

BOARD OF ZONING ADJUSTMENT MINUTES
MEETING OF MAY 2, 2005 - 2:00 P.M.
MOBILE GOVERNMENT PLAZA, MULTI-PURPOSE ROOM

MEMBERS PRESENT

Reid Cummings, Chairman
Stephen J. Davitt, Jr.
H. Lamar Lee
William Guess
Vernon Coleman
Sanford Davis

MEMBERS ABSENT

Martha Collier

STAFF PRESENT

Margaret Pappas, Planner II
Mae Sciple, Secretary II

OTHERS PRESENT

David Roberts, Traffic Engineering
David Daughenbaugh, Urban Forestry
Wanda Cochran, Assistant City Attorney

Chairman Cummings noted the number of members present constituted a quorum and called the meeting to order.

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

APPROVAL OF MINUTES:

A motion was made, seconded and so ordered to approve the minutes of the meeting of April 4, 2005, as submitted. The motion carried unanimously.

PUBLIC HEARINGS:

#5305

(Case #ZON2005-00857)

Cellular South Real Estate, Inc. (Mobile Christian School, Owner)

5900 Cottage Hill Road

(North side of Cottage Hill Road, 160'± East of Woodhillcrest Drive)

Use, Height, Setback, Separation Buffer and Access Variances to allow the construction of a 125' Flag Pole Communication Tower in an R-1, Single-Family Residential District, towers are prohibited in R-1 Districts; to allow the tower to be 125' in height, the maximum height allowed in an R-1 District is 35'; to allow the construction of said tower to within 20' from a lease parcel line, a minimum setback of 125' is required; to allow construction of the tower within 78' of residentially zoned property, a minimum separation buffer of 188' is required; and to allow unimproved parking and access to the site, paved parking and access is required for all towers except those located in I-2 Districts.

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Mr. Cummings announced that due to a proposed change in the location of the tower, the staff recommended that this application be held over for 30 days so that the applicant could amend his plan.

Brooks Milling, of Hand-Arendall, was present on behalf of Cellular South. Joe Gordy was also present representing Cellular South. Mr. Milling asked if it would be helpful for them to submit the revised location to the Board at this time. Mr. Cummings agreed.

Mr. Milling stated that last week they saw the staff report which recommended that this application be held over to explore other locations. He said they found a site which they felt addressed the staff's concern. It was basically in the center of the campus. The original site was on the eastern edge of the campus, very close to the adjoining neighborhood. Mr. Gordy presented a diagram of the alternate site. In addition to the issue about proximity to the neighborhood, Mr. Milling said moving the site to this central location also placed it right at a parking lot, which addresses the concern of paved parking of the site.

Mr. Gordy presented some photographs of what the flag pole tower would look like, as well as a booklet showing a similar tower located in Vicksburg, Mississippi. As stated in their application, the cellular antennae are concealed within the tower, so this addresses the issue from an aesthetics standpoint. They felt it would fit in with the character of Mobile Christian School. The structure would sit behind their baseball field and adjacent to their football field. Mr. Milling said representatives from the school, as well as additional representatives from Cellular South were present if anyone had any questions.

Mr. Coleman asked if it would be a stand-alone tower.

Mr. Milling said it would. It looks like just a large monumental flag pole. There would be fencing around it and landscaping.

Before hearing from anyone from the school, Mr. Cummings said he would like to hear from some of the neighbors who had concerns about this.

Thal Lee, a resident of 1917 Cansler Drive, which was right behind Mobile Christian School, had concerns about the location. Mr. Lee said he talked to Mr. Whistler and it was his understanding that the tower was going to be behind the football field about 150 feet off the property line. He stated that the city of Los Angeles, as well as the International Association of Fire Fighters, had passed a resolution stating their opposition to any stations, antennae or towers until it could be proven that they were not hazardous to one's health. Mr. Lee questioned the need for a tower.

Mr. Cummings noted that the revised location of the tower would be approximately 522' south of the north property line of the school, which would abut Mr. Lee's property. It would also be approximately 491' east of the west property line of the school's property.

Mr. Lee asked if there was going to be an array at the top of the tower.

Mr. Milling said no.

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Mr. Cummings noted that there was a similar cell tower to that proposed at Murphy High School which was approved about two years ago. It was bigger than your average flag pole, nonetheless it looked like a flag pole and all the antennae array and such were designed to be encapsulated inside the housing for the pole.

Mr. Lee further stated that the teachers in Fairfax County in Washington passed a resolution this year against any further zoning or construction of cell towers on school property in Fairfax County, and that the existing towers be taken down. Their reason was for health concerns.

Mr. Cummings said this same concern had come up before this Board many times, not just for cell towers on school sites, but throughout the Mobile area in general. Information that the Board had been presented has been that the frequencies that are emitted from this type of tower and transmission are very low frequency. There have been people at this podium before who have said that there were no current studies that could support that those types of emissions could be harmful to anyone's health. Mr. Cummings asked if a representative from Cellular South would like to address this issue.

Jerry Skipper with Cellular South stated that as far as studies on RF emissions, they have been done by the FDA, the SEC and the World Health Organization, and none of these studies have proved that there was any danger whatsoever at this point.

Regarding radio frequency emissions, Ms. Cochran stated that no local government had any authority to do anything about frequency. That was strictly within the jurisdiction of the FCC.

Mr. Skipper added that when they build a tower it has to be to FCC standards. It is on the engineer's report that they are below those emission standards.

Mr. Cummings asked counsel if the Board should move further in hearing this application, or hold it over.

Ms. Cochran stated that technically there has been an amended application, and there needs to be notice before a decision can be made.

Mr. Cummings agreed with Ms. Cochran and said the application would have to be held over for 30 days. He said if the neighbors had any further concerns they should speak to representatives of Cellular South.

Mr. Cummings called for a motion to holdover this application for 30 days. Such motion was made by Mr. Davis and seconded by Mr. Coleman.

The motion carried unanimously.

#5306

(Case #ZON2005-00859)

Barnes Quality Signs (Ruby Tuesday, Owner)

May 2, 2005

3920 Airport Boulevard, Building 2

(North side of Airport Boulevard, 150'± West of Berwyn Drive West)

Sign Variance to allow three wall signs and one free-standing sign; a maximum of two wall signs and one free-standing sign is allowed on a single tenant site.

Craig Barkley, with Barnes Quality Signs out of Atlanta, was present on behalf of Ruby Tuesday. Mr. Barkley said the purpose of this request was to provide a third identification sign on the Ruby Tuesday's building. He said they needed a wall sign on the right elevation. They were hoping to get a little viewing angle off Berwyn Drive, which was the second frontage for the shopping center. At this point they did not have any exposure for people coming in that rear entrance. Mr. Barkley said he had pictures on his lap top showing the building and the angle of the wall on which they would like to put this sig.

Mr. Cummings said it would, but what would be more useful would be the location of the Am South Bank as it relates to the eastern side of that elevation.

Mr. Barkley said he had that also and showed the Board the picture.

Mr. Cummings said that really, the need for this sign was to let people coming from Berwyn Drive know their location, as opposed to going west on Airport Boulevard.

Mr. Barkley said that was correct. He said they were allowed a sign on the landlord's tenant sign, but they did not receive top billing. They were at the bottom slot. A sign placed in the middle of their right elevation could be seen from both approaches.

Mr. Cummings stated that Ruby Tuesday was well known in Mobile and there was probably noone in Mobile that was not aware that this building was going to be a Ruby Tuesdays. The gold and green colors, with the red and green striped awning, was a landmark in terms of people recognizing what it was. In his view, there was really no hardship for the property itself as to why the sign ordinance could not be implemented and enforced. He said this was not a case of where you had a brand new restaurant coming into a market trying to establish itself and compete against restaurants that had been here forever. Ruby Tuesday has been around a long time.

Mr. Barkley further stated that when he got the initial site plan there was a pylon sign on the Ruby Tuesday site. Later he found out from the developer that they were not really going to let them have that. Instead they would have a slot on the shopping center sign. That slot ended up being at the very bottom. In conversations with the City, Mr. Barkley said they had proposed three identification signs with the understanding that they were going to be able to use this tenant panel. He said in Atlanta when they propose something on a tenant panel, the landlord owns the sign, they get his permission, and that's it. This had been their experience pretty much anywhere in the country. It was a shock to them when their permit application was rejected because they wanted to count the tenant panel as another sign. He said neither Sandy Bell or anyone else realized that until the permit was rejected and the property was already purchased. Sandy Bell felt very strongly that he either wanted his sign up high where everybody could see it, or he wanted exposure on all three elevations just like the standard prototype building.

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Mr. Cummings pointed out that Ruby Tuesday at Colonial Bel Air Mall had only one sign. There was not a tenant pylon sign. That restaurant had been there over 15 years and was apparently doing well.

Mr. Cummings repeated that the way he saw it there was no hardship for this property. The fact that the developer made a promise and then could not live up to it was between the tenant and the developer.

Mr. Barkley said he did not know if the developer made a promise. It was just never made clear to them that a tenant sign that did not belong to Ruby Tuesday would be counted against them as far as their advertising. He said Ruby Tuesdays does not own that sign, and the landlord could take it down if he wanted to and then they would be without a sign.

Ms. Pappas stated that neither the City nor the Board was going to get involved in the requirements between the developers and the owners of the other property. She pointed out that when this site received PUD approval in November 2004, Ruby Tuesdays was allowed one free-standing sign. That could be, as far as the City was concerned, on their lease parcel. The size was dictated by how much frontage they have on Airport Boulevard. Ms. Pappas said that during the permitting process Ruby Tuesday had an opportunity instead to put it on the tenant sign and the staff was agreeable to that. In so doing, however, they do forego placing the sign on their actual site. But they do have the option, either way, in terms of the sign regulations. They cannot have both.

Mr. Davitt asked if he understood that they could take down the one sign that was on the pylon and install their own free-standing sign.

Mr. Pappas said that was correct.

Mr. Cummings pointed out that if they were to do that, they would still not be allowed, without some type of a variance, three wall mounted signs.

Ms. Pappas said that was correct. They could have three wall signs or one free-standing sign and two wall signs like the site on Airport Boulevard, and then one on Dauphin Street.

Mr. Barkley said it might behoove them to look into it.

Ms. Pappas noted that the maximum height would be 35 feet.

Mr. Barkley said that would be enormously better than what they have. That would take away the need for this wall sign because they would have viewing from both roads.

Ms. Pappas further pointed out that they only had 55 feet of frontage, so that would limit them to a 55 square foot sign on the site.

Mr. Barkley further stated that he thought the hardship was more on the front end. They did not make a recommendation to Sandy Bell before investigating what they understood the code to be. He said the tenant sign came up after they designed the building signage, and that was all negotiated with the real estate broker and the landlord. All of a sudden, they have a tenant sign.

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He said nobody knew you had to have your own permit that belonged to you, not the developer, not the owner of the sign, but who's going on it. That was never brought out because this had never been an issue anywhere in the country where they had ever done a sign. This was the first time they ever had to permit a tenant sign.

Mr. Cummings said that he was extremely familiar with the process that the real estate people for Ruby Tuesday go through when selecting a site because he had been involved in them. He said it was very thorough and if somebody dropped the ball and missed this particular one, that was between the real estate broker, the landlord, and the guys with Ruby Tuesday corporate office.

Mr. Barkley said they would investigate the possibility of a ground sign. His site plan showed they had 65 square feet.

Mr. Cummings said they had 35 square feet.

Ms. Pappas said the staff would pull the plans from their file to determine how many square feet that had.

Mr. Cummings wanted to be sure that Mr. Barkley understood that if he choose not to go on the landlord provided pylon sign on the shopping center itself, but instead go to a free-standing-sign, it would be that one and two wall signs; not that one and three wall signs.

Mr. Barkley said he understood.

After discussion a motion was made by Mr. Davitt and seconded by Mr. Lee to deny this request for a Sign Variance at the above referenced location.

The motion carried unanimously.

OTHER BUSINESS

Ms. Pappas informed the Board that an appeal had been filed on the Bishop application on College Court.

There being no further business, the meeting was adjourned.

APPROVED: June 6, 2005

Chairman of the Board

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