

BOARD OF ZONING ADJUSTMENT MINUTES
MEETING OF APRIL 7, 2014 - 2:00 P.M.
MOBILE GOVERNMENT PLAZA, AUDITORIUM

MEMBERS

William Guess, Chairman
Vernon Coleman, Vice Chairman
Sanford Davis
Adam Metcalfe
Jeremy Milling
Russell Reilly
Lewis Golden

STAFF

Bert Hoffman, Planner II
Carla Davis, Planner II
Lisa Watkins, Secretary I

OTHERS

Doug Anderson, Attorney
George Davis, City Engineering
MaryBeth Bergin, 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
✓	Lewis Golden

CALL TO ORDER:

Chairman Guess advised all in attendance as to the policies and procedures of the Board of Zoning Adjustment. He noted the numbers of members present constituted a quorum and that the Board was on a supermajority voting system, so it would require approval of five members to pass a variance. He then called the meeting to order.

HOLDOVERS:

#5879/4504/2211

(Case #ZON2014-00216)

Damu Kunche

2306 & 2308 Airport Boulevard

(Northeast corner of Airport Boulevard and Morgan Street).

Front Yard Setback Variance to allow a 20' X 36' gas pump canopy 4.5' from the front property line in a B-2, Neighborhood Business District; the Zoning Ordinance requires a minimum 25' front setback for all structures in a B-2, Neighborhood Business District.

Council District 1

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

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

- The applicant is requesting an additional pump to be installed and a canopy over it;
- There is an existing pump that is 14.5' from the ROW line of Airport Boulevard;
- They are asking for extensions eastwardly for the additional pump with columns in line with the center to support the canopy;
- One of the questions the staff had was regarding queuing spaces, and they have 60' of queuing space which is ample for three cars at the drive-up window;
- The Major Street Plan shows that the Airport Boulevard ROW is 80';
- He presented plats showing the Mellow Mushroom, Regions Bank, Ruth's Chris, a strip shopping center, Foosackly's, another service station with a canopy, and the old La Louisiana property;
- Plats referenced here were first recorded in 2001;
- Ruth's Chris was required to have 100' right-of-way, and they had to dedicate extra widening to get that 100';
- The service station with the canopy had to also dedicate to get 100' right-of-way;
- The next subdivision had an existing 63' wide right-of-way, and they were not asked for any additional widening;
- Foosackly's had a 60' right-of-way with no additional widening asked for;
- The subject site has a 65' right-of-way;
- There are several other sites that have had plats recorded with 80' and 100' ROW;
- If Airport Boulevard was widened, it would take out a string of businesses that were probably built to code at the time they were built, but now they are closer than the 25' setback;
- The hardship is that if the canopy and pumps were pushed to the north to get out of the 25' setback, they would lose four of the eight parking spaces that are in the front;
- The edge of the canopy is 4' off the right-of-way;
- The canopy could be cut from 20' to 16' so that would make it 6.5' off the right-of-way;
- The canopy is 16' high so that wouldn't be a problem.
- There is another site 100' to the east of this site that has a sign that is 4' by 12', 12' feet off the ground and 2.5' off the right-of-way;

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- At 811 Dauphin Island Parkway at Duval Street, there is an Exxon station where the canopy and columns are 15' from the right-of-way, so this does exist in Mobile although staff did not want to use this site to show a precedent as it is about a mile away;
- The existing pump island will remain, they will just extend it out to add the second pump.

Mr. Hoffman stated that when the drive-through was added for the Little Caesar's, it was done so without planning knowledge so the planning department did not review the drive-through criteria for this site. One of the things they would want to see is that the queuing space shown on the drawing be striped if the application is approved. He also pointed out that on the Mellow Mushroom site and some other sites along Airport Boulevard referenced by Mr. Byrd, the staff did ask for the dedication, but the Planning Commission decided not to require it.

The Chair asked if there were any questions from the Board. Hearing none, he asked if there was anyone present in the audience in favor or in opposition to the matter. Hearing none, he opened the floor for a motion.

After discussion, a motion was made by Mr. Coleman, with second by Mr. Davis, to approve the above-referenced matter.

The Board found the following findings of fact for approval:

- 1) Granting the variance will not be contrary to the public interest in that the proposed canopy, with the conditions listed below, will be consistent in terms of the existing setbacks of other businesses located along this segment of Airport Boulevard;
- 2) Special conditions, including the small size of the property and the constricted on-site circulation, do exist that a literal enforcement of the provisions of the chapter will result in an unnecessary hardship; and
- 3) The spirit of the chapter shall be observed and substantial justice shall be done to the surrounding neighborhood by granting the variance because most of the near-by businesses appear to enjoy similar front yard setbacks, and thus the amended proposal will be consistent with adjoining businesses.

Based upon the preceding, the Board approved the request, subject to the following conditions:

- 1) Reduction of the canopy size as offered by the applicant, to be 16 x 36 feet, so that the encroachment into the setback will be lessened;
- 2) Striping of the queuing lane for the existing drive-through window;
- 3) Completion of the other proposed changes to the site, including the closure of a curb-cut; and
- 4) Full compliance with all other municipal codes and ordinances.

The motion passed unanimously.

#5880

(Case #ZON2014-00233)

Victor Sign Co.

3811 Airport Boulevard

(South side of Airport Boulevard, 225'± West of Downtowner Boulevard).

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- 3) Revision of the site plan to provide understory trees in the vicinity of the dumpster, to be coordinated with Planning staff;
- 4) Subject to Engineering comments (*A Right-of-Way permit, in full compliance with the City of Mobile Right-of-Way Construction and Administration Ordinance, latest edition, shall be required prior to any demolition or construction within the public right-of-way.*);
- 5) Subject to Traffic Engineering comments (*Exact design of the curb cut to be approved by Engineering and Traffic Engineering and conform to AASHTO standards. Removal of the parking meter and any conflicting parking space striping shall be coordinated with Traffic Engineering and at the applicant's expense. Traffic stripe may not be painted over; grinding is required.*);
- 6) Subject to Urban Forestry comments (*Property to be developed in compliance with state and local laws that pertain to tree preservation and protection on both city and private properties (State Act 61-929 and City Code Chapters 57 and 64).*);
- 7) Subject to Fire comments (*All projects within the City of Mobile Fire Jurisdiction must comply with the requirements of the 2009 International Fire Code, as adopted by the City of Mobile.*); and
- 8) Full compliance with all municipal codes and ordinances.

The motion passed unanimously.

#5883

(Case #ZON2014-00453)

Thomas G. & Susan W. Thomas

1744 Hunter Avenue

(Northeast corner of Hunter Avenue and Hannon Avenue)

Side Street Yard Setback Variance to allow the construction of a 6' high privacy fence setback 2' from the side street property line in an R-1, Single-Family Residential District; the Zoning Ordinance requires a 20' side street yard setback for a 6' high privacy fence in an R-1, Single-Family Residential District.

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.

Thomas G. and Susan W. Thomas, 1744 Hunter Avenue, Mobile, AL, spoke on behalf of themselves and made the following points in favor of the application:

- They want to put up a fence for two reasons: 1) they have large dogs that are able to lean over the small fence, and they need to have separation between public contact and their dogs, and 2) they live on a corner lot and have very little privacy;
- They would like to enclose the fence and put in a New Orleans-style courtyard;
- They already have ARB approval;
- The fence is not inconsistent for the neighborhood as there are several similar fences in the area.

Mr. Hoffman stated that the issue is that since this is in a historic district, and they couldn't show that there is another house within 150' that has an existing fence of the same height on the property line, the applicants were required to get special approval from the Board. They have already received ARB approval.

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The Chair noted that there are numerous pictures in the file of similar fences in the area.

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

Mr. Coleman stated that he rides by this house on his bicycle frequently in the summertime, and he would appreciate a higher fence.

Mrs. Thomas stated that all of their neighbors are in favor of them getting a fence.

The Chair asked if they had considered setting the fence a little further back than what they had proposed.

Mr. Thomas replied that they could come back a couple of feet, but they were trying to follow the existing fence line.

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

A motion was made by Mr. Coleman, with second by Mr. Davis, to approve the above-referenced matter.

The Board found the following findings of fact for approval:

- 1) Approving the variance will not be contrary to the public interest due to the fact that the proposed fence is consistent with other fences within the adjacent areas of the Old Dauphin Way Historic District;
- 2) Special conditions, including the need to more fully separate the owner's dogs from pedestrians on the sidewalk in order to reduce the risk of injury, do exist such that a literal enforcement of the provisions of the chapter will result in an unnecessary hardship; and
- 3) The spirit of the chapter shall be observed and substantial justice shall be done to the surrounding neighborhood by granting the variance due to the fact that the site is located within an historic district, and the proposed fence would be in keeping with the development of the district.

Based upon the preceding, the Board approved the request, subject to the following conditions:

- 1) Obtainment of the proper building-related permits for the construction of the proposed privacy fence; and
- 2) Full compliance with all other municipal codes and ordinances.

The motion passed unanimously.

#5884

(ZON2014-00456)

Michael Crowley (McDonald's USA, LLC)

2 Springdale Boulevard

(Southwest corner of Dauphin Street and Springdale Boulevard)

Sign Variance to allow three nonconforming freestanding signs to remain and two menu board signs to be installed at an existing restaurant in a B-3, Community Business District; the Zoning Ordinance allows one freestanding sign and does not allow the expansion of nonconforming signage in a B-3, Community Business District.

Council District 5

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.

Michael Crowley, McDonald's USA, LLC, 3850 North Causeway Boulevard, Suite 1200, Metairie, LA, spoke on his own behalf and made the following points in favor of the matter:

- They are requesting a variance to erect two menu boards at their newly remodeled location at Two Springdale Boulevard;
- They were informed that their three existing road signs are not currently in compliance with code, but they were in compliance when they were erected;
- He is in agreement with the staff's recommendations.

After discussion, a motion was made by Mr. Milling, with second by Mr. Metcalfe, to approve the above referenced matter.

The Board found the following findings of fact for approval:

- 1) Based on the fact that the proposed menu boards are not considered branding advertising and no increase in advertising signage is proposed, the variance will not be contrary to the public interest;
- 2) Special conditions (existing legal nonconforming freestanding signs) exist such that a literal enforcement of the provisions of the chapter will result in unnecessary hardship; and
- 3) The spirit of the chapter shall be observed and substantial justice done to the applicant and the surrounding neighborhood by granting the variance in that there will not be any increase in site identity or advertising signage.

Based upon the preceding, the Board approved the request, subject to the following conditions:

- 1) the obtaining of all necessary permits associated with the menu boards;
- 2) no corporate imaging to be placed on the menu boards;
- 3) no other signage on the site to contain any corporate imaging, other than the three existing legal nonconforming freestanding signs; and
- 4) full compliance with all other municipal codes and ordinances.

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The motion passed unanimously.

#5885

(ZON2014-00473)

Clyde Covington

1361 Forest Cove Drive

(West side of Forest Cove Drive, at the West terminus of St. Charles Court)

Side and Rear Yard Setback Variances to allow the construction of a 10' by 12' utility shed setback 2' from the side and rear property lines in an R-1, Single-Family Residential District; the Zoning Ordinance requires 8' side and rear yard setbacks in an R-1, Single-Family Residential District.

Council District 7

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

Clyde Covington, 1361 Forest Cove Drive, Mobile, AL, spoke on his own behalf and made the following points in support of his application:

- He has large front and side yards; he needs a garden shed to store tools so that he can park both his vehicles in his garage;
- He wants to put the shed in the rear corner so that it will be out of sight from the rest of the neighboring houses;
- There is about 35' behind him so that any government vehicle would be have access to the water drain;
- The shed will not be on top of the storm drain; it will be two feet inside his property on the side and the rear;
- He has discussed with his neighbor, and he is okay with it;
- Mr. Price from MAWSS inspected it, and he is okay with it;
- He will put the shed on a permanent foundation to secure the shed, but he may consider a portable storage building anchored to the foundation.

The Chair asked if the proposed shed would be going on top of the storm drain that is back there.

Mr. Covington replied that it would be two feet inside his property on both the rear and the side. The storm drain structure is about 42' behind his neighbor's house; the access to it goes through his property.

The Chair asked if his neighborhood had any kind of covenants regarding any kind of restrictions against sheds.

Mr. Covington stated that his neighbor told him verbally the day before that he had no problem with the request, and Mr. Price from MAWSS came by and looked and said it didn't affect his access. Therefore, the only issue is the city drainage easement.

Mr. Milling pointed out that the drawing submitted with the application shows the shed sitting on top of the 42" storm drain and asked if anything had changed with the positioning of the shed.

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Mr. Covington stated that the area where he wants to put the shed is just a grassy area; it is not on top of the storm drain. Mr. Covington said that the concrete drain structure is behind his neighbor's house; the area he is talking about is just grass behind his house that he cuts. Mr. Covington stated that he needed to get back with his engineer to verify if the area he wants to put the shed is or is not outside the easement as there appears to be a discrepancy on the placement of the shed on the drawing.

After discussion regarding a discrepancy of the placement of the shed on the submitted site plan versus where the applicant stated that he wishes to place the shed, a motion was made by Mr. Guess, with second by Mr. Davis to holdover the request until the May 5th meeting to allow the applicant to undertake the following, and make adjustments to the site plan as needed:

- 1) Applicant to contact his engineer to verify the proposed location of the shed, so that it is accurately represented on any site plan submitted for review by the Board; and
- 2) Applicant to contact George Davis (251.208.7599), City Engineering Department, to review the proposed location of the shed in the context of the existing storm water pipe and easement.

The motion passed unanimously.

#5886

(ZON2014-00506)

LL&T Properties, LLC

8010 Airport Boulevard

(North side of Airport Boulevard, 150'± West of the North terminus of Dawes Road)

Sign Variance to allow two freestanding signs at a multi-tenant commercial site with less than 600 linear feet of street frontage in a B-3, Community Business District; the Zoning Ordinance allows only one freestanding sign at a multi-tenant commercial site with less than 600 linear feet of street frontage 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.

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

- This property is located in an area that was annexed into the City;
- The property has 496' of frontage;
- There was already two signs on the property when it was annexed, and according to the ordinance, 600' feet of frontage is required to have two pylon signs;
- They are not adding a sign – they want to take one sign down and move it to a more strategic location on the property;
- Thrifty Car was a tenant in the site, and Enterprise will lease the site now and wants their own 80 square foot sign;
- There is a huge billboard to the west that blocks the existing Thrifty sign;
- If the property were subdivided, which they may do in the future, both signs would be allowed;

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- The new sign will be better aesthetically, and it will be farther from the road and less obtrusive than the current sign;
- The other sign is a multi-tenant sign – the building to the east is a five-tenant building while the Enterprise building is separate from the multi-tenant building;
- The multi-tenant sign is about 300' away from where the Enterprise sign is being proposed, so it isn't practical to have tenant panel on that sign;
- If the variance isn't approved as submitted, he thinks the owner may compromise and say that he would subdivide the property within six months. He could discuss with that option with the owner, if that would help rather than the request being denied;
- Enterprise is moving into the building on April 15th and needs the signage, so they don't have time to do the subdivision prior to the tenant moving in.

Mr. Milling asked if the billboard was there prior to the sign being put up or if the sign was there first. He also asked if Enterprise would be willing to compromise on the size of the sign if the Board were to consider approving the variance.

Mr. Dagley stated that Enterprise's standard sign measures 20 feet 5 inches by 4 feet 1 inch, and the proposed sign is 17 feet off the ground. The existing sign is 12.5 feet off the ground and measures 4 feet by 8 feet, so the proposed sign is more than double the size.

Mr. Metcalfe asked if the property were subdivided, where did he think the subdivision line would be?

Mr. Dagley thought that they would actually make three lots out of it, one for the Enterprise building, one for the multi-tenant building and one for the future development. He thought that the reason the subdivision hadn't already been done was that they didn't know exactly where to put the line to make it more conducive for new development.

Mr. Metcalfe asked if the property were subdivided in the logical sense, what size sign would be allowed for the single building that is the Enterprise site?

Mr. Hoffman stated that they are allowed one square foot per linear foot of frontage, so if the site had 100 linear feet of frontage, they would be allowed to have 100 square feet of signage on each side of the sign.

Mr. Dagley did want to emphasize that it does create a hardship when they are now having to conform to rules that they didn't have to previously as the Thrifty sign was there before the site was annexed into the City.

The Chair asked if the tenant was planning on putting any signs on the building.

Mr. Hoffman stated that they would be allowed one wall sign and one separate freestanding sign as well.

The Chair asked if there was anyone in the audience in favor of or in opposition to the matter.

Andrew Pabst, Mobile Airport Authority, 8400 Airport Boulevard, Mobile, AL, spoke on behalf of the Airport Authority. He stated for the record that the Airport Authority was not in favor or opposed to the sign, but because of the close proximity to the runway environment, if the sign

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exceeds 420 feet in height, a 7460-1 form needs to be submitted to the Airport Authority for submission to the FAA for an airspace study. This form would need to be submitted 45 days prior to beginning construction.

Mr. Metcalfe stated that they have been faced with several similar issues in this area where businesses were having to comply with new rules since they have been annexed than they had to comply with previously. He thought that a reasonable idea would be to have the owner come back in for a subdivision within a certain amount of time. Then, if the subdivision didn't happen or if it were denied, then the sign would have to be removed.

After discussion, a motion to approve the above referenced matter was made by Mr. Metcalfe, with second by Mr. Davis.

The Board found the following findings of fact for approval:

- 1) Approval of the variance will not be contrary to the public interest due to the existing conditions of adjacent properties being similar to the site in question;
- 2) Special conditions, including the location of the existing sign and the time frame of the tenant, do exist such that a literal enforcement of the provisions of the chapter will result in an unnecessary hardship; and
- 3) The spirit of the chapter shall be observed and substantial justice shall be done to the surrounding neighborhood by granting the variance because the proposal will be consistent with other existing signs for nearby businesses.

Based upon the preceding, the Board approved the request, subject to the following conditions:

- 1) Obtainment of the appropriate sign permit;
- 2) Completion of the subdivision of the property within 8 months, to create a lot for the property that will accommodate the proposed sign size, or removal of the sign if the subdivision process is not completed;
- 3) Sign height to be no greater than 20 feet due to Mobile Airport Authority related requirements; and
- 4) Full compliance with all other municipal codes and ordinances.

The motion passed unanimously.

#5887

(ZON2014-00512)

David Hooper (M. Don Williams, Agent)

1283 Azalea Road

(East side of Azalea Road, 850'± South of Government Boulevard)

Surface Variance to allow a gravel parking area to be used for service truck storage in a B-2, Neighborhood Business District; the Zoning Ordinance requires a service truck storage area to be paved in asphalt, concrete or an approved alternative paving surface in a B-2, Neighborhood Business District.

Council District 4

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

Don Williams, M. Don Williams Development, P. O. Box 16305, Mobile, AL, spoke on behalf of the applicant and requested that the application be withdrawn.

The Board allowed the request to be withdrawn by the applicant.

#5888
(ZON2014-00513)

Kenneth Ohanlon

50 Mohawk Street

(Southwest corner of Mohawk Street and Homewood Street)

Use Variance to allow a duplex (R-2, Two-Family Residential) use in an R-1, Single-Family Residential District; the Zoning Ordinance does not allow R-2 use in an R-1, Single-Family Residential District.

Council District 1

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

Kenneth Ohanlon, 52 South Julia Street, Mobile, AL, spoke on his own behalf and made the following points in support of the matter:

- He provided additional information to the Board showing property listings in the area with values and map locations;
- The map he presented had properties on Mohawk Street marked showing that there were duplexes in the neighborhood;
- He pointed out several duplexes that were very small and indicated that the tenants would be undesirable and rent yields would be low;
- He pointed out other larger, multi-family residences that could command higher rents and better tenants;
- He stated that properties with tiny duplexes ruin the neighborhood, but decent-sized duplexes are assets to the community;
- He plans to install webcams to watch the property and will not allow dogs or smoking;
- Although the area is zoned R-1, the neighborhood is really multi-family in nature due to a number of duplexes being grandfathered in.

Mr. Guess asked the applicant if he had ever developed a piece of property like this before and if he understood the permitting process, including permits for demolition, and whether he obtained a permit for demolition.

Mr. Ohanlon responded that he had developed such properties, and he did understand the permitting process. He stated that the project started out with a permit to revitalize the existing house. When they took sheetrock down, he saw that the house was eaten up with termites, so he decided to demolish the house.

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Chairman Guess asked if he obtained a permit for demolition.

Mr. Ohanlon stated that he did get a permit for demolition and demolished the house down to the sub-floor.

Chairman Guess noted that the demolition permit was obtained after the fact. He asked what type of residence the original structure was – whether or not it was a duplex.

Mr. Ohanlon replied that the original structure was a large single-family house.

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

Mr. Milling asked what were the applicant's intentions regarding the property when he bought it – was his intent to renovate it as a single-family residence?

Mr. Ohanlon replied that he got the house in trade, and he didn't know what he was going to do with it at first. When he took out the initial permit to renovate, he didn't realize what he was up against.

Mr. Milling asked how long he had owned the property.

Mr. Ohanlon replied that he had owned it approximately 27 years.

Mr. Milling asked if during that time he did any upkeep or renovations to it.

Mr. Ohanlan stated that he didn't do anything to the property during that time other than pay the taxes annually; he stated that he owned it outright.

Mr. Guess asked if he had ever rented the property.

Mr. Ohanlon replied that he had never rented the property, and the utilities hadn't been on for 27 years.

Mr. Metcalfe asked the applicant to verify that he was intending to build a new, 3600 square foot structure on the property and that the construction cost was listed as \$60,000.

Mr. Ohanlon replied that he was planning a new, 3200 square foot structure. He threw a dollar figure out to the neighbors just to throw it out there because it was really none of their business how much it cost him. He realized a house like that couldn't be built for \$60,000.

Mr. Metcalfe responded that his statement that the neighbors that he would spend \$60,000 on the structure would certainly give them reason for trepidation.

Mr. Ohanlon stated that when he met with the neighbors, there was no give or take. They said he wasn't going to build a duplex and didn't care what he had to say. At that point, the meeting became adversarial, he threw the \$60,000 figure out there, and he left. He stated that he can build the structure for \$60 per square foot.

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The Chair recognized the audience members there in opposition to the matter and gave select members the opportunity to speak.

Mr. Ian Claridge, 160 Mohawk Street, Mobile, AL, spoke on his own behalf and made the following points in opposition to the matter:

- His property is one and a half blocks south of the subject property;
- He has lived in his house for 12 years, it is 2900 square feet, and it is not a rental;
- There is a duplex next door to his house that was improperly granted a zoning variance;
- The duplex is a 1900 square foot home that has been split in half;
- The duplex was split into a one bedroom/one bath and a two bedroom/two bath multi-family structure;
- He has witnessed all the issues that the neighborhood is trying to avoid by not allowing another duplex;
- The issues range from poorly maintained yards, insufficient on-site parking relative to the number of tenants who live there resulting in on-street parking which disrupts the traffic flow and makes access to driveways on adjacent properties difficult;
- Mohawk Street deemed a cut-through street, and several houses do not have driveways so the occupants have to park on the street;
- School buses travel down Mohawk Street to get to Murphy High School so in the mornings, it is essentially a one-way street as two vehicles cannot pass due to on-street parking;
- He has witnessed purely profit driven repairs and renovations to an aging house that indicate a complete lack of concern for the surrounding neighbors as well as a revolving door of tenants who have no interest in the neighborhood or community and improving it;
- He is a commercial general contractor, and he is the neighbor who pushed Mr. Ohanlon at the neighborhood meeting for a dollar figure for the construction cost;
- Mr. Ohanlon promises to build something grand in the original style of the house; the original style is a single-family residence and that is what the neighbors would like to see;
- The applicant references the income level and rent amounts of the tenants in the area – Mr. Claridge believes that Mr. Ohanlon could command the same amount of rent with a single-family residence in that neighborhood as he plans to charge for the duplex rental;
- The neighbors asked the applicant what he would do if the variance was denied, and he said that he would appeal the decision;
- When asked what he would do if the appeal was denied, Mr. Ohanlon stated that he would leave the property as is which is a raised foundation with termites and rotten wood with a commode sitting in the middle of it;
- Referencing Mr. Metcalfe's question as to whether or not Mr. Ohanlon planned to build a new structure, he stated that Mr. Ohanlon had said that he planned to build on top of the existing foundation which will not support a new structure as it is a raised structure on blocks and brick with rotten wood and termites;
- Mr. Ohanlon has owned the property for 26 years, and it hasn't been maintained for the last ten years – the grass is always a foot tall, the bushes are overgrown, and there is a general disregard for the property;
- Mr. Claridge would almost rather see the property left alone than turned into a duplex.

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Winston Grow, 110 Mohawk Street, who spoke on his own behalf and made the following points in opposition to the matter:

- He has resided at 110 Mohawk Street for 16 years;
- He is an attorney and has handled a few zoning variance cases;
- His understanding is that the applicant must suffer a unique situation with the property that makes it unusable otherwise;
- There is no hardship with this property that prevents the owner from building a new home on the lot;
- The applicant has owned the property for 27 years, and he hasn't sold it or tried to renovate it. He has generally let it decay to the point where he can't do anything but raze it and build a new structure;
- In the last 20 years, there have been at least three new homes built on this block and others have been extensively renovated, so this is not an area where people are afraid to build new single family residences;
- Another lot on the street has recently sold to build another single family residence;
- The problem with a duplex is that it is never intended to be owner-occupied, and therefore, the goal is to keep the expenses and upkeep at a minimum. The people that own in the neighborhood spend a lot more keeping their properties up;
- He questions what type of structure the applicant would build considering that he's left an eyesore on the street for 27 years.

Sheree Glavin, 4 Crenshaw Street, spoke on her own behalf in opposition to the matter. She made the following points for denial:

- She is a real estate agent who can attest to the effect of a rental on the values of surrounding properties – it does decrease desirability and therefore the value and salability;
- There is a push to restore residential living in Downtown and Midtown;
- Mr. Ohanlon made a good point about values in that there was duplex on Homewood Street that sold for about \$40,000 – it was renovated back into a single family residence that sold for \$140,000;
- Mr. Ohanlon has a rare and valuable opportunity in that he could just sell the lot or build a single family residence – people are willing to pay top dollar to get the best of both worlds by getting a brand-new home and also getting to live in Midtown.

The Chair asked if the Board had any further questions. Hearing none, he asked if the Staff had anything else to add.

Mr. Hoffman stated that in the staff report there is a question as to ownership of the ten foot wide strip at the top of the property. The original application didn't contain any information about how the original structure was to be converted in a duplex. Now that all that is left are the piers and subfloor, staff would still need to see plans for the house if it is to built as a duplex. Sufficient information hasn't been provided to consider this application for approval.

The Chair asked for comments or any questions from the Board.

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Mr. Milling stated that he did not see where the applicant had made a case other than economic gain for justification for approval of the variance. He made a motion that the staff's recommendation for denial be followed. The motion was seconded by Russell Reilly and passed unanimously.

The Board found the following findings of facts for denial:

- 1) the subject of the use variance, the residence, has been demolished;
- 2) the variance cannot be considered with questions of ownership unresolved;
- 3) approving the variance request will be contrary to the public interest in that it is contrary to Section 64-3.C.1. of the Zoning Regulations in that R-1, Single-Family Residential Districts are intended to consist primarily of single-family residences;
- 4) special conditions such as the site is unusable as a conforming, single-family residence, aside from economics, do not exist such that a literal enforcement of the provisions of the chapter will result in an unnecessary hardship; and
- 5) the spirit of the chapter shall not be observed and substantial justice shall not be done to the surrounding neighborhood by granting the variance because none of the nearby multiplexes have been granted approval from the Board of Zoning Adjustment or Planning Commission, and should phase out eventually.

#5889

(ZON2014-00514)

Steven Damrich (M. Don Williams, Agent)

154 Texas Street

(North side of Texas Street, 100'± East of South Conception Street)

Site Variance to allow a continuous 52' wide property and alley curb cut; a 10' wide single lane driveway access to a rear storage yard; nose-in/back-out parking spaces with access and maneuvering within the public right-of-way; and no landscaping or tree planting compliance in an I-1, Light Industry District; the Zoning Ordinance requires site entrances and exits located so as to minimize traffic congestion; rear yard access drives to be two-way, 24' wide; all parking access and maneuvering to be on-site; and full compliance with the landscaping and tree planting requirements in an I-1, Light Industry District.

Council District 2

The Chair announced the matter, advising it had been recommended for holdover until the May 5th meeting. He advised the applicant should address the Board regarding the subject at that time.

Don Williams, M. Don Williams Development, P. O. Box 16305, Mobile, AL, spoke on behalf of the applicant and noted that staff had made recommendations on this case that they could probably work around, but since the project isn't very time sensitive, he agrees to a holdover so that they can reorient the parking and address other staff concerns.

A motion for holdover was made by Mr. Coleman and seconded by Mr. Metcalfe.

The motion passed unanimously.

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The Board heldover the request to the May meeting to allow the applicant to make the following revisions to the site plan, due by April 14, and possibly revise the variances requested:

- 1) Revision of the site plan to reflect the absolute minimum setback required by Section 64-4.D.1. of the Zoning Ordinance;
- 2) Repositioning of the proposed modular building to reflect the setbacks of condition #1;
- 3) Realignment of the two parking spaces, access aisle, and accessible area to show the two parking spaces facing West;
- 4) Depiction of one frontage tree and calculations of available landscape area;
- 5) Revision of the requested variances, if necessary, to reflect site layout changes; and
- 6) Clarification of how employees will park if they come to this location to receive their checks.

#5890/5740/5721
(ZON2014-00515)
Patricia D. Jackson

2667 Government Boulevard

(East side of Government Boulevard, 335'± South of Kreitner Street)

Use and Parking Ratio Variances to amend a previously approved variance to allow automotive sales with 2 employee parking spaces for a 1,588 square-foot office building on a lot split-zoned between B-2, Neighborhood Business District, and R-1, Single-Family Residential District; the Zoning Ordinance does not allow automotive sales in either B-2, Neighborhood Business Districts, or R-1, Single-Family Residential Districts, and 6 employee parking spaces are required for a 1,588 square-foot office building.

Council District 5

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.

Marl Cummings, Cummings and Associates, One Houston Street, spoke on behalf of the applicant and made the following points in support of the matter:

- This property was previously approved for a variance for a B-3 automotive use;
- They are requesting that the variance be reinstated for auto sales;
- The site has been used in the past as an auto sales lot;
- The previous approval required that the rear property line be improved with a wooden privacy fence, and that has been done.

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

Mr. Milling asked for verification that the previous variance approved in 2012 had lapsed and that applicant didn't follow through and that was why they were before the Board now.

Mr. Cummings stated that the previous tenant moved out, and there was another tenant moving in.

The Board discussed that they remembered that there was an issue with parking in the right-of-way.

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Mr. Hoffman stated that in the previous application, one of the comments by Traffic Engineering was that any asphalt in front of this property not associated with the road be removed to strongly discourage parking in the public right-of-way.

Mr. Hoffman read a list of conditions prepared by the staff should the Board wish to consider approval. The list contained a limitation that there be no more than five cars for sale on the lot at any one time.

Mr. Cummings stated that the limitation of only five cars would be a problem. He thought that the lot could fit up to 30 cars.

The Chair stated that the site plan showed nine spaces, and he asked if the applicant was or wasn't planning to follow the submitted site plan and whether or not it wasn't accurate.

Mr. Cummings stated that today was the first he'd seen of the site plan. It was submitted by the property owner's engineer. The buildings were situated correctly on the site plan. He thought it was the intent of the property owner to have more than five vehicles for sale on the property.

After discussion, a motion was made by Mr. Davis and seconded by Mr. Metcalfe to holdover the case until the May 5th meeting to allow the applicant to consult with her engineer regarding the proposed site plan submitted with the application, versus the applicant's intent regarding site improvements.

The motion passed unanimously.

It should be noted that changes to the site plan may require additional variance requests, which in turn may require additional notification labels, postage and application fees.

#5891

(ZON2014-00523)

Robert Whigham (M. Don Williams, Agent)

51 Oakland Avenue

(Southwest corner of Oakland Avenue and Marston Lane)

Side Street Yard Setback Variance to allow an 8' high wall setback 1' from the side street property line, and 8' high wooden gates within the side street yard setback in an R-1, Single-Family Residential District; the Zoning Ordinance requires a 20' side street yard setback for walls and gates over 3' high in an R-1, Single-Family Residential District.

Council District 7

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

Don Williams, M. Don Williams Development, P. O. Box 16305, Mobile, AL, spoke on behalf of the applicant and made the following points in support of the matter:

- This site is at the corner of Marston and Oakland;
- Marston has a 50' right-of-way but doesn't appear so due to the closing in of vegetation in the City right-of-way on the east side of the lot;

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- They want to build a stucco wall similar to the eight foot wall on the Morrisette property that goes around the entire block;
- Mr. McCants with Urban Forestry told him that vegetation isn't regulated except in the form of trees;
- Mr. McCants did tell him that if they were to remove vegetation they would have to get a land disturbance permit;
- They want to put up an eight foot wall and thin the vegetation - that will be an improvement in the line of sight;
- The person who will be most affected is the neighbor to the south – her driveway jams up to the northside of her property so he has to pull up to the right-of-way line and then pull up ten feet more to see past the vegetation in the City right-of-way;
- They have discussed the wall with the neighbor to the south, and she is in favor of it as it will improve her line of sight;
- He read from the Traffic Engineering comments that reiterate how this will improve the neighbor's line of sight.

The Chair noted that there was no one present in favor or against the application.

After discussion, a motion was made by Mr. Coleman, with second by Mr. Metcalfe to approve the request, subject to conditions.

The motion passed unanimously.

The Board found the following findings of fact for approval:

- 1) Granting the variance will not be contrary to the public interest in that the clearing of shrubs within the right-of-way as part of the project will improve visibility for traffic, and the fact that Traffic Engineering has stated that there will be no traffic visibility impairments due to the proposal;
- 2) Special conditions, including the fact that there is a need for privacy in the rear of the corner lot property, do exist that a literal enforcement of the provisions of the chapter will result in an unnecessary hardship; and
- 3) The spirit of the chapter shall be observed and substantial justice shall be done to the surrounding neighborhood by granting the variance because the proposal will be consistent and in harmony with other properties in the vicinity.

Based upon the preceding, the Board approved the request, subject to the following conditions:

- 1) Obtainment of the proper building-related permits for the construction of the proposed privacy gates and wall; and
- 2) Full compliance with all other municipal codes and ordinances, including obtaining any necessary Right-of-Way permits.

OTHER BUSINESS:

With no further business before the Board, the meeting was adjourned.

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APPROVED: December 1, 2014



Chairman of the Board

/lw