

BOARD OF ZONING ADJUSTMENT MINUTES
MEETING OF JULY 2, 2007 - 2:00 P.M.
MOBILE GOVERNMENT PLAZA, MULTI-PURPOSE ROOM

MEMBERS PRESENT

Reid Cummings, Chairman
Martha Collier*
Vernon Coleman
Sanford Davis
William Guess
J. Tyler Turner*
*supernumerary

MEMBERS ABSENT

Stephen Davitt, Vice-Chairman

STAFF PRESENT

Frank Palombo, Planner II
Caldwell Whistler, Planner I
Mae Sciple, Secretary II
Tiffany Green, Secretary I

OTHERS PRESENT

John Lawler, City Attorney
David Roberts, Traffic Engineering

Chairman Cummings noted the number of members present constituted a quorum and called the meeting to order. Mr. Cummings advised all those in attendance of the rules, regulations, and procedures regarding Board of Zoning Adjustment meetings and votes.

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

At this time Mr. Cummings announced that in Mr. Davitt's absence, Mr. Turner, supernumerary, will vote in that Board position, and that in the case of a recusal, Ms. Collier, supernumerary, will step in to vote for that position. He also announced that today cases would be taken in order per the agenda and called the first case.

PUBLIC HEARINGS:

#5421

(Case #ZON2007-01616)

Aaron Peterson & Alphonso Cariglino

2012 Dauphin Street

North side of Dauphin Street, 225' ± East of North Fulton Street.

Use, Access/Maneuvering, Parking Ratio and Parking Surface Variances to allow a human resources/personnel services business office in an R-1, Single-Family Residential District, with a 10' access drive, nine parking spaces, and grass parking surface; the Zoning Ordinance requires a minimum of T-B, Transitional-Business District for business offices, 24' wide access/maneuvering area, and ten parking spaces with an asphalt, concrete, or approved alternative parking surface.

Al Cariglino , 138 Florence Place, Mobile, AL, spoke first, expressing his nervousness at not having done this before.

Mr. Cummings reassured the gentleman by telling him to just state his reason for being before the Board and what he would like to accomplish.

Mr. Cariglino stated he had some drawings he would like to pass out to the Board. He went on to state that when they bought the property they attempted to follow all of the rules of the City and the State was concerned in regards to doing business. He stated their business venture was neither illegal nor immoral, that it is a simple payroll and staffing service for small businesses. He said that when they activated their business by filing incorporation papers with the State they also went to the City and applied for a business license. This was denied due to the fact that the property was not zoned for commercial business. At that time, they were told they needed to go to the Zoning board and apply, since they had been told they qualified as a transitional business, as the upstairs would be for the exclusive residential use of the Petersons. There would be two offices downstairs, which would mean only about 25% of the property being used as an office. Mr. Cariglino went on to state that shortly after they purchased the building and prior to activating our business, he called his City Councilman, Fred Richardson, and spoke with him at length regarding the status of transitional business zoning before the City Council. Mr. Cariglino stated he was advised by Mr. Richardson that it had been tabled for two weeks but that Mr. Richardson expected it to be passed the next Council meeting. Mr. Cariglino went on to say that Mr. Richardson also advised him to talk to with the neighbors to see if there were objections to having an office in the residence, and if not, then the business could be started. Mr. Cariglino admitted they did not start on this right away as they still had to file with the State. They did not receive any adverse comments until after they resurfaced the asphalt driveway and parking lot. This was done because it was cracking and it made the area look better. There are no intentions by the owners to change the appearance of the property, as they also live in the area. They like the appearance and want to keep it that way. They have no intentions of putting up signage. They only want to do a small employee type business. Mr. Cariglino stated that they were given the paper work to file for transitional business zoning. They filled the paperwork out for transitional zoning based upon the information they read regarding it. However, when they filed it, somehow it was changed and now it appears that they have filed for a complete zoning change. This was not what they wanted, he stated. All the owners wanted was to be allowed transitional business zoning for their property. Mr. Cariglino stated again that the upstairs portion of the building is maintained for the exclusive use as the residence of the Petersons. He stated there are no plans to change the exterior appearance of the building, including there not being business signage, and that they will only be using the two downstairs rooms as offices. At this time, Mr. Cariglino asked that pictures of the area that he had taken be given to the Board. He stated they were of the residences around the property in questions and said he had highlighted some that were either apartments or commercial/rental properties in the area. He went on to say that that if you looked at Dauphin Street from Water Street to Zeigler Boulevard that it was a 4-lane thoroughfare and not really what you would consider a neighborhood street. He said that they appreciate those who want to keep it as a neighborhood and that they, too, want to keep the house as much that way as possible and reiterated they did not plan to change anything. He also went on to comment that there were lawyers and accountants offices, everything around them, which is why they were applying to get a variance for business use.

Mr. Cummings said that he was unclear regarding Mr. Cariglino's mention of Mr. Richardson trying to get this property re-zoned into a transitional business type district and asked if Mr. Cariglino could clarify that for him.

Mr. Cariglino stated that when they bought the property they had been told that the transitional business zoning was in the City Council at that time to be passed. His conversation with Mr. Richardson established that the issue had been tabled.

Mr. Cummings asked if the transitional business zoning was at City Council in terms of being an ordinance that was going to be introduced as part of the zoning ordinance or was it to be applied specifically to this piece of property?

Mr. Cariglino responded that he was of the understanding that it was as a zoning ordinance and not applicable just to this piece of property.

Mr. Cummings then asked for clarification regarding that the applicant, when purchasing the property, did so knowing that the property was zoned R-1.

Mr. Cariglino responded that yes but with the understanding that there was a possibility that a transitional business could be conducted.

Mr. Cummings then stated that the transitional business amendment to the zoning ordinance has taken place.

Mr. Cariglino responded correct and that that according to what it says in the transitional business verbage, if read all the way through, they qualify.

Mr. Cummings then asked if application was then made through the Urban Development Department to the Planning Commission to have the property re-zoned as transitional business?

Mr. Cariglino responded that this was correct.

Mr. Cummings stated that the applicant made comment that it had then become a full-blown re-zoning to some other classification.

Mr. Cariglino said that they received all the paperwork they were supposed to file, took it to the zoning board and told them what they were trying to do. He stated that they helped the applicants fill out the form to make sure the correct ones were completed. He added that the applicants asked "point blank" if they were completing the correct ones because they wanted to go with transitional business and not a "full blown variance". He went on to say that the applicants did not want a "big hoopla" about it, specifically mentioning they did not want a sign put up. He said the next thing they knew a sign was put up and somehow it had been filed differently than what they had asked for and this is what started the controversy.

Mr. Cummings advised the applicants that regardless of the zoning classification, whether it be B-3 or I-2 or TB, a sign would be put up regarding a re-zoning hearing. Mr. Cummings went on to advise the applicants that the normal procedure is the Chair asks for anyone who wishes to speak in favor to do so and then anybody who wishes to speak in opposition to do so. The Board

wants to give everybody a chance to do that, but that the applicant is given the opportunity to rebut any thing they may hear either for or against them. Mr. Cummings then asked the Board members if they had any questions at that time. Hearing none, he asked the applicant to step aside for a moment to give anyone else there the opportunity to speak in favor of the application.

Sonya Fowler, a real estate broker, spoke on behalf of the applicant. She stated she though TB zoning suited the same needs that are in the qualifications. She also stated she thought they were not trying to put up a sign or have a lot of traffic.

Mr. Lawler asked if there were enough grounds for rezoning.

Mr. Palombo said no and that there was no application.

Mr. Cummings stated for clarification that this was not a rezoning hearing and that rezoning hearings were heard by the Planning Commission. He went on to say that if the applicants wished to withdraw this application for a variance of use as it applies to the terms of the R-1 zoning, they were welcome to do so and apply directly to the Planning Commission for a rezoning change. He stated the purpose of this hearing among other things was to consider whether or not a hardship for this property exists in its existing current R-1 zoning category, which would allow the operation of this type of business here. Mr. Cummings went on to thank Ms. Fowler for her remarks, telling her the Board was delighted to here anything she had to say about why this particular property should be granted a use variance, but that it was not a rezoning hearing.

Ms. Fowler said okay and then asked if a variance were granted, would it stay for the particular business indicated or would it go with the property.

Mr. Cummings advised that variances are granted to the property. Mr. Cummings then asked if there were anyone else who wished to speak in favor of this application.

An unidentified male speaker in the audience asked if the variance were to be denied, would that bar them from seeking a rezoning.

Mr. Cummings addressed the audience and said no, then explained the details of the options available to the applicants. He stated that if it were to be denied, the applicant could accept the denial and not use the property for the proposed purpose. Mr. Cummings said a second option for the applicant was to appeal the matter to Circuit Court within 15 days of that day's decision, at which point it was out of the Board of Zoning Adjustment's hands and became a matter for the Courts to decide. Option three, as outlined by Mr. Cummings, gave the applicants the opportunity to change their minds and go directly to the Planning Commission and seek a rezoning of this property for Transitional Business or B-1 or whatever they might choose. At that point, it would be up to the Planning Commission to make a recommendation for the rezoning to the City Council, then it would be the City Council who would make the ultimate decision.

Mr. Cariglino then said they would like to withdraw the application at this time and take the route Mr. Cummings had mentioned.

Mr. Cummings asked for clarification that if the applicant withdrew, could he come back, as he didn't want to put the applicants in a position that they could not come back to this Board and seek a use variance if the Planning Commission did not determine in their favor.

Mr. Palombo took this opportunity to advise the Chair and other Board members that the business was currently operating illegally in a legally zoned piece of property and that if the application were withdrawn, the next available meeting before the Planning Commission would be the second meeting in August. Mr. Palombo went on to ask if the Board would allow him to run this business for another two months?

Mr. Lawler stated it would be a policy decision for the enforcement division of the City to do with regards to allowing somebody to continue in operation. He stated that generally speaking the Board frowns on a business continuing without proper zoning. He went on to say that from what the applicant had said, he applied for a business license and was turned down because he didn't have proper zoning but decided to go ahead and operate the business anyway.

Mr. Cariglino added they were just sitting there using the computers not really doing that business.

Mr. Cummings asked if they were answering the telephones as Worldwide Personnel Services Alabama Inc?

Mr. Cariglino said yes.

Mr. Cummings then said the Board would proceed with hearing the variance application. If the use were denied, then they could certainly make immediate application for rezoning to the Planning Commission to be heard in August. However, as they had made application for a business license, been denied based on lack of proper zoning, and had decided to operate the business in spite of this knowledge, that the Board was denying the request to withdraw based on those facts.

Mr. Palombo stated that, though he was not the person who spoke with the applicant regarding their application, he knew the staff give applicants the choice of either bringing their request before the Board of Adjustment or seeking rezoning by the Planning Commission. Going before the Board of Adjustment is obviously the easiest and fastest way to proceed, as a rezoning takes nine to ten weeks.

Mr. Cummings stated that under the circumstances, in order to be fair to the applicant, the residents and other property owners, the Board would go ahead with the hearing.

Mr. Graham queried that there may not have been proper notification to some of the neighbors.

Mr. Lawler responded that Mr. Graham was correct regarding the impropriety of holding a secret meeting and that nearby property owners were entitled to know what was going on with adjacent property, but, in this particular instance, with signage up and down Dauphin Street, it was difficult to imagine there being anyone who did not know about the meeting who had interest in it. Mr. Lawler expressed his confidence that the Board had more than substantially complied with the notice requirement ordinance.

Mr. Cummings recognized all of this and in the interest of the process, the choices available to the applicants, said the Board would proceed with this and asked again for anyone else wishing to speak in favor of the application.

Jason Darly, an attorney with offices located at 1751 Dauphin Street, addressed the Board. He stated he was relatively new to Mobile, having moved here just before Katrina in 2005. He said he had gone to undergraduate school at Florida State and attended law school in Mississippi. This meant he drove back and forth through Mobile a lot. He let it be known that it was Mobile's charm... Mobile, Dauphin Street, Government Street, the vitality of these areas that was the main reason he came to the city. When he finished law school and decided to start his own firm, Mobile seemed to be the perfect mix of Savannah, GA and New Orleans to him. Initially, he rented an office downtown not far from the Chamber of Commerce, then he and his partner bought the building there at 1751 Dauphin Street, at the corner of Hannon Avenue, one block east of Houston Street. He stated he and his partner have great neighbors with no problems whatsoever. The partners keep their building clean and have put a great deal of money into both the exterior and interior of the building. He went on to say that all along Dauphin Street, there are beautiful building, beautiful homes, beautiful businesses, and he didn't personally see a problem with granting a variance here. He said there were businesses to the left as you go down the block, with the one spot where there weren't any, but everywhere else there are businesses. He noted there is a business directly across and to the right; South Alabama Care which give care and support to area AIDS patients. Mr. Darly said he though there was room for progress here, and that business owners generally have to keep up their businesses, maintain their yards because they are trying to grow their business, trying to maintain their clientele. Mr. Daley went on to say that a lot of the draw for those who live in Midtown is the ability to live and work in the same small community and said that he lived 8/10ths of a mile from his office and walks to work from time to time. He said Mr. Cariglino was simply asking for the same thing with his low impact business that will not undermine the structural/architectural integrity of the building or area. Mr. Daley also stated he felt that allowing this type business on the property was a good idea and that it would contribute to the growth that is going on all over Mobile county, from the north with the steel mill and all along the bay. He stated that Mobile is a great place to live and a great place to work and the vitality of Midtown is something a lot of people want to be a part of. He expressed his feelings that these businesses can contribute a lot and not take a way from these communities.

Mr. Cummings thanked Mr. Daley for his comments and time. He also welcomed him to the city and expressed his hope that Mr. Daley's practice did well. Mr. Cummings ask if there were those who wished to speak in opposition at this time.

Mrs. Phyllis Creel, 2009 Dauphin Street, which is right across the street from the property spoke first in opposition. She stated that she had lived at that address for the last 20 years with her husband and had reared their daughter at that location. She said her home was built in 1913 and that they had done extensive renovations and restorations with the historical integrity in mind. She expressed that they had built their life and home in that location and were close to their neighbors and knew that their neighbors shared their feelings. She stated that she was adamantly opposed to any zoning variance, transitional or otherwise, being allowed in her neighborhood. Mrs. Creel stated that when the current owners of the property in question purchased the property, they knew it was zoned R-1 and chose to run a business in it anyway; that they did not

seek a variance with regards to zoning until they had been turned into the City. She went on to say she felt quite sure there was no shortage in commercial property in Mobile and in as much would not require a historic home to be converted into a business. She then commented on the residential use of the property as mentioned earlier saying that it appeared to be “off and on” for the past nine months with the property dark at night and deserted on the weekends. She also commented regarding the statement made earlier to Dauphin Street being 4 lanes, saying that had nothing to do with whether the area was a neighborhood or not, and that the people present at the hearing that day were a testament to this fact. She stated that this part of Dauphin Street all the way to Houston was almost exclusively residential, and that this part of Dauphin Street contains some of Mobile’s most beautiful architecture and referenced Termite Hall and Trinity Episcopal Church. She expressed her feelings that this neighborhood is part of what gives Mobile its unique personality and that the people who live there work to maintain the area and preserve and protect the neighborhood. She expressed deep concern that if the variance was allowed it would set the precedent for that portion of Dauphin Street no longer being a neighborhood.

Mr. Cummings thanked Mrs. Creel for her comments and asked if there were anyone else who wished to address the Board to please do so.

RobbieLynn Irvine spoke saying she had lived within five blocks of this house for about the last 50 years. She added her parents had lived across the street from the address in question for 12 years. She stated that on the corner of Fulton and Dauphin Street, there is a house that is zoned commercial because it was commercial at the time zoning for the area went into effect and therefore had been “grandfathered” in. She said that property has been an appraisal office and is now going to be a law office. She added her parents lived next door to that property and they would have loved for that house to have been a residential house, but she felt that once a home becomes commercial you can not get people to come back in and re-establish it as residential. She expressed her opinion that once you change and make a residential piece of property a commercial piece of property it is almost never going back to residential. She also expressed concern over a statement she heard the applicant make during a television interview that the area was known as Lawyer Road, saying that she had lived there for over 50 years and most everybody she had spoken with who lives in the general area had never heard this term. She went on to say that the block from Fulton Street and Upham, Dauphin and Old Shell Road was now almost exclusively commercial. Noting this, she asked that the Board not allow this to take place in her neighborhood.

Mr. Cummings thanked Ms. Irvine for her comments and then explained for the record and the applicant that Ms. Irvine’s comment regarding “grandfathering” referred to the zoning ordinance of the City of Mobile being adopted on or about 1968 and if businesses were in a structure prior to that adoption, they were “grandfathered” in, but that the area or property wasn’t necessarily zoned for that use.

Marilyn Culpepper with the Historic Mobile Preservation Society spoke saying that she was there in support of the neighborhood maintaining its historic character. While she did understand that many improvements have been made to historic properties all over the city by law firms and other professional offices, as far as this particular property is concerned, her organization feels that it would be an inappropriate decision to grant this rezoning variance.

Mr. Cummings thanked Mrs. Culpepper for her comments and asked if there was anyone else who needed to speak.

Barry Dumas, 1826 Dauphin Street spoke in opposition advising the Board that he had written a letter regarding this issue and hoped that they had it in front of them and addressed a couple of points from that letter. He directed their attention to a house on Dauphin and Upham Street that had previously been of interest to the accounting firm of a Mr. Crowe. At that time, the Board denied a zoning variance for that property and that decision was upheld by the Court of Civil Appeals and kept the house with its R-1 zoning. Mr. Dumas expressed his belief that one of the most pressing factors in this case was the fact that the property owner bought the house with full knowledge that it was zoned R-1 but with full intent to run a business there. Mr. Dumas stated that in his opinion it constituted no hardship for the property to be granted the variance for business as the plan by the property owner was for the property to be used as a business from the beginning and not as residential.

Mr. Cummings thanked Mr. Dumas for his comments and appreciated that he had mentioned the issue of hardship for the property. Mr. Cummings asked if anyone else wished to speak on the matter.

Mr. Arnie Nelson, 2008 Dauphin Street, spoke saying he lived next to the residence in question and had copies of the petitions signed by pretty much everybody in the neighborhood signed against this proposed rezoning. Mr. Nelson said that the only time he had spoken with the owner of the property in question since they had purchased the house last August was during the week prior to the Board of Zoning Adjustment hearing when the owner accosted Mr. Nelson in his front yard. At that time, Mr. Nelson said, Mr. Peterson told him that Dauphin Street was to be nothing but doctors' offices and lawyers' offices and there was nothing we could do to stop it. Mr. Nelson also stated that based on his personal research the hearing should be based on their applying for a use variance to use the home as a business and that variance was supposed to be based upon the owners' showing a hardship for the property to be used as originally intended. Mr. Nelson voiced his opinion that the owners had not demonstrated such a hardship, that there was no hardship related to the property preventing it from being used as a residence. He said it is zoned residential and has been occupied as residence for decades, and that the former owner was at the hearing. Mr. Nelson stated that the former owner had lived there probably 50 years and had raised a family there and that the only reason he knew that the former owner moved from the property was he decided go to a retirement facility. Mr. Nelson went on to say he believed the applicant was supposed to show that the proposed use was appropriate for the site. Mr. Nelson let it be known that he did not see how the proposed use was appropriate for the site as it is of no use to the neighborhood, offering no benefits, no goods, nor services to the surrounding neighbors as needed to be considered for a transitional business, including not having a character which would promote local orientation. Mr. Nelson opined that the business would have nothing but a negative effect on the surrounding area. He also questioned regarding the need of a required buffer zone between a business and a residence. This is because the driveway for the property in question is two feet from Mr. Nelson's property line. He also stated that to grant this variance would only serve to open the door to additional variances leading to a deterioration of the neighborhood, which had already been pointed out as being on the National Register of Historic Places. Mr. Nelson went on to comment on a couple of other flaws in the application as he saw them one of them being the application for nine parking spaces instead of ten. He stated he didn't know why they did that as they do not currently have space for even the nine unless

they park on the grass which he felt would not be attractive. He also felt that the request for nine was an effort to prevent them being required to meet screening and landscaping requirements. He voiced his concern regarding why their parent company, Re-sourcing Solutions Group, a publicly traded company with assets of 2.7 million dollars and revenue of 5 million dollars in 2006, should want or need to put a branch of their business in a residential area. He said this kind of company needed to be renting commercial space in Mobile, not trying to sneak in an office next door to his house.

Mr. Cummings responded to a couple of things mentioned by Mr. Nelson. He stated for the record that when an applicant applies for a variance they are welcome to apply for others things that vary from the ordinance, including the number of parking spaces required, but it is up to the Board as to whether or not those things are granted, but the applicant always has the right to apply. He asked those in attendance for the sake of time that if someone had something new and factual that had not been heard to please come forward and speak, otherwise he would close this portion of the public hearing.

Mrs. Carol Elise Hardy, 134 Myrtlewood Lane, Mobile, AL 36608, stated she owns the house at 2016 Dauphin Street and is opposed to the application for a variance to permit commercial activity at the location in question. She said 2016 Dauphin Street had been in her family for nearly 100 years; that her grandparents had built the home; her father had been born and died in the home; she was married in the home, and when she retires from the Department of Human Resources, she plans to live there. As a result of this, she does not want any compromise of the zoning rules. She added that from Fulton Street to the west to Carlen Street in the east, the north side of Dauphin Street is entirely residential with the exception of Trinity Church. She did admit as her house fronts Dauphin Street that it has become a major thoroughfare, but that her house along with those of her neighbors all have big backyards. She said as a child she played in that backyard and her children played in that backyard and she hopes if she has grandchildren that they will play in that backyard. She said this as her house, like that of her neighbors, has not vehicle access to Dauphin Street. Her access is limited to an alley off Fulton Street that runs along the back of the house. She expressed concern over this as she had heard that the applicants intend to extend the back to the alley to their property to use it as an access for their business and she has heard they even intend to pave it. She said that any action that turns the alley into a commercial thoroughfare will create a serious danger to children playing in the yards of these houses and threatens to destroy the residential character of all the houses on the north side of Dauphin Street.

Mr. Cummings thanked her for her comments then addressed the applicant advising him of his opportunity to respond to anything he had heard so far.

Mr. Cariglino said he felt he had heard a lot of half truths but appreciated everybody's opinion and feelings. He went on to state that the City was missing quite a few pieces of property that were being used as either rental or commercial in that area. He also said that they intended to keep this property as a residential piece of property if zoned against them. He addressed the issue of buffers and said they would install 6 foot privacy fences between the properties. He commented on the emotional rhetoric that was coming out and felt that it was due in part to the TV interview from the previous Friday where he was questioned by the media about concerns they had received regarding being told that they were running an Internet porn shop from the location. He went on to re-iterate that it was not their desire to disrupt the neighborhood, to

change it in anyway. They liked it the way it was and that they planned on keeping the grass cut and paving the existing parking lot located in the front of the home, which he added was there when they purchased the house.

Mr. Cummings thanked Mr. Cariglino and reminded him, as well as those in attendance that the City of Mobile was over 300 years old but that the city's ordinances were not. He said that from personal experience he knew that sometimes the city ordinance can be your friend and sometimes it was not. He also commented to the applicant that the midtown area was a very tight knit community and if things did not go in the applicant's favor, either there or in court or with Planning Commission or City Council, that Mr. Cummings firmly believed that the neighbors would welcome them and be good neighbors if it is the applicant's intent to make the house their residence. At that point he asked the Board if there were questions for either the applicant or any of the speakers.

Mr. Graham asked if all those in opposition to the variance would please stand.

Mr. Cummings stated for the record that there were an awful lot of folks present with concerns about Dauphin Street and the midtown area.

Mr. Graham asked the applicant how many people were in the proposed business.

Mr. Cariglino said there were a total of two people who worked in the office, Eric Peterson and himself. He said that Mr. Peterson's sister worked as an outside sales representative, so there are never more than 3 cars at the house and they are parked in the back.

Mr. Cummings asked if there were any more questions.

Joe Stewart, 1908 Dauphin Street, asked the applicant that if there were never more than three cars there, why was the front yard paved? Mr. Stewart made comments regarding Mr. Cariglino's comment of "half truths" and said it was Mr. Cariglino's choice to use innuendo regarding the statement that there were a bunch of rental properties in the area. Mr. Stewart allowed that there were residential rentals but that no businesses rent or run in that block of Dauphin Street.

Mr. Cummings thanked Mr. Stewart for his comments. As Chair, Mr. Cummings stated that he did not see the use as a fit with the property. He had not seen any establishment of hardship with regard to use as far as a commercial venture was concerned. He agreed that Midtown was a unique part of Mobile and that Mobile is a very dynamic place. He commented that many of the residences in the midtown area have been there for a very long time; 75, 100 years or more and that Trinity Episcopal Church had been on that corner for over 150 years. He stated again that he personally didn't see that the property had a hardship for this uses and saw no reason why it couldn't be used as a residence. He then asked for other comments, questions, motions from the Board.

Mr. Graham moved that the Board deny the application as stated.

Mr. Cummings asked for a second, which Mr. Guess gave.

Mr. Cummings asked for discussion and hearing none called the vote, which was unanimous to deny.

Mr. Cummings thanked everyone for their time and participation in the process. He encouraged the applicant to pursue the best plan he felt for himself and his venture and let him know that he could rest assured that the neighbors would welcome them into the community. He then advised the Board would allow a few minutes for the room to clear and called the next item.

#5422

(Case #ZON2007-01623)

Site Enhancement Services

1312 West I-65 Service Road South

West side of West I-65 Service Road South, 410'± South of Key Street.

Sign Variance to allow 238 square feet/face on a 70' high rise freestanding sign within 1000 feet of the centerline of I-65, and three wall signs on a single tenant commercial site; the Zoning Ordinance allows 200 square feet/face on freestanding high rise signs within 1000 feet of the centerlines of I-65 and I-10 and two wall signs on a single tenant commercial site.

Kyle Clements with Site Enhancement Services company, 6001 Nymphs Parkway, South Bend, Indiana, spoke. He stated they were the national sign agents for Value Place Hotel which is in the process of purchasing a property located at I-65 Frontage Road and Pleasant Valley Road for hotel use. He noted that the staff report had commented that this was a bit premature regarding a request for a sign variance as the purchase of the property had not yet been finalized. Mr. Clements addressed that by saying for Value Place, signage is a very large component of its marketing strategy and also very important to the site as it creates visibility along the interstate. He stated they were there requesting two sign variances, one being for additional square footage for the freestanding sign and the other asking to utilize a third wall sign on the property. He said that as it stands right now, they are allowed 200 square feet for the free-standing sign at the height of 100 feet because they are within the 1000 feet of the center of I-65. They are also allowed the use of two wall signs at 30% of the wall area, which given the scale of the building in question would be limited to 350 square feet each. So, essentially they are currently allowed 700 square feet for building signage and 200 square feet for a freestanding sign. Addressing each of these items separately, Mr. Clements asked the Board to look at page 9 of the packet he had provide each of them to see the area of the sign. Currently it is referred to as the 250 square feet sign, which is by the smallest box that actually encompasses the entire sign. Taking in to account what is called the geometric measurement, which is just the actual, physical area the sign takes up, it is actually only 180 square feet, which is 20 fet under what is allowed by code. This being the case, the data shows the company is being penalized 28% of the sign area with unused space. He added that this was the detriment in this situation. It was for this reason combined with the road conditions associated with that corridor that they were going for the requested sign size. He stated that all along I-65, people were traveling anywhere between 65-70 miles an hour and that they needed signage with lettering large and legible enough to give them the required advanced notification to make safe traffic maneuvers off of I-65 to make their way to this particular location. It is this size sign that will allow for that. It will allow for lettering that is easily read at a distance and the technology used with regards to illumination and messaging will be code compliant. The reasoning behind this specific sign package is it gives safe, advanced notification required by motorists who will in all probability be unfamiliar with the area. He stated that when you measure the actual physical size of the sign it is under the 200 feet allowed per code at this

particular time. In regards to the wall signs, Mr. Clements said that currently they are allowed two signs with essentially 350 square feet each. He felt that this was an exorbitant amount of signage and something they felt was not advantageous for them at this particular property. However, they would like the Board to consider granting them three very small signs, one along the two long elevations of the building and the third on the elevation actually facing the service road. The purpose of these three signs was to create place based identification. He felt the large, freestanding sign would provide visibility that would allow travelers the advanced notification to get them safely off the interstate and the three smaller signs would allow them to identify the physical building. Mr. Clements again referenced the packet, specifically drawing attention to pages 4, 5, and 6, which show the percentages of space currently taken by signage. He noted that on each of the long sides, they currently take up only .8% (125 square feet), where the code allows them up to 30%, or 350 square feet, or by geometric square footage, 92 square feet. If placed on the end elevation, the same exact sized sign would only take up 3.4% of the front façade. In as much, he expressed that it was felt that this would not only be better for their customer but also better for the community, as it reduced the need for yet another large sign in that corridor and provide the hotel the ability to provide patrons with the place based identification needed in order to safely maneuver to the property.

Mr. Graham asked Mr. Palombo if the staff currently calculated the footage based on the box (i.e. length times width).

Mr. Palombo stated the staff did calculate based upon “the box” as the zoning ordinance does not state geometrical or boxed, but typically they have always gone on the box dimensions for square footage.

Mr. Turner asked if the purpose of the large sign was to draw cars off of the interstate?

Mr. Clements responded yes then tried to clarify its location, apologizing for not being from Mobile then explaining the property was located near the current hotel properties flagged by Fairfield, Residence, and Hampton. He went on to state that the property is in that corridor so new hotel signage would have no negative impact on the community as it already had a number of large hotel signs and the proposed signage would be in line with those.

Mr. Turner commented that as someone who does live here, he was trying to figure out if you were going north on I-65, you would have to pull on to Pleasant Valley Road and then it would take you 45 minutes to cut through traffic to get to the location, if you could figure it out the first time. By the same token, if you were coming south, you have to come back through two traffic lights, if you can figure out with exit to take, the Lakeside Drive exit and which exit to take to get to the Service Road. Mr. Turner said he was not really sure putting a sign up would help going forward from either north or south.

Mr. Cummings noted that it appeared that no one else was there to speak either for or against the proposed variance. He then said that the staff understood the ordinance to measure just for “box” dimensions regardless of how much of that space is actually used.

Mr. Plombo said that was correct and illustrated that it was applied to McDonald’s as well in that their “arches” would have to fit in the “box” dimensions as well to be in compliance.

Mr. Cummings commented on the building being fairly wide, that is from the street to the back; that it was also a very long building.

Mr. Clements asked how long was the building.

Mr. Cummings said it was over 200 feet long.

Both Mr. Cummings and Mr. Palombo remarked that the site was a very difficult site and Mr. Palombo said there were wetland issues at the rear of the property as well.

Mr. Coleman asked Mr. Palombo if the fact that there is no exit right in the area being discussed and that travelers would have to go all the way to Government and come back down the service road had been taken into consideration.

Mr. Palombo said that was an issue the Board could use.

Mr. Coleman commented that all of these factors including signage being on the back of the building would create a hardship.

Mr. Cummings said that given that the total used area, if figured square inches as a percentage of the box that the ordinance calls for is under utilized and the fact that Government Boulevard is $\frac{3}{4}$ of a mile to the south of the location and the Airport Boulevard exit is another $\frac{3}{4}$ of a mile or so to the north, it would be important to really want to keep folks attention. Mr. Cummings then questioned whether this location would be a suite hotel, some type of extended stay facility.

Mr. Clements said it was an extended stay hotel, but they do change their business package. He re-stated that he represented the sign agent only and that specific business practices are left up to the Value Place hotel chain. He went on to say that they normally go on a weekly basis, but that has been altered in other communities and that figures quoted were to simply give a general idea. He added that Value Place is an extended stay concept hotel started by the same person who started Residence Inn.

Mr. Graham said he was okay with the size of the sign on the piling, whether it be 238 square feet or 180 square feet, but that he also felt they should stay with 2 signs with regards to those actually located on the building due to the fact that the Board has been a stickler regarding this and single tenant sites. He went on to add that he felt they were well within their rights to increase the size of those signs as long as the size stayed within the city code.

Mr. Coleman commented that he was familiar with the area as he goes through there all the time and said that if someone coming off Government Street did not take the service road, they would not find the location. He also felt that the location needed a sign that would face Cottage Hill Road.

Mr. Davitt said the applicant could do a sign on the north facing the interstate for southbound drivers or vice versa. With the applicant still having the large sign on the pylon, he questioned the need for signage right on the side of the building.

Mr. Coleman asked if Mr. Davitt was commenting on the west side of the building.

Mr. Davitt said the east side of the building which is where the other sign is. He commented that he was not interested in getting into their business or where they wanted to put the sign, but he felt strongly about the fact the applicant has the large sign on pylon as well as the two wall signs.

Mr. Coleman asked for confirmation regarding the pylon going on the front of the building.

Mr. Clements stated the pylon would be placed on the north east side of the building.

Mr. Davitt felt that it might be possible to let them increase the size of the two wall signs.

Mr. Cummings asked if there were a motion on the floor.

Mr. Davitt moved to approve the pylon sign and up to two wall signs subject to the wall signs not exceeding the city ordinance.

Mr. Cummings clarified the motion by stating the pylon sign and the two wall signs would be in accordance with the dimensions that were given.

Mr. Clements asked if the statement about dimensions applied to free standing sign or the wall signs.

Mr. Cummings advised that it applied to either, clarifying the motion for the applicant by saying that the pylon sign and two of the three wall signs were to be approved as proposed.

Mr. Clements asked if the Board meant approval at 125 or 92 square feet.

Mr. Cummings said yes and asked the there was a second for the motion.

Mr. Guess seconded and Mr. Cummings asked for discussion on the motion before the Board.

Mr. Palombo asked for clarification from Mr. Davitt with regards to his motion by stating the Board was approving the freestanding wall as is but that the applicants can not increase the wall signage if they can meet the requirements of the City Code, 350 square feet maximum with 30% face front and that they would be lock at the 125 maximum square footage.

Mr. Davitt said yes.

Mr. Clements said his clients would stipulate that they would use just the 125 square feet wall signs and they would determine which one would definitely go on the south elevation because that is the main entrance but they would have to review the placement on either the north or east elevation for best visibility.

Mr. Cummings then called the vote, which carried four to one, after which Mr. Cummings thanked the applicant for his time and called the next case.

#5423

(Case #ZON2007-01626)

Downtowner and Michael Joint Venture

North side of Michael Boulevard, 180'± West of Downtowner Boulevard, and extending North

to Downtowner Boulevard, 176'± North of Michael Boulevard.

Off-Site Parking Variance to allow 373 off-site (paved) parking spaces in a B-2, Neighborhood Business District for post-disaster agent overflow parking for a near-by insurance company office; the Zoning Ordinance requires all parking to be on-site in a B-2, Neighborhood Business District.

Dan Deihl of Mobile Group spoke representing Pilot Catastrophe stating their proposal for an off-site parking variance was due to the increased need for parking at their new facility, the old BE&K building. The organization looks to employ 400 people at that location and currently only have 330 parking spaces. They are looking to add an additional 70 spaces plus over-flow parking for when situations call of the influx of additional agents. Mr. Deihl expressed his understanding the staff's concern that the area would predominately be unoccupied, that it could possibly be utilized as a "cut thru", and/or it would become a gathering place for undesirable activities. Mr. Deihl stated they were very open to the idea of some type of entry confinement like a carded gate or security guard. He let the Board know that the site is currently vacant. He also let the Board know that Pilot has a history of doing more than required when it comes to such things a landscaping with their properties. He cited their Downtowner location, which did not require any landscaping, but the company added trees and other vegetation which have created a very appealing piece of property. He added that the variance is necessary because under current condition they are unable to park the 400 employees they expect to have on a daily basis.

Mr. Cummings asked if there were any questions at this time.

Mr. Davitt commented that there were currently 370 odd parking spots and unless there were a major hurricane he too was concerned that the additional parking lot would be pretty empty most of the time.

Mr. Deihl addressed that by saying there would be 400 employees in the building continuously, with 330 of them parking on the other side. That would leave the addition 70 cars in the proposed parking lot which would have restricted entry, daytime security, and locked up/inaccessible at night.

Mr. Davitt asked if the area in question was considered wetlands.

Mr. Deihl advised that it had been delineated and no longer had any characteristics conducive with wetlands.

Mr. Davitt then asked what kind of landscaping could be expected on the site.

Kurt Sexton spoke representing both Pilot Catastrophe and Hillcrest Commons. He reminded the Board that Pilot was a Mobile based business which cares deeply about its community and that the Pilot president, Mrs. Pilot, takes the appearance of her corporation very personally, which is why so much is done with regards to landscaping. He further stated that Pilot also has a very personal approach to the well being of their personnel in addition to their property, therefore security for all is a priority. He said that at the current property they have added additional oak trees, added sod, and are planning decorative lighting using 8 feet cast iron poles which they will run along the walkway. They plan on continuing this landscaping on the proposed parking lot as well.

Mr. Cummings voiced his concern over the issue of drainage with this much asphalt.

Mr. Deihl advised the Board that Pilot would be creating a drainage detention area as was the case for the other site. Their current plan is for it to drain into the canal on the south side of Michael Boulevard.

Mr. Cummings asked if the plan was to hold it in underground pipes until it gets into the creek or if the plan was the creation of an on-site retention pond.

Mr. Deihl stated there would have an on-site retention pond which would slow down the storm water and get it to the catch basin on the north side of Michael Boulevard from there it would be carried underneath an existing pipe that goes under Michael Boulevard.

Mr. Davitt asked if the retention pond would be at the apex of the site.

Mr. Deihl advised that the detention pond would be at the bottom right hand corner on the Michael Boulevard side. He went on to let it be know that if this variance were to be approved and Pilot were to find in themselves in a situation where they needed to cut down on some of the parking in order to create a larger detention pond, they would certainly do so.

Mr. Cummings offered the Board's appreciation for the fact that Pilot is a Mobile based company very well recognized for their work during disaster times. He then expressed his concern of what he saw as the potential for he referred to as "a big sea of asphalt that basically is going to be a big sea of asphalt most of the time", in as much as it will not be occupied by a lot of cars, people or activity. He wanted to know what the possibilities for heavily screening the area with landscaping would be. He wondered whether they would be able to meet the minimum code here or was it going to be above that standard.

Mr. Palombo said the applicant would be meeting code and said if the Board went with approving the variance that he suggested breaking these solid aisles of parking with a landscape aisle every 10 to 15 cars. He said that the area would be a lot of asphalt and that to meet the landscape requirements of 12% of the site being green that number of trees required might be a problem, however, the creation of green space would not be.

Mr. Deihl added that that the proposed landscaping in front of the Board meets both the tree and landscaping requirements of the city and re-emphasized that if the Board reviewed what Pilot had done in this regard at their location down the street, it was above and beyond the requirements. He said the preliminary site plan only showed that minimum requirements would be met.

Mr. Cummings asked what type of trees were planted at their current location.

Mr. Deihl advised they were the required live oak heritage trees and reminded the Board that when Pilot moved in to the site on Downtowner, there were no landscape requirements for them to fulfill, yet Pilot chose to sod and add trees to the site.

Mr. Guess asked how many employees did Pilot currently have on site.

Mr. Sexton said the site had not been opened yet and the current proceedings were part of that process.

Mr. Guess amended his question to be how many parking spaces did they currently have.

Mr. Sexton said that right now there were currently only 330 parking spaces. This would be an issue by the end of the month when Pilot begin hiring to bring the current staff numbers up to their necessary 400.

Mr. Guess then added that it appeared to him that Pilot was only looking for a total of 400 spaces, not 330 plus 400.

Mr. Sexton said Pilot was only looking for an additional number of spaces to accommodate agents in situations of catastrophe. He added that while the event might not be based in Mobile, if it occurred somewhere on the Gulf Coast then the need for parking in addition to the necessary 70 to cover the total 400 regular employees would exist.

Mr. Guess asked if the applicant knew the total number of vehicles anticipated with an event.

Mr. Sexton hazarded to guess at that figure, but stated that when they did the original drawing and submission it was done with the maximum that would be allowable.

Mr. Guess expressed his confusion and asked if the parking lot could be expected to house a potential 700 vehicles.

Mr. Sexton said that was not what they anticipated.

The applicant was asked if the company was only looking at parking cars in the area or were they anticipating parking semi-trailers as well.

Mr. Sexton stated that it would strictly be cars with the majority of them initially being rental as most of the staff for this facility would be moving here.

The Board member went on to comment that the site was located across the street from Davidson High School. He also remarked that there were not a lot of places to hang out in that area and expressed his concern regarding the prevention of unauthorized use of the lot by other cars.

Mr. Sexton again said that Pilot also wanted no other vehicles on the lot except employees so security for the lot would be hired.

Mr. Sexton was asked by the Board if they were open to putting some type of fence around the off-site parking to help preventing it from becoming a place to "hang out".

Mr. Sexton responded by saying they are willing to do whatever would be best, but they were not looking at something as simple as a chain across two bars and a padlock. He stated that at this point he was unsure of what to submit with these regards as he was unsure of what was

allowable by zoning ordinance, but he assured the Board that Pilot was ready to follow whatever guidelines recommended by them.

Mr. Cummings expressed his concern to the other Board members that while he understood the current need for more parking, he was worried with regards to what might happen in the future if this user's business grew to such an extent that the 1020 Downtowner Boulevard location was no longer sufficient forcing them to move. 1020 Downtowner Boulevard for the past 25 years, with the exception of BE&K, has struggled as an office building. Mr. Cummings felt this was due in part to design and in part to location, regardless, with its history, if it ceased to have its current use, the variance would have created a sea of asphalt with lots of trees and a security gate that nobody will pay much attention to. Mr. Cummings queried Mr. Lawler regarding his thought on this matter.

Mr. Lawler responded that the Board could put reasonable conditions in place with regards to the variance such as "as long as this business is in operation and has a need for it", however, it will not prevent the parking lot being in place, because once it's put down, it's there.

Mr. Coleman brought up the option of "grasspave/grasscrete" instead of traditional paved surface.

Mr. Lawler responded positively to the option of asphalt for the 70 or so that are expected and the use of "grassy area" or whatever special surface for the onslaught of people that would arrive in the case of an event.

Comments were made by staff, Board, and applicant alike as to the uncertainty of upcoming events, noting that this is why they are understood as accidents and or catastrophic.

Mr. Sexton noted that the addition of the parking lot could be seen as a booting selling point as a business tenant could see the advantages of having the addition parking for their employees.

Mr. Cummings agreed saying that the site would be seen as already improved and the "hard part" being completed.

Mr. Deihl stated again that Pilot is not looking for something short term. They, as a corporation, are not going to invest the money they've invested into that area for just an "overnight" venture.

Mr. Davitt asked Mr. Palombo to show the location of Pilot's offices on the existing zoning map.

It was noted that State Farm and the law firm of Stokes & Clinton were also in that area.

Mr. Davitt stated that if parking were to "get out of hand", that the property across the street owned by the Gavin Bender group could possibly utilize parking at that location.

Mr. Deihl was quick to relay that those office currently do not have enough parking for their quantity of business.

Mr. Davitt moved to approve the request, subject to some type of an adequate on-site security system to prevent "cut thrus" and things of that nature, as well as meeting not only the minimum

landscape ordinance but some type of coordination with additional on-site landscaping such as islands to break up the rows of parking.

Mr. Cummings restated the motion saying approval subject to the installation of a security system, presumably a keycard type, restricted access to both Downtowner and Michael and meeting landscape ordinance, which was quickly seconded by Mr. Coleman.

Mr. Roberts, traffic analyst for the City of Mobile, asked if they could see some sort of detailed parking site layout such as Mr. Palombo mentioned as well as Traffic Engineering having the opportunity to approve any curb cuts to be made on the site prior to anything being done.

Mr. Palombo suggested that more thought be given to the security entrance as the current code requires a “3 car stand off” and with its current design it is not possible to get a “3 car stand off” on private property to enter the site either way.

It was noted this could be accomplished by eliminating some proposed parking to which Mr. Deihl was unopposed.

Ms. Collier expressed concerns regarding the placement of sidewalks to which Mr. Cummings said that the applicant would be responsible for improvements to the sidewalks in the area.

Mr. Guess again addressed this issue of green space in the parking lot utilizing something that is not necessarily black top that would allow for drainage as well, noting that the University of South Alabama utilizes a “grasspave/grasscrete” type product at the Mitchell Center.

Mr. Davitt advised he was comfortable with the use of asphalt but was open to amending to coordinate with Traffic Engineering.

Mr. Cummings said he would very much like to see more trees fringing Michael Boulevard and Downtowner Boulevard, increasing the number of trees required over that stipulated in the current ordinance noting the density of trees planted in Fairhope down Greenoe Road and Fairhope Avenue had effectively hidden the shopping centers and necessary parking lots located there due to their density and stacking.

Mr. Deihl advised the Board that this was something the company was comfortable complying with.

Mr. Sexton stated that he wished he had brought examples of what Pilot had already done on the original lot because it was exactly what has been accomplished.

Mr. Guess asked if they planned on retaining some of the existing trees or just planting new ones upon development.

Mr. Deihl said they would retain what was possible.

Mr. Cummings pondered the wording for the motion with regards to additional trees and Mr. Palombo stated “one and a half times the requirement of frontage trees per street frontage”.

Mr. Cummings stated he would be happier with “twice the times required” as they have shown such a willingness to do so. He then asked Mr. Davitt if he was receptive to this amendment.

Mr. Davitt said he was comfortable with one and a half times but two would be okay.

Mr. Guess asked if this would not be the time to work out the issues involved with drainage.

Mr. Cummings said those issues would be addressed by Engineering.

Mr. Guess expresses his comfort with this information by seconding the motion in its amended version.

Upon hearing this Mr. Cummings called the vote which carried four to one, with Mr. Turner denying.

OTHER BUSINESS

Minutes from the May and June 2007 meetings were on the agenda for approval.

Mr. Davitt moved to approve the minutes as written with second by Mr. Guess.

Mr. Cummings asked for discussion and hearing none, called the vote which carried unanimously.

Mr. Palombo introduced Ms. Tiffany Green to the Board advising them she would be taking minutes until such time as Ms. Sciple’s replacement was hired.

Hearing no further business, the meeting was adjourned in regular fashion.

APPROVED: July 7, 2008

Chairman of the Board

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