

BOARD OF ZONING ADJUSTMENT MINUTES
MEETING OF FEBRUARY 3, 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 affirmative votes from five members present to pass a variance. He called the meeting to order at 2:04 p.m.

HOLDOVERS:

#5870

(Case #ZON2013-02719)

John Kirby

7049 Dickens Ferry Road

(South side of Dickens Ferry Road, 550 ± East of Cody Road).

Parking Surface Variance to allow a gravel lay down yard for the storing of cars for an automobile paint and body shop in a B-3, Community Business District (rezoning pending); the Zoning Ordinance requires parking areas to be paved with asphalt, concrete, or an approved alternative paving surface in an 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.

Brett Orrell, Polysurveying, 5588 Jackson Road, Mobile, AL, spoke on behalf of the applicant and requested a holdover until the March 10th meeting as they have applications before the Planning Commission that they want to get a ruling on before the Board hears this case.

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

A motion was made by Adam Metcalfe, with second by Sanford Davis to hold the matter over to the March 10th meeting, at the applicant's request.

The motion passed unanimously.

#5871

(Case #ZON2013-02577)

Glass Masters

7064 Airport Boulevard

(North side of Airport Boulevard, 330'± East of Cody Road).

Sign Variance to allow a sign on an existing vacant second sign structure at a single-tenant commercial site with an existing off-premise multi-tenant freestanding sign structure in a B-3, Community Business District; the Zoning Ordinance allows 1 freestanding sign structure per single tenant site 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.

Mr. Joel McDaniel, District Manager for Glass Masters, 10538 Shadow Lake, Geismar, LA, spoke on his own behalf and made the following points in support of the matter:

- He came before the Board last month, and it was suggested that they resubmit a smaller sign proposal for consideration.

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Mr. Hoffman stated that the applicant for the previous case on the agenda is Mr. McDaniel's landlord, and there is an existing PUD including this site with it being on its own lot within the PUD. There is a case for a PUD for the overall site containing multiple lots currently before the Planning Commission for this site to turn it into one lot and to create a new PUD to include the expanded area in the back; that is the subject of the first variance application on the agenda that was just heldover.

Mr. McDaniel stated that he and his sign contractor submitted better pictures to illustrate the site, and they revised the sign of the sign from 10' X 12' to 8' X 10'.

Mr. Guess asked if there was also an awning on the building that was replaced with a sign.

Mr. McDaniel confirmed that they did have the awning replaced.

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

Mr. Milling stated that he drove around to view the site, and he thought that the present signage caught the eye very quickly. He asked what the applicant was trying to accomplish that the present signage on the awning doesn't. He drove around from all sides.

Mr. McDaniel disagreed that the location had good visibility from all sides at the redlight. The building sits back 30'-40' off the road. They have been in business in Mobile for 15 years, and they moved to Airport Boulevard to improve their business.

Mr. Guess asked if their business had improved since the move.

Mr. McDaniel affirmed that it had improved, but he thought it could be much better with a sign on the road.

Mr. Milling asked if the Spectrum sign to the east belonged to a tenant on the site as well.

Mr. McDaniel stated that the gentleman who he leases from has a body shop and Spectrum Automotive as well.

Mr. Milling asked if what the applicant was proposing was to get his sign above the Spectrum sign.

Mr. McDaniel stated that during last month's Board meeting, he understood that the height would be an issue, so they were proposing to lower it so that the top of their sign was below the Spectrum sign. They have no objection to lowering the pole, but they didn't want to have a monument sign right on the ground level.

Mr. Milling asked if there had been any conversation about them splitting the panels on the Spectrum sign as it has unused panels above and below the Spectrum sign.

Mr. Metcalfe said that since it is a multi-tenant site, it seems like starting over with a multi-tenant sign for everyone on the site would be the best bet.

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Mr. McDaniel said that the owner had owned the glass business that was there before, and he shut it down. He further stated that the panel underneath Spectrum's is a little 12" panel, and that would be insufficient.

Mr. Hoffman pointed out that if this particular lot was considered by itself, it would be allowed to have a freestanding sign with 99 square feet per face. His reduced sign is only proposed to be 60 square feet. Based on the information that we had for the multi-tenant sign that has Spectrum on it, they applied for a permit, but never actually received the permit. That sign is 120 square feet. This piece of property would then have signage totaling 180 square feet because it would have the existing multi-tenant sign and the sign that is being proposed today.

Mr. Guess asked if the development went through and the site was changed to one lot, what would be allowed.

Mr. Hoffman replied that in the staff report for the PUD, it was recommended that the site be brought into compliance regarding signage so that the three existing free-standing signs plus this existing pole would be eliminated, and they would have one multi-tenant sign for entire development which includes the five buildings shown on the aerial photo.

The Chair asked if this proposed sign were allowed and the development were approved, if this sign may have to be changed later to meet the conditions of the PUD.

Mr. Hoffman stated that he was correct.

Mr. McDaniel stated that when he was at the last Board meeting, they told him to tone it down, and now they are saying something else.

The Chair stated that they suggested to him that if he were to downsize it, the Board would consider it. Since that time, they have all have more opportunity to reflect and to drive by the site. He further remarked that the site appears to be covered in signs.

Mr. Hoffman stated that that there are currently three existing freestanding signs plus the pole in front of Glass Masters. Glass Masters has a permitted wall sign on the top of the building and an unpermitted sign on the awning.

Mr. Coleman asked what would happen if Spectrum changed its mind and decided not to go through with the PUD?

Mr. Hoffman replied that the Spectrum site has a large problem, and they are going through the PUD process because one entire area on the site was cleared of trees, graveled, and they are putting wrecked cars on the property. The site is zoned R-1, and they are trying to come into compliance.

Mr. Coleman stated that the owner's vision for the property has created a disadvantage for the tenant leasing the property and creates a hardship for him that didn't exist when he leased the property.

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Mr. Hoffman agreed that it was complicated and added that the question was whether or not Glass Masters indeed has a signage hardship. Is there something about this property that necessitates him having his own individual, freestanding sign, whether or not the rest of it is an issue is not for the Board to consider. If something happens at the Planning Commission that negates the decision here, that would be unfortunate.

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

Hearing no motion from any other Board member, the Chair made a motion to deny due to there being too many signs on the site per his review of the site, and if the Planning Commission applications are approved it would negate the Board's decision. The motion was seconded by Lewis Golden.

The motion passed with Mr. Coleman in opposition to denial.

#5872

(Case #ZON2013-02805)

KV PROPERTIES, LLC

2715 Dauphin Street

(South side of Dauphin Street, 67'± East of Dauphinwood Drive).

Surfacing Variances to allow gravel parking and maneuvering surfaces in a B-3, Community Business District; the Zoning Ordinance requires asphalt, concrete, or an approved alternative paving surface for parking and maneuvering surfaces in a B-3, Community 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.

Keith Vaughn, KV Properties, LLC, 66 St. Francis Street, Mobile, AL, spoke on his own behalf and made the following points in support of the matter:

- They intend to put personal storage units at the front of the property and use the back for boat and RV open-air storage;
- He would like to use a gravel/crushed aggregate type surface for the boat/RV storage area as there may be a time in the future when they build additional storage buildings;
- They have other locations where they use this same type surface, and they have no problems with dust or any kind of pollution;
- The back part of the yard is along the railroad tracks and would only be visible to the apartment complex in the rear.

The Chair asked what type of fence was around the property where it backs up to a residential area and if there is a green space buffer between the properties.

Mr. Vaughn replied that the only existing fence is a chain link fence that he believes belongs to the apartment complex. If required to put up a privacy fence along the side where the apartment complex is he would, but if it is not required, he intends to put up a chain link fence. The rear of the property is currently wooded. There is a 10' buffer that was required and approved through a

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PUD application. There are some large trees, but they did brush-cut back there. The landscape plan is still being worked on, and they may plant more trees in the buffer to come up to the landscape ordinance.

Mr. Milling asked what else besides paving might be required if the variance is denied.

Mr. Hoffman replied that it could include site lighting as they now require photometric plans on sites that have 25 or more parking spaces. The tree and landscape plan would have to comply. The approved PUD is site plan specific so if there are significant changes made to that, he would have to go back before the Planning Commission. The way the Planning Commission approved this PUD is that if the Board doesn't approve the surfacing variance, he will have to pave the boat storage area.

Mr. Milling read from the staff report and asked how the site abutting an apartment complex causes approving the variance to be contrary to the public interest.

Mr. Hoffman stated that gravel surfacing can generate dust and create noise depending on the volume and speed of traffic which may be a nuisance to apartment dwellers. The approval of aggregate surfacing in a B-3 district has to go through the variance process because the Planning Commission and the City Council didn't feel that it was appropriate to be allowed with Planning Approval. So, the question is what is the hardship with this site that prevents the applicant from paving the storage area.

Mr. Guess asked about the aggregate surfacing from a fire department standpoint.

DC Roach stated that if there is a road, the fire department expects to see asphalt or concrete. The fire department isn't concerned with what stored vehicles are parked on; they are concerned with the access road. They would not drive a fire truck across a rock surface and whatever was stored back there would burn. An access road should be engineered to support the weight of a 75,000 pound fire truck, and there should be sufficient room to turn around.

After discussion of the various types of aggregate surfacing, methods of installation, engineering and maintenance thereof, the Chair opened the matter for a motion.

A motion for approval was made by Mr. Guess, with second by Mr. Coleman, subject to the following conditions:

- 1) that the circular aggregate driveway be engineered to accommodate access by a fire apparatus, with such engineering information to be submitted for review at the time of land disturbance permit request; and
- 2) that a 6-foot high wooden privacy fence be constructed, with the appropriate permits, where the RV/boat storage area abuts the adjacent apartment complex.

The motion passed with Mr. Milling voting in opposition.

PUBLIC HEARINGS:

#5876/4812/4709

(Case #ZON2014-00031)

Jerry Ward

1981 St. Stephens Road

(Northwest corner of St. Stephens Road and St. Stephens Court).

Use, Parking Ratio, Access/Maneuvering, Tree and Landscape, and Side and Rear Setback Variances to allow a 2,251 square foot restaurant and a car wash with 8 parking spaces, with sub-standard access and maneuvering areas, no tree plantings or landscaped area, and to allow a structure 6'± from side street side yard property line and within 6'± of the rear property line in an R-1, Single-Family Residential District; the Zoning Ordinance requires a minimum of a B-2, Neighborhood Business District to allow a restaurant and carwash, 23 parking spaces, 12' wide access aisles for one-way traffic, full compliance with tree planting and landscaped areas, and structures to be a minimum of 25' from a side street side yard property line and a minimum of 10' from a rear property line adjacent to an R-1, Single-Family Residential District.

Council District 1

The Chair announced the matter, advising it had been recommended for denial of the carwash use and side and rear setback variances, and approval, subject to conditions, of the restaurant/internet café use, parking ratio, access and maneuvering, and tree and landscaping variances. He advised the applicant should address the Board regarding the subject at that time.

Jerry Ward, 1981 St. Stephens Road, Mobile, AL, spoke on his own behalf and made the following points in support of the matter:

- Mr. Ward went to renew his business license, and there was an issue between the license department and the zoning department;
- He has had a license for the last two years for the restaurant;
- The carwash isn't his primary concern, and he does understand the concerns with it;
- His building is a little over 2000 square feet, and he uses only about half of it for the restaurant;
- He's been allowed two uses for the length of time he's been there, and if he loses the carwash, he'd like to supplement that loss with another use.

Mr. Guess stated that he thought that the problem with the carwash was the need for an oil separator and hook-in to the sanitary sewer.

Mr. Ward stated that those items are in place and have been for the last five years. The plumbing inspection department should have a record of it.

Brett Orrell, Polysurveying, 5588 Jackson Road, Mobile, AL, spoke on behalf of the applicant and stated that he didn't have evidence of it based on his site plan, but in talking with Mr. Ward, the location is where the existing carport stands, about halfway down on the south side of the main building. If they were to move the carport to the proposed location on the site plan, the asphalt slopes in that direction, and the water could be routed to that separator. He didn't have any documentation stating that it is tied in to the sanitary sewer, but he's been told that it is tied

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in. His main focus is reviewing the site itself, and it is a very small site. They are looking to restripe the parking lot to come as close to compliance as possible. Mr. Ward would like to keep the carwash, but he does understand the limitation there. Mr. Ward mentioned that half of the building is currently being used for the restaurant, and he doesn't want to be limited based on this application. If he loses the carwash, he'd like to be able to use the other half of the building for an internet café or for some sort of retail purpose.

The Chair asked if there was anyone present in opposition to the matter.

The following people spoke in opposition:

- 1) Jeannette Ray, 1804 St. Stephens Court, Mobile, AL,
- 2) Sharon Todd, 1866 St. Stephens Court, Mobile, AL.

They made the following points in opposition:

- Mrs. Ray lives directly behind Mr. Ward's businesses;
- Mr. Ward has inadequate parking;
- The residents of St. Stephens Court are unable to enter their street due to hindrances to the flow of traffic, and their street only has one way in and one way out;
- Mr. Ward's customers have been rude and verbally abusive to the residents to the point where the residents fear for their safety;
- Residents have had to call the police to get the customers to move their vehicles;
- The noise ordinance is being violated by the customers parking their vehicles and turning up the music in their cars very loudly;
- The patrons overflow into the empty lot across the street, they consume alcohol there, and urinate in public;
- The customers don't just make purchases and leave – they loiter and litter;
- The City's inspectors only see the activities during the day when they are called out, but the nights and weekends are the worst;
- Mrs. Ray submitted pictures of flyers showing where Mr. Ward is planning to have a car show on Monday, March 3rd which should not be allowed as he has inadequate parking as it is, much less being able to park the show cars and have room for customer parking;
- Simply discontinuing the carwash will not solve the traffic problem as there was inadequate parking before the existence of the carwash;
- In the staff report, it states that the City made an error and should not have issued Mr. Ward a business license in the first place;
- The majority of the residents of St. Stephens Court have lived there 25-40 years, and they can't just leave with these problems occurring;
- Since 2011, they have had break-ins every other night in their neighborhood;
- Mrs. Todd works 12-hour shifts, and she has to sit and wait in traffic to be able to enter her street;
- The previous uses of the site were an insurance agency and then a club;
- Mrs. Todd has been to Montgomery to get the club closed down;
- The businesses in the area are declining, and people are just coming to the area to destroy property.

Mr. Davis asked for the applicant's response to the opposition.

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Mr. Ward stated that he understood the neighbors' concerns. He does see the things that they are seeing; St. Stephens Road is a very hard area.

Mr. Guess asked if Mr. Ward was on site during operating hours, if he had met with the residents regarding their complaints, and if the police had been called as was stated. He also asked if he thought that eliminating the car wash would solve a lot of the complaints.

Mr. Ward stated that he was there during operating hours. He hadn't met with the residents, but he was aware of their complaints. The police have been called, not always just to his location, but to the area in general. He intends to eliminate the car wash and focus on the hot dog restaurant.

Mr. Davis stated that he was very familiar with the area, and the area all the way from Pleasant Avenue up to Gloria York has a compounded problem with the same type concerns that the residents have voiced. There was a package store on that corner that is no longer there, and the overflow goes to that vacant lot. His purpose is to bring a degree of harmony and stability to the community. He wondered if eliminating the car wash would solve the problem.

He is also familiar with when this location used to be a club and they had the same types of problems. There would be cars stopped at the front, and there would be cars all the way to the end of the cul-de-sac. He didn't know if they would be able to reach any common ground. He also had not heard anyone comment on the tutorial service that goes on in the building for the kids in the area.

Mr. Metcalfe asked Mr. Ward to describe the activities that occur within the building.

Mr. Ward stated that it is a hot dog restaurant. He would like to grow into a sandwich shop, but he is doing fair business with the hot dogs. The business is open from 10:30 to 5:00, although the hours may change. He has women working in his shop, and he is concerned about all employees' safety. He does not serve alcohol in the restaurant.

Mr. Metcalfe questioned the staff regarding the number of parking spaces on the site and the non-conforming use of the site as far as the business license being issued.

Mr. Hoffman replied that it has been operating only through non-conforming use history. Mr. Ward was issued a business license by the Revenue Department without zoning clearance. The staff never had the opportunity to review the business license application. It was issued about three years ago. If a zoning clearance had been requested at that time, the staff probably would have concluded that the non-conforming use for food consumption use had expired as the gap would have been more than two years since the prior similar use. The zoning clearance would not have been approved for restaurant/café use because it is zoned R-1, and there is insufficient parking. Mr. Ward would have had to apply for a variance for that particular use at that time.

Mr. Orrell responded that if the car wash were removed that would eliminate some of the traffic problems. Traffic Engineering has it in their report about restriping the parking area to improve it, and they will get with Traffic to make the best of the situation to limit traffic onto St. Stephens Court.

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The Chair stated that Mr. Davis brought up a point about some kind of tutorial service that no one else had mentioned. Is this the internet café use that had been discussed?

Mr. Ward stated that although the neighbors might not think he was a decent person, he does try to get involved in the community because he grew up in that community and missed out on a lot. It is something he offers for the neighborhood kids.

Mr. Davis stated that the area is in a crisis in the area as far as the elementary school children are concerned. The nearest school was closed down; there is a Headstart program over on the other side of it. The kids have to be transported by bus to school all the way down near Broad Street and MLK to the Florence Howard School. The kids have a problem with having somewhere to go after school. Mr. Davis continued by saying that although there have been negatives discussed regarding Mr. Ward's business, there are tremendous positives going on inside as well.

Mrs. Ray responded that she lives in the community, and she hasn't seen any evidence of an educational program. She is a 34-year educator in the Mobile County Public Schools, and the schools do have afterschool programs for the kids. The residents are there all the time, not just some of the time, so they know what's going on.

Mr. Davis said, with respect to Mrs. Ray, that he doesn't live far from there, and he travels that road frequently. He is very in-touch with the parents and students in the school district, and he is very sure there is student activity there.

Mr. Hoffman stated that how the staff became familiar with the site is that they were answering a complaint on a site immediately to the north. That business had added a car wash use to that property as well, and that case is currently in Environmental Court. In investigating that site, the staff found out about the structure that had been added for the car wash at this site.

Mr. Guess asked Mr. Ward if his business had been inspected and permitted by the Health Department.

Mr. Ward stated that he had been approved by the Health Department.

Hearing no further discussion, the Chair opened the floor for a motion. Hearing none, he reviewed the recommendations in the staff report as well as items the applicant and his agent stated they would withdraw and/or revise.

Mr. Metcalfe asked why the staff was recommending approval of the restaurant use/internet café that only has eight parking spaces and is tough on the neighborhood when the initial license would have been denied zoning clearance due to expiration of the non-conforming use and inadequate parking.

Mr. Hoffman stated that in this case, the City had made a mistake in issuing the business license. It is in operation and has been for two to three years. As part of the variance process, doing substantial justice to the applicant has to be weighed against justice for the neighborhood. Ideally this building would be limited to a 1:300 parking ratio like retail space or office, and even that may not have compliant parking. It is a difficult situation, and the applicant should have

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some sort of viable use of the property. Staff recommended approval due to the error made by the City.

Mr. Metcalfe's concern was that while Mr. Ward is currently only using half of the building, if he expands into the other part of the building, it will put more hardship on the parking lot and the neighborhood without the City or anyone being able to say anything about it.

Mr. Hoffman replied that the Board could limit the size of the restaurant.

Hearing no further discussion, the Chair opened the floor for a motion.

Mr. Coleman asked the owner if he would consider hiring security during business hours to control traffic and off-site parking.

Mr. Guess asked if the applicant currently has the internet café in the existing space.

Mr. Ward replied that he has three laptops and two desktops currently in use.

Mr. Coleman made a motion to deny the carwash use and the side and rear setback requests, while approving the restaurant use, parking ratio, access/maneuvering, and tree and landscaping variances; the motion was seconded by Mr. Guess.

The conditions are as follows:

USE VARIANCE: The carwash use was **denied** with the carport structure to be removed within 30 days.

The restaurant and internet café use was approved, subject to the following conditions:

- 1) Provision of security to limit any off-site parking or blocking of St. Stephens Court;
- 2) Restaurant and internet café uses limited to the portion of the building currently in use for those businesses;
- 3) Compliance with building and Fire Code;
- 4) Prohibition of alcohol sales/consumption on premise;
- 5) Hours limited to 10:30 am-6:00 pm; and
- 6) Provision of appropriate waste disposal and revision of the site plan to illustrate the location of a dumpster in compliance with Section 64-4.D.9. of the Zoning Ordinance, or depict a note stating that garbage will be collected via curb-side pickup.

PARKING RATIO VARIANCE: The application was approved due to the existing layout and size of the property, subject to the following conditions:

- 1) Revision of the site plan to depict compliant angled or 90° parking; 9'x18' spaces;
- 2) Revision of the site plan to depict compliant parking along the southern side of the building;
- 3) Compliance with Traffic Engineering Comments: *(The parking spaces illustrated are only 7' wide, two feet less than the 9' city standard width. The spaces are also only 15' deep, three feet less than the 18' city standard depth. If striped parking is required, angled parking is suggested, with the "driveway" north of the power pole designated as the entrance, and the "driveway" south of the power pole designated as the exit. This*

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should minimize the impact of vehicles backing and maneuvering in the right of way. (Site plan does not illustrate small grassed area surrounding power pole.); and

- 4) Provide one "van accessible" compliant space with access aisle and revision of the site plan to illustrate a handicapped parking space compliant with the Americans with Disabilities act.

ACCESS/MANEUVERING VARIANCE: The application was approved to allow a reduced access/maneuvering area, subject to the following conditions:

- 1) Revision of the site plan to depict compliant angled or 90° parking; 9'x18' spaces;
- 2) Revision of the site plan to illustrate a handicapped parking space compliant with the Americans with disabilities act; and
- 3) Revision of the site plan in coordination with Traffic Engineering Comments: *(The parking spaces illustrated are only 7' wide, two feet less than the 9' city standard width. The spaces are also only 15' deep, three feet less than the 18' city standard depth. If striped parking is required, angled parking is suggested, with the "driveway" north of the power pole designated as the entrance, and the "driveway" south of the power pole designated as the exit. This should minimize the impact of vehicles backing and maneuvering in the right of way. (Site plan does not illustrate small grassed area surrounding power pole.).)*

TREE AND LANDSCAPING VARIANCE: The application was approved to allow no frontage trees and frontage landscaping, subject to the following conditions:

- 1) Provision of two understory trees between the building and privacy fence along the western property line; and
- 2) Maintain a minimum of 840 ± square feet of landscaped area.

SIDE AND REAR SETBACK: The application was denied.

The motion passed with Mr. Metcalfe voting in opposition.

#5877/5790/4193

(Case #ZON2014-00045)

Joe Walvis (M. Don Williams, Agent)

4114 Moffett Road

(Northeast corner of Moffett Road and Wolf Ridge Road).

Surfacing and Tree Planting Variances to allow a storage yard to have gravel surfacing with frontage trees placed beyond the 25' front building setback in a B-3, Community Business District; the Zoning Ordinance requires storage yards to have concrete or asphalt surfacing and all frontage trees to be placed in the 25' front building setback in B-3, Community Business Districts.

Council District 1

The Chair announced the matter, advising that this matter would be heard out of order because legal counsel for both sides was present.

Mr. Don Williams approached the Board and turned the floor over to Atty. John Lawler, the previous staff attorney for the Board, due to Mr. Lawler's familiarity with the application.

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Mr. John Lawler, representing the Board of Zoning Adjustment in a suit filed by the applicant, stated that the case has been appealed and set for trial on January 15, 2014. He further stated that:

- Prior to a trial date being set, both parties were ordered to mediation;
- In the original case before the Board, Mr. Walvis wanted to continue parking on grass as he always had because the site is used as a pawn shop where vehicles are stored on the site and are not constantly moving in and out;
- The City's position was that the parking area must be asphalt or concrete;
- Mr. Lawler and Mr. Hoffman met with the mediator, Stephen Clements, and agreed that the Board should make the decision whether or not to accept the applicant's proposal or go to court on the matter;
- Mr. Lawler stated that he could not predict with certainty how the case would be decided if it went to court. He believed that the Board had the upper hand in the case, but he also felt that this case differed from the other cases on the agenda having to do with alternative surfacing because the applicant's use and surfacing of the property has been in place for a long time, he had a business license, and the matter came before the Board after the applicant was turned in for violation of the ordinance;
- He stated that it may raise another legal issue regarding whether or not they could now enforce something that has not been previously enforced;
- He thought that it may be best to come to an agreement without going to court since the applicant had been issued a license and had been operating this way for years.

Mr. Metcalfe asked what precipitated the complaint against the applicant.

Mr. Hoffman stated that the complaint was made that cars were being sold at this location. In researching the site to answer the complaint, it was apparent that the applicant did have a license for car sales at the site, but there was no zoning clearance issued. Upon further review, it was noted that the site was no longer in compliance with the tree plan approved in 1995 because several trees had been cut down and that an addition to an existing building had been built without a permit. All of these items, in addition to the issue of the surfacing for the car storage area are what brought the matter before the Board.

Mr. Guess asked Mr. Lawler if he remembered any cases coming before the Board regarding alternative surfacing for pawn shops or businesses of this nature.

Mr. Lawler replied that he couldn't recall any coming before the Board. He stated that there have been exceptions made to the surfacing requirements, and he hoped that they were all made based on exceptional circumstances based on each site. He stated that one could drive around the city and find sites of this nature with aggregate surfacing with permission and without. The current parking surface at the subject site is grass, so aggregate surfacing would be an improvement. If the case went to court and was ruled in the applicant's favor, it would be in favor of parking on grass.

Mr. Coleman asked if the title pawn business required that they have a license to sell autos in addition to operating as a pawn shop.

Mr. Hoffman replied that as far as zoning is concerned, they would be required to have two separate zoning certificates – one to allow them to sell cars in a B-3 district as well as to operate

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as a pawn shop. The revenue department would allow that under the same basic license, but it would require two different zoning approvals. Sales of vehicles are allowed by right in this district; the issue was that there was no zoning clearance for it. In reviewing the zoning issue, the storage on grass surfacing versus storage on paved surfacing issue came up, and the surfacing issue is the matter before the Board today.

Mr. Metcalfe asked how long this activity had been going on with a grass surface.

Mr. Hoffman replied that it was probably prior to 1995 when the original tree plan was approved. First, the site went through a process to get special approval to operate as a pawn shop in a B-2 district, then it was later rezoned to B-3. These activities were prior to the current owner purchasing the property.

The following people spoke in support of the matter:

- 1) Don Williams, M. Don Williams Development, 6300 Piccadilly Square Drive, Mobile, AL;
- 2) Shawn Smith, 14100 Joe Hamilton Road, Grand Bay, AL, and
- 3) Chase R. Laurendine, 5909 Airport Boulevard, Mobile, AL.

They made the following points in support of the application:

- The business has been operating as is for about 21 years;
- Mr. Williams designed the original plan 18 years ago when Mr. Walvis took over, and he also drew the tree plan that was submitted and approved in 1995;
- The plan showed grass in the back. It had chain link fence around part of it, and it wasn't designated for parking, but was instead shown as a grass backyard;
- It wasn't designated for storage of vehicles in 1995, so there was need to get approval for that. However, it has been used for that purpose in subsequent years;
- It was totally fenced, gated and padlocked later, but has always remained grass surfacing;
- Mr. Hoffman advised them of three items that caused the site to be non-compliant: 1) parking on grass; 2) trees not according to approved plan; and 3) the unpermitted addition;
- They are before the Board now to clean up two and a half of these items: 1) they have applied for the permit for the addition to the building; 2) the boundaries of the site have changed due to a vacation of Donald Street Extension – they will comply with the nine frontage tree requirement based on current street frontage but they propose to plant seven of the nine trees in the side yard, not in the 25-foot setback due to potential widening of Wolf Ridge Road; 3) they would like to use tightly-packed gravel as an alternative surface because the majority of the boats/cars are parked there for several months without regular movement – they will provide for storm-water retention;
- There are usually only 3-4 cars stored at one time, but they do also store lawnmowers and trailers;
- When they repossess pawned items, they are required by statute to store them on-site;
- There is nothing in the zoning ordinance specifically requiring paving although the staff does interpret the ordinance that way; therefore, the Board has no authority to require paving;
- They feel like it is a fair compromise for the Board to allow gravel surfacing on this site.

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Mr. Metcalfe suggested that, in the spirit of compromise, the client may want to consider replacing the chain-link fence with wood privacy fencing on the side facing Wolf Ridge Road continuing east 90 degrees, for just those two corners, to shield the neighborhood.

Mr. Laurendine stated that his client would prefer no expense, and he couldn't agree to it on their behalf, but he felt that it wouldn't be a significant problem to require that change in the fencing.

Mr. Guess asked Mr. Smith if the owner had other facilities of this type with boat and vehicle storage, and if so, what surface material did those sites have for storage.

Mr. Smith replied that they did have other locations – one in Mississippi, the one in Mobile, and one in Theodore. The one in Mississippi has grass storage, the one in Theodore has asphalt, but it was that way when they began operating there as it was the old Ward's Army-Navy store.

The Chair asked if there was any one else in the audience who wished to speak in favor or opposition to the matter. Hearing none, he asked Mr. Lawler to respond to the points made by Mr. Laurendine regarding the legal interpretation of the zoning ordinance.

Mr. Lawler stated that stronger arguments could be made that the City's interpretation of its own ordinance did hold great weight, and there is legal precedence giving weight to the interpretation of the ordinance by the staff who administers it. However, it wasn't a sure thing either way as to how the court would rule if the case were to go to court. He reiterated that there is an offer by the applicant that was a compromise between full compliance and grass. If the case went to court, the decision would be made for either full compliance or grass – nothing in between. If he thought that there was certainty that the Board's decision would not be overturned, he would not have suggested that the Board hear the applicant's offer in compromise.

Mr. Milling asked Mr. Metcalfe if his suggestion of alternate fencing could be remedied by putting stripping in the current chain link fencing rather than putting up new wooden fencing.

Mr. Metcalfe replied that he had no problem with netting or slats, but he realizes that those alternatives don't generally hold up to the same wind load as the privacy fencing. His main concern was from the sightliness standpoint as storage yards are generally unsightly, and screening is usually recommended.

Mr. Hoffman pointed out that on page eight of the staff report, it is mentioned that the City Council approved an amendment to the zoning ordinance to allow aggregate storage yards in light industrial districts by right which wasn't previously allowed. When that amendment originally went before the Planning Commission, it also included B-3 districts with planning approval. There was an attempt to get approval to allow aggregate in storage facilities zoned B-3, but that proposal was rejected by both the Planning Commission and the City Council.

Mr. Guess stated that in his time on the Board, he had seen requests for variances for alternative surfacing for laydown yards, car lots, boat storage, and boat repair facilities, but this case is the first he had seen for a pawn shop. He realized that although this site was not originally intended to be used as a storage facility, it has expanded beyond the original scope of the site. He did see the benefit of having some type of surfacing down for any leaking vehicles or potential fire hazards. Hearing no further comments in favor or opposition, he opened the matter for a motion.

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A motion was made by Adam Metcalfe, with second by Vernon Coleman, to approve the surface variance request and tree planting variance as follows:

Surface Variance: The surface variance request was approved, subject to the following condition:

- 1) replacement or augmentation of the current fencing along the western and northern portions of the storage area with a wooden privacy fence, slatting or netting.

Tree Planting Variance: The tree planting variance, with regards to the location of seven of the nine required frontage trees, was approved as proposed by the applicant and depicted on the submitted site plan.

The motion passed unanimously.

#5878

(Case #ZON2013-03073)

Enrique Irizarry

5 Springhill Trace

(Southern terminus of Springhill Trace).

Side and Rear Setback Variances to allow a gazebo in a drainage and utility easement within 4'± of the side property line and 6'± of the rear property line in an R-1, Single-Family Residential District; the Zoning Ordinance requires minimum setbacks of 25' from the front property line, 8' from the side property line, and 8' from the rear property line in an R-1, Single-Family Residential District.

Council District 5

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

Bennett Schumann, Architect, 1010 N. 5th Avenue, Pensacola, FL, spoke on behalf of the applicant and made the following points in support of the matter:

- The project was built in 1982 by a developer;
- It was purchased by Mr. Irizarry in the 90's.

Pete Marston, 4703 Old Shell Road, Mobile, AL, addressed the Board on behalf of his father who couldn't attend the meeting. His property is adjacent to the west. Their family homestead sits on approximately 2.5 acres and was built prior to the Civil War, so they've been there a long time. They are not in opposition, but they have had some water issues from the neighbor to their west. They just ask that there be no adverse effects from any re-directed water flow.

Mr. Hoffman stated that this is a private street and all the drainage easements are existing. There is one on the west side and one on the south side of the property. On the western drainage easement, they will put a different covering over the ditch that exists there now. After meeting with Engineering and the property owner, it was determined that because these are all private easements and they do not take City water, the City has no jurisdiction here. It is up to the homeowners' association. There is a wall between this development and the Marston property,

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so that will keep water from this property from going through the wall to the other side. The water drains from the north to the south so it goes down to the Country Club golf course. There

should be no issue with this site as they are not changing anything relating to impervious area as it is already developed.

Mr. Schumann stated that they are going to maintain the private drainage, and they will put a cover on it for accessibility and continued drainage so they don't think they will affect anything on the western side of the property anyway.

Hearing no further discussion, the Chair opened the floor for a motion.

A motion for approval was made by Adam Metcalfe, with second by Vernon Coleman.

The motion passed unanimously.

OTHER BUSINESS:

The Chair announced that the Board has been provided a new proposed format for the approval/denial of Board of Zoning Adjustment applications that will be used beginning with the March, 2014 meeting going forward.

Mr. Hoffman discussed that the approvals and/or denials should be worded to make the decision more specific due to issues that have arisen about possible challenges on some recent BOA decisions, and as the BOA sits as a quasi-judicial body, the staff and attorney recommend that the Board go through a findings of fact process/statement in rendering their decision. The Rules of the BOA actually require this procedure.

The staff will suggest a possible finding in the report recommendation based on the facts as conveyed in the staff report. If the Board accepts the suggested finding and recommendation, that information will be recorded as the decision of the Board. If the Board makes another determination, then the Board will have to itemize the facts used in rendering their decision.

The following are suggested as examples:

Approval

The Board finds that:

1. Based on (what) the variance will not be contrary to the public interest;
2. These special conditions (list conditions related to property only, not individual or financial) exist such that a literal enforcement of the provisions of the chapter will result in unnecessary hardship; and
3. That the spirit of the chapter shall be observed and substantial justice done to the applicant and the surrounding neighborhood by granting the variance (how).

Denial

The Board finds that the variance request:

1. Will be contrary to the public interest (how);

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2. That special conditions (explain) do not exist that a literal enforcement of the provisions of the chapter will result in an unnecessary hardship; and
3. That the spirit of the chapter shall not be observed and substantial justice shall not be done to the surrounding neighborhood by granting the variance (why).

It will make decisions more defensible and based on facts surrounding the case and property; and appear less arbitrary and capricious or based primarily on neighborhood opposition or political support.

The ARB implemented a similar findings of fact element to their decision making process several years ago. While different in that they are finding fact relating to guidelines, the procedure makes for a more formal and procedurally correct process than not including the justification in the decision making process or the letter of decision.

This format provides the Board with better legal protection regarding decisions made. The Board also wants to make decisions consistent with previous decision unless a particular site specific hardship causes a different decision to be warranted.

Mr. Hoffman also discussed that if the City Council approves the proposed Form-Based Code, it will change some of the Board's duties only in the Form-Based Code District area which is within the Hank Aaron Loop area. This change will allow the Board to consider economics for specific cases in the decision-making process in this particular area only.

The Board discussed the amendment of BOA rules to reflect elimination of Supernumerary Member. The previous rules reflected that an application needed consent of at least four members, which was the majority at the time, to pass. The consent of five members, a super majority, is now required for an application to pass.

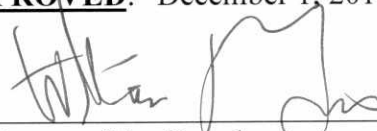
The Chair opened the floor for a motion to approve the above change to the BOA rules.

A motion was made by William Guess, with second by Vernon Coleman, to approve the proposed amendment to the Board of Zoning Adjustment rules to eliminate the Supernumerary Member.

The motion passed unanimously.

With no further business coming before the Board, the meeting was adjourned at 4:25.

APPROVED: December 1, 2014



Chairman of the Board

/lw