it is zoned B-2.

Mr. Guess asked if Mr. Cowles was clear on the recommendation that he go to the Planning Commission and see how that comes out.

Mr. Cowles did believe so, he just didn't want to go through all that and then still end up with nothing.

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. Hearing none, he asked if there were those present in opposition to the matter and opened the floor to their comments.

Mr. Ken Pritchett, 1612 Dublin Street, Mobile, AL, spoke on his own behalf, and made the following points in opposition of the application:

- The property has been vacant since 1961, and he wants it to stay as is. He doesn't want setback variance granted.

The Chair asked if there were any questions for the resident. Hearing none, he noted that the staff recommended holdover so the Planning Commission can review it, there is one resident opposed, and there are issues with the site layout and how the setbacks will impact the potential development of the property. He opened the matter for a motion.

A motion was made by Mr. Adam Metcalfe, with second by Mr. Vernon Coleman, to holdover the above referenced request to the meeting of July 1<sup>st</sup>, with revisions due by June 10<sup>th</sup>.

**June 3, 2013**

**Board of Zoning Adjustment**

The motion carried unanimously.

**#5837**

**(Case #ZON2013-01250)**

**5414 Old Shell Road LLC**

**5414 Old Shell Road**

(North side of Old Shell Road, 120'± East of Cosgrove Drive)

**Parking Surface Variance to allow gravel surfacing for parking and maneuvering area in a B-1, Buffer Business District; the Zoning Ordinance requires all parking and maneuvering areas to be paved with concrete or asphalt in B-1, Buffer Business Districts.**

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.

Doug Anderson, Burr and Foreman Law Firm, 11 N. Water Street, Mobile, AL, spoke on behalf of the applicant and made the following points in favor of the application:

- At the time the owners purchased the property in 2006, there was a gravel parking lot on the east side of the building;
- The front parking lot is paved, and the side parking lot is gravel on the east side and it does not go into the backyard;
- In the fall of 2012, they called for an inspector to come to the site for advice on getting a new sign;
- While inspector was there, he noticed the gravel parking lot and asked to see their permit;
- The prior renter put in the gravel parking lot without a permit;
- His clients received a summons to environmental court for failing to observe the city ordinances;
- The environmental court judge recommended that the property owners attempt to get a variance before he hears the full case;
- Photo of real estate office to the west of clients' property show neighbor has shell parking lot also. They applied for a variance in 1989 and were turned down. They were told to pave and did pave some, but much of it is still gravel;
- Next vacant building to the west also has shell/gravel parking area;
- Further west is the Brick Pit BBQ showing the full parking area is gravel;
- The hardship in this case is that his clients are facing criminal prosecution in environmental court for something they did not do-that existed when they purchased the building;
- The zoning ordinance says a variance cannot be given where economic loss is the sole basis for the variance application;
- The main basis of this variance application is that his clients don't want to face criminal prosecution for something that existed when property was purchased.

Mr. Guess asked how many striped spaces were available for parking.

Mr. Anderson replied 14 or 18; he wasn't sure.

Mr. Guess said he'd go with 14 as a minimum.

**June 3, 2013**  
**Board of Zoning Adjustment**

Mr. Anderson stated that the building was previously used as a professional veterinary office that complied with all building codes, parking requirements when it was built.

Mr. Guess asked if they had sufficient parking now.

Mr. Anderson responded that he did not know-that hadn't been brought up by the city as an issue. There have never been any complaints until now after they called the inspector out to discuss a sign, and now they find themselves in criminal court.

Mr. Lawler explained that environmental court brings people in when there is a violation of the building codes, and the first thing they try to do is bring the person into compliance. They don't haul people in to throw them in jail. They are told to get a variance, or they are told to come into compliance.

Mr. Anderson stated that the citation/municipal offense ticket states "gravel was placed as a parking surface without approval. The gravel must be removed or there must be an approved variance allowing the gravel." His clients are being charged with placing the gravel on the site which again was in existence before they bought the property. They are subject to fines/penalties, and if they don't comply with the environmental court, the judge will hold them in contempt and send them to jail.

Mr. Milling noted that the staff reports states that the gravel parking was only use for overflow, but he went out there, and it appeared to be used for employee parking, and it appeared to be full in the back where there is parking on the grass.

Mr. Anderson acknowledged that he thought it was more than overflow parking, that employees may park there as well.

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 application 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, The Chair made a comment that it does appear that it is common for the area to have gravel-mix and parking on grass. He still questioned whether there was sufficient parking. He opened the matter for a motion.

A motion was made by Mr. Vernon Coleman to approve the above referenced request.

Mr. Guess asked if there were to be any restrictions on the parking as it relates to the grass areas and any kind of apron or curbing, or just as it currently exists.

Mr. Coleman stated that there doesn't appear to be any buffer to keep it out of the street.

Mr. Hoffman stated that the gravel area is setback from the street probably 75' at least. He also pointed out that when the building was built in '96-'97 it had a compliant tree/landscape plan and 14 parking spaces for the size of the building. But based on the photos submitted with the application, it is no longer in compliance with the tree plan for the property, and one of the paved parking spaces is now taken up by a dumpster.

**June 3, 2013**  
**Board of Zoning Adjustment**

Mr. Metcalfe seconded the motion to approve the above referenced request.

The Chair acknowledged that there was a motion to approve and a second. He asked Mr. Coleman if there were not going to be any conditions to the approval.

Mr. Coleman stated that there were not.

Mr. Guess noted that there is also a large oak tree in the area, and did it need to be protected.

Mr. Hoffman stated that it wasn't a live oak tree.

The Chair again acknowledged that there was a motion and a second and asked if there was any further discussion. Hearing none, he called for a vote.

The motion passed unanimously.

**#5838**

**(Case #ZON2013-01266)**

**Dr. Ken Jordan (M. Don Williams, Agent)**

**6401 Brindlewood Court**

(Eastern terminus of Brindlewood Court, 735'± East of Brindlewood Drive)

**Rear Yard Setback Variance to allow a garage within 6' of the rear property line in an R-1, Single-Family Residential District; the Zoning Ordinance requires a minimum 8' rear yard setback.**

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.

Don Williams, Williams Engineering, 6300 Piccadilly Square Drive, Mobile, AL, spoke on behalf of the applicant. He recognized that the staff notes showed a recorded 1977 7.5' drainage/utility easement. He stated that he could not in good conscience ask the Board to approve extension of building into a utility easement. Therefore, he agreed with staff that this request needs to be denied. They did not realize the easement was there at the time of application because several of the neighbors have buildings built along the property line. But once it was brought to his attention, he could not present a good case to the Board to ask them to approve what would result in an encroachment when the owner tries to sell the property.

Mr. George Davis asked Mr. Williams if they had considered requesting vacating the easement.

Mr. Williams said that they thought that process may be too long and hard, they are only off 2', and they can look at revising the shape of the garage to make it work.

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



**June 3, 2013**  
**Board of Zoning Adjustment**

The Chair made a motion to deny the above referenced request at the request of the applicant. Mr. Coleman seconded the motion.

The motion carried unanimously.

**#5839**

**(Case #ZON2013-01267)**

**Vallas Realty, Inc.**

**8 Kenneth Street**

(East side of Kenneth Street, 180'± North of Dauphin Street)

**Use, Front Landscaping, Surfacing, Access/Maneuvering Area, and Buffer Variances to allow a four-unit multi-family complex with reduce front landscaping, gravel access/maneuvering area, and no residential buffer in an R-1, Single-Family Residential District; the Zoning Ordinance requires a minimum of an R-3, Multi-Family District for a 4-unit multi-family complex with full compliance with landscaping requirements, all access/maneuvering areas to be asphalt or concrete, and a compliant residential buffer.**

Council District 2

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. John Vallas, Vallas Realty, 165 West I-65 Service Road North, Mobile, AL, spoke on behalf of the applicant, and made the following points in favor of the application:

- The building has been vacant for more than a couple years;
- The new owner wants to renovate/improve the structure, make a financial investment and contribute to the community;
- She is reducing the number of units from five to four;
- She plans to demolish the back portion of the building that is an eyesore;
- The building was previously used as a 5-unit multiplex structure, and since it has been vacant it lost its use variance. The existing zoning of R-1 causes a hardship on the property.
- The existing improvements can't be used the way it's built and conform to the existing zoning regulations.
- They are requesting a front landscaping variance;
- The existing landscaping covers 40% of the site which exceeds requirements. However, of the 3000 square feet of landscaping on the site, only about 577 square feet is on the front. But they cannot comply with the front landscaping requirements due to existing improvements.
- The staff requirements regarding the south side of the site doesn't bring them into compliance on the front of the site;
- Alleyways and gravel are common in Midtown;
- Staff researched and found numerous duplexes in the area;
- They cannot meet the buffer requirements because the south property line is an alleyway that serves three other property owners.

**June 3, 2013**  
**Board of Zoning Adjustment**

Mr. Metcalfe stated that he went by property and it looked bad, and he was curious as to what type of improvements the owner intended to make to the property.

Mr. Vallas replied that she will tear off lean-to on the back of the garage, replace rotten wood, paint, renovate interior to get units suitable for leasing. She will also make improvements to the parking area and access in and out of the site.

Mr. Guess asked why there was a request for a landscape variance.

Mr. Vallas replied that 60% of the site is already landscaped. The requirement is for a portion of that to be on the front of the site, but they can't meet that due to the improvements. He has spoken with David Daughenbaugh, and they will coordinate any new requirements with Urban Forestry, but they don't foresee any based on the amount of landscaping that currently exists on the site and the two large live oaks that are on the east side of the site that they are preserving.

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

Mr. Sanford Davis asked about the neighbor's statement that this alley is the only access to his property.

Mr. Vallas stated that it is a public alleyway serving multiple persons.

Mr. Palombo questioned how they could angle cars in the parking area without blocking the neighbors' access to the alley.

Mr. Vallas stated that they would be willing to meet traffic engineering on site to coordinate exactly how the parking is put it to accommodate everyone.

Mr. Palombo and Mr. Sanford Davis both voiced concern for the neighbors and their access as the neighbors had to write in to voice objections.

Mr. Vallas stated that this was the first he'd heard of any objections, and he would welcome the opportunity to meet with the neighbors today or at their convenience to work it out.

Mr. Metcalfe suggested that they slide the parking areas to be parallel with the building to change the angle and not block the alley.

Mr. Vallas agreed to meet with his engineer, the neighbor, and City Engineering on site so that everyone is comfortable with the changes.

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

Mr. Milling asked if the part that is being torn down had the flat roof.

Mr. Vallas affirmed that it was the flat roofed structure on the east portion of the garage and that would provide circulation into the back.

Mr. Metcalfe asked if the electrical service on the lean-to was for the entire structure.

**June 3, 2013**  
**Board of Zoning Adjustment**

Mr. Vallas didn't know how many units were on that meter.

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

Hearing none, he asked if there were those present in favor of the matter and opened to the floor to their comments.

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.

Melanie Adkison, 161 Williams Street, Mobile, AL spoke on her own behalf and made the following points in favor of the application:

- She and her partner purchased the property as a multiplex, and they were informed that it had been used as a multiplex;
- They later found out that it had been rezoned R-1 and were in shock as it wasn't sold/explained to them that way;
- She lives in Midtown and only wants to improve the neighborhood area;
- She doesn't want to cause problems for neighbors and wouldn't think of blocking the alley;
- She didn't think that the angled parking would block the alley, but she agreed that parallel parking might be a better option;
- She will tear off the back part of the garage that was the back of the fifth unit and will only have four units;
- She will construct a small laundry room out of the remaining portion of the old fifth unit for the tenants' use.

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

Susan Gianelloni, 1804 Dauphin Street, Mobile, AL, spoke on her own behalf and made the following points in opposition to the application:

- She opposed the application because they wouldn't be able to enforce the way the tenants park;
- Walgreen's is going in at Kenneth and Springhill Avenue and traffic is already a nightmare.

Rebecca Green, 1800 Dauphin Street, Mobile, AL, spoke on her own behalf and made the following points in opposition to the application:

- The house is directly looking into her back yard;
- It takes anywhere from five to ten minutes to get out off the driveway on any given day, and having a four-unit housing complex with multiple cars for each unit would only add to the problem of getting in and out of their properties;
- She was concerned about setting precedent with changing the zoning.

**June 3, 2013**

**Board of Zoning Adjustment**

- She asked if this would be upstairs/downstairs units.

Mr. Guess verified with both Ms. Gianelloni and Ms. Green their proximity to the site and how it might impact them.

Ms. Adkison reiterated that the site was previously used as a five unit property. It was owned by Mobile Infirmary, they purchased it to make a little park for their sign. She was told that the only reason it was now an R-1 is that it sat empty for over two years so it reverted back. It was listed as multi-family unit when she purchased it. It is an eyesore and dilapidated, there is no way to use it as an R-1 facility due to the way it is divided up unless it was torn down. She didn't think the city would allow that because it's in a historic district. As far as enforcing the parking, it must be included in the contract and have assigned parking and the tenants must comply.

Mr. Gabriel Fines, 20 Kenneth Street, Mobile, AL, spoke on his own behalf and stated the following:

- He moved in during 2006 and it's not the best-looking section of Midtown and it does need a lot of improvements;
- He is concerned that the exterior of the property will reduce the landscaping and that they are asking for parking in the front;
- Many units in the area have paving or shells in the front;
- He would like to see the green space preserved;
- He agreed that the outbuilding looks awful and thinks that a lot can be accomplished by taking that building down.

Mr. Guess confirmed that the parking would be to the side or the back.

The Chair asked if there were any further questions for the neighbor. Hearing none, he asked if the Board had further questions for the applicant.

Mr. Guess did state that he thought it might be beneficial to take down the garage, and he asked the applicant if she had discussed it with her partner.

Ms. Adkison said that the house and garage are both eyesores, but they don't think that it is necessary or cost-effective for them to completely tear down the garage. She thinks they will be best served by tearing off the lean-to and making the remaining part of the garage a small utility area.

Mr. Coleman commented that they need to be mindful that there aren't any north/south accesses in this area of Mobile-you have to go east/west to be able to go north/south. The traffic isn't going to decrease, and there is a hospital there too. The traffic is only going to increase due to the location.

The Chair announced that there was a recommendation from the staff to holdover for site plan revision and possible revision of the engineering for the layout of the parking.

**June 3, 2013**  
**Board of Zoning Adjustment**

Mr. Palombo stated that if they are going the approval route, they could approve it subject to Traffic Engineering approval on the back out parking and plan revision.

Mr. Metcalfe congratulated the applicant for what she's trying to do and recommended approval subject to coordination with the staff to correct the side parking.

Mr. Coleman seconded.

Mr. Sanford Davis wasn't ready to approve as he still had concerns about the uproar this has caused in the community. He wished to register his unreadiness because they shouldn't take it lightly when neighbors take time to come register their concerns, but he further stated that there did need to be harmony on the Board.

The Chair stated that if the staff can coordinate with the applicant to make sure they address that the alleyway is kept clear through redesign of the parking and features of the building that is being removed, then the Board should take that into consideration.

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

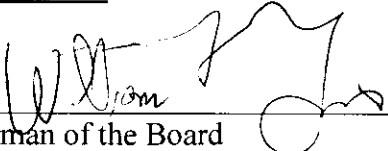
- 1) subject to Traffic Engineering approval to reconfigure the parking spaces along the 10-foot alley.**

The motion carried unanimously.

**OTHER BUSINESS:**

Mr. Palombo and Mr. Hoffman introduced three new members of the planning staff:  
Carla Davis, Planner II,  
Charles Finkley, Planner I, and  
GeeGee Watt, Planner I.

**APPROVED:**

  
\_\_\_\_\_  
Chairman of the Board

/lw