

BOARD OF ZONING ADJUSTMENT MINUTES
MEETING OF JULY 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 all five members present to pass a variance. He then called the meeting to order.

HOLDOVERS:

#5894

(Case #ZON2014-00898)

Jason Bunch (Carfinder's)

85 Schillinger Road North

(Northwest corner of Schillinger Road North and Airway Park Drive).

Use and Site Variances to allow the off-site temporary storage of vehicles on a vacant lot with gravel surface in a B-3, Community Business District; the Zoning Ordinance requires asphalt, concrete, or an approved alternative paving surface in a B-3, Community Business District.

Council District 7

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

Jon Amsberry, Driven Engineering, 8005 Morris Hill Road, Semmes, AL, spoke on behalf of the applicant and made the following points in support of the matter:

- Mr. Bunch had installed gravel parking without a permit, so he came to Driven Engineering to have the site plan updated for approval for the permit request;
- The permit was denied as it didn't meet several codes;
- Mr. Bunch contends that the street that the parking lot is on is adjacent to his business, but it is not a part of his business – he owns the subject property, the Carfinders lot, and the next property to the west;
- He is using the subject property as an intermittent parking facility to park cars on that he plans to sell on his lot before he details them to put up for sale;
- Airway Park Drive is generally light industrial in nature, so they don't feel that it poses an injustice to the business park to have alternative surfacing;
- When the runoff calculations were done several years ago by Avalisha Fisher, that parcel was considered fully impervious, so the detention pond is sufficient to serve both lots;
- The lot to the north and lots of car dealers all around this property have the same type surfacing so they aren't asking for anything any differently than what the other dealerships along Schillinger's Road have done;
- As far as the landscaping, car dealers have problems with overstory trees dripping sap that is hard to buff out.

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

Merrill Thomas, 6 Drury Lane, Mobile, AL, spoke as the representative of the owners of 15 lots in Airway Commercial Park and as the owner of three buildings himself. He made the following points in opposition to the matter:

- When he is trying to sell these properties, the potential buyers drive down Airway Park, and he has to tell the buyers that they have to put in curbs, gutters, and landscaping that the applicant did not do;

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- Allowing these variances would create a hardship to the landowners in the park;
- There is about a dozen cars parked around this lot in the right-of-way. He would like to see the intersection that is the entrance to their park cleaned up;
- This lot was part of the park, and the owners sold it to Mr. Bunch;
- There are subdivision restrictions in the park that provide for a finished roadway frontage, so the landowners asked to see his construction drawings;
- Mr. Bunch told the landowners that the subdivision restrictions had expired, so he would not comply;
- The other landowners would like to see him comply as he expands further into Airway Business Park.

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.

A motion was made by Mr. Metcalfe, with second by Mr. Milling, to deny the above referenced request.

The motion passed unanimously.

#5895/5797/5726

(Case #ZON2014-00928)

New Hope Baptist Church

1270 & 1272 Pecan Street, 608 Live Oak Street, 1261 & 1263 Persimmon Street

(Northeast corner of Pecan Street and Live Oak Street extending to the Southeast corner of Pecan Street and Persimmon Street).

Tree Planting Variance to reduce the number of Frontage Heritage Trees required for a church in an R-2, Two-Family Residential District; the Zoning Ordinance requires a minimum of one frontage heritage tree per 30 linear feet of street frontage for a church in an R-2, Two-Family Residential District.

Council District 2

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.

Carlos Gant, architect, 2808 Steeplechase Court, Mobile, AL, spoke on behalf of the applicant and stated that he was in agreement with staff recommendations.

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. Metcalfe, to approve the above referenced request.

The motion passed unanimously.

The Board found the following findings of facts for approval:

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- 1) Based on the fact that this same request has been granted to the applicant twice in the past, the variance will not be contrary to the public interest;
- 2) These special conditions (lack of sufficient area to plant overstory trees within close proximity to the building) 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 in that all other tree planting requirements will be met and the total number of required trees planted will still be met.

The application was approved, subject to the following conditions:

- 1) coordination with Urban Forestry for the frontage tree planting requirements of the Ordinance to allow the planting of understory trees instead of overstory trees within the location of the building;
- 2) revision of the site plan to specify Live Oak trees as the heritage trees along all three street frontages due to the presence of overhead power lines;
- 3) submittal of three (3) copies of a revised site plan showing required revisions prior to the submittal of plans for building permitting; and
- 4) full compliance with all other municipal codes and ordinances.

PUBLIC HEARINGS:

#5897

(Case #ZON2014-01120)

Donald and Sabina Hinton

5350 Todd Boulevard

(West side of Todd Boulevard, 550'± North of the terminus of Todd Boulevard).

Side Setback Variances to allow a shed within 6'± of the side property line, and a shed within .75'± of the side property line on a 100'± wide lot in an R-1, Single-Family Residential District; the Zoning Ordinance requires a minimum of an 8' side yard setback on a 100'± wide lot in an R-1, Single-Family Residential District.

Council District 4

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.

Sabina and Donald Hinton, 5350 Todd Boulevard, Mobile, AL, spoke on their own behalf and made the following points in support of their application:

- They are in a flood zone and this is the only location where they can put the shed to keep their things dry;
- They can't put it in the driveway and still have access to the house for repairs;
- They need the storage space and have health issues and can't climb up into their attic.

Mr. Milling asked about the alternative location mentioned in the staff report.

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Mrs. Hinton stated that there was no way to access that location as the land slopes. There is no way to tie it down. The soil is very sandy, and there is a drainage easement back there. During the last flood, they had floodwater in their pool and four feet of water in the previous shed that they had. This shed was placed on site in October. Her neighbor, Mr. Grantham, came over and commented about it being a nice shed, but he didn't say he had any problem with it or the location.

Mr. Metcalfe asked how staff was made aware of this shed being there.

Mr. Hoffman stated that there was a complaint filed with the 311 system. An inspector was sent out and found that a shed was put on site without a permit. He stated that if the variance was approved, they would be required to get an after-the-fact building permit for the shed, and they may be required to elevate the shed even more to be in compliance with flood zone regulations.

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.

Mr. Thomas Grantham, 5330 Todd Boulevard, Mobile, AL, spoke on his own behalf and made the following points in opposition to the matter:

- The shed is very tall, and it has a barn-type roof;
- He brought some pictures and stated that there are other places where the shed could be placed;
- He and the other neighbors in the area have their sheds in the back;
- He got five or six feet of water in his shed during Katrina, but he always moves his mower and other things out of the shed where there is a hurricane warning;
- The Hintons have a very nice, well-kept yard, but this shed just doesn't fit where it is sitting right by the house;
- He is asking that they enforce the City ordinances and require the shed to be moved.

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

The motion passed unanimously.

The Board the following findings of fact for denial:

- 1) Approving the variance will be contrary to the public interest in that the approval of the variance will be contrary to Section 64-3.C.1.e. of the Zoning Ordinance regarding setbacks within an R-1, Single-Family Residential zoning district;
- 2) Although special conditions exist, such as a hardship to the property due to the lot's proximity to a canal and location within a flood zone, a literal enforcement of the provisions of the chapter will not appear to result in an unnecessary hardship; and
- 3) The spirit of the chapter shall not be observed and substantial justice shall not be done to the surrounding neighborhood by granting the variance for the unpermitted shed since there may be other areas on the property which may be appropriate for the shed that would meet all setback requirements in upholding the spirit of Section 64-3.C.1.e. of the Zoning Ordinance.

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Therefore, the shed should be removed and relocated to a compliant location, with the appropriate building permits.

#5898

(Case #ZON2014-01130)

Advantage Sign Company

3449 Hillcrest Road

(Northeast corner of Hillcrest Road and Girby Road).

Sign Variance to allow a digital sign located 210'± from the nearest residentially zoned property in a B-3, Community Business District; the Zoning Ordinance requires all digital signs to be a minimum of 300' from residentially zoned property in B-3, Community Business District.

Council District 6

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

Irv Horton, Advantage Sign Company, 5819 I-10 Industrial Parkway, Theodore, AL, spoke in support of the matter and made the following points:

- When the City changed the ordinance in the last year and a half regarding limiting digital signs within 300' of residential areas, he nor any other sign contractors understood the change to include digital gas pricing signs;
- He understood it to limit LED displays from flashing, scrolling, or having animation;
- The sign he is asking to be permitted is simply to display a gas price – it doesn't change colors, flash or animate – it simply displays a number;
- Digital signs are the industry standard for displaying gas prices now;
- The old way of changing panels on gas pricing signs is labor-intensive and unsafe;
- This sign is no more intrusive than a traffic light, and he didn't think that it was the City's intent to limit gas signs.

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.

The Chair asked staff which residence was within 300' of this site.

Mr. Hoffman replied that to the south of the site, there is residentially zoned property that he believed to be owned by the school board. Across Hillcrest, there is a subdivision which is residentially zoned.

Mr. Milling asked staff if when the City changed the ordinance to limit digital signs, if the intent was to include gas pricing signs or if that was overlooked.

Mr. Hoffman stated that prior to the ordinance being amended in 2013, staff was reviewing plans for several digital gas signs that would have been affected because staff does interpret the ordinance to include gas station price signs, not just moving digital signs.

Mr. Metcalfe asked what type of bulbs were in the sign now.

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Mr. Horton stated that the current bulbs are fluorescent. With the proposed sign, the prices can be changed out at the register without anyone having to go out with an extension arm to physically change the prices.

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

The motion passed unanimously.

The Board determined the following findings of fact for Approval:

- 1) approving the variance will not be contrary to the public interest in that the digital sign regulations are not, in the Board's opinion, applicable to fuel price signs;
- 2) special conditions exist and there are hardships which exist, in that the Board is of the opinion that the digital sign regulations are not applicable to fuel price signs, such that the 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 proposed digital fuel price signs will not be a detriment to the neighborhood.

#5899

(Case #ZON2014-01149)

McLain and Associates, Inc.

1312 West I-65 Service Road South

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

Use Variance to allow a retail and lounge business in an I-1, Light Industry District; the Zoning Ordinance does not allow retail or lounge businesses in an I-1, Light Industry District.

Council District 5

The Chair announced the matter, advising it had been recommended for holdover to allow the applicant to make revisions to the site plan. He advised the applicant should address the Board regarding the subject at that time.

Terry McKinney, Delaney Land and Realty, 225 Springhill Memorial Place, Mobile, AL, and Angie Odom, architect on the project, spoke on behalf of the applicant and made the following points in favor of the matter:

- The staff had recommended holding the matter over until the following meeting so that they can make revisions to the site plan to clarify the parking;
- They are hoping to get an approval today subject to re-submission of an acceptable site plan based on the recommendations due to the timeframe of the potential buyers' pending SBA loan;
- There will be no alterations to the building except for the interior and doing upgrades;
- The site is zoned I-1, and the bulk of the surrounding properties are zoned I-1 and being used as if they were B-2 or B-3;
- There are two new developments for hotels in the area have been rezoned;

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- They will be able to comply with the conditions from Traffic Engineering with the submission of a revised site plan.

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

Ms. Davis stated that she had received complaints from a few people who wanted to speak in opposition to this case, but they were not in attendance because the matter was recommended for holdover.

The Chair asked if she knew the nature of their opposition.

Ms. Davis stated that the adjacent property owner was concerned about parking and overflow onto his property. The other complaint was concern about the hours that the business would be in operation and how that might affect the hotels.

Ms. McKinney stated that they did meet the parking requirements. It would be a pretty good walk for someone to park at the hotel next door and walk around to the entrance. There will be a lounge entrance in the rear, and the entrance for the retail store will be in the front. The business will be The Tinder Box that has been in business in the mall for 30 years. The lounge will be for their customers to try new products, so there will be smoking. There will be alcohol served, but there will be no kitchen.

Mr. Metcalfe asked how much of the building would be dedicated to the lounge.

Ms. Odom stated that the building is about 4500 square feet and about 1800-1850 square feet will be for the lounge.

The Chair asked what the fire department limit would be on occupancy for that size lounge.

District Chief Roach stated that for a bar with fixed seating, it would depend on how it was set up. He thought the occupancy would be about 250, and he would be looking at the requirement for the sprinkler system as well.

Ms. Odom stated that they submitted a drawing that had their occupancy information on it, and she couldn't remember what that was and didn't have it with her. They were told that they would not be required to have sprinklers.

The Chair stated that the Board had a dilemma whether or not to hold this over based on allowing the adjacent property owners to comment and the applicant submitting a revised site plan.

Ms. Odom stated that they are using the existing parking, but instead of the eight current spaces remaining perpendicular, they will make them parallel. Their drawings indicated that, but Traffic Engineering wanted the spaces to be 23 feet wide instead of 20 and that will work, and they will be one parking space over the requirement.

Mr. Metcalfe asked if their parking compliance was based on the current zoning, or based on their requested use of the site.

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Mr. Hoffman stated that the way staff did the parking calculations, they would be required to have 26 parking spaces which they appear to show on the property. The lounge area requires one parking space per 100 square feet so that would be 18 required, and the remainder of the building would require about eight more spaces. They do need to make some dimensional adjustments to the parallel parking along the south property line per Traffic Engineering to make sure they can still get all those parking spaces on this site.

Ms. Odom replied that they can get the required number of parking spaces with the appropriate adjustments.

Rosemary McLain, McLain and Associates, Inc., 3484 Bel Air Mall, Mobile, AL, spoke on her own behalf and made the following points in support of the matter:

- The lounge isn't going to be a traditional bar;
- They have a very specific clientele – the interior will be mainly designed for sofa-type lounge chairs;
- They have been in business for 10 years, and this type lounge where customers can try new products is something customers have been asking for since the implementation of the new smoking ordinance;
- They shouldn't be drawing a large number of people – it is for customers who smoke cigars and pipes;
- She envisions a privacy fence surrounding the entire parking area to designate their parking area separately from Rim Time (they always have tires and junk in parking lot) and the hotel which has a grassy area between the two sites so anyone walking from the hotel parking lot would have to walk around;
- The lounge is designed for business men/ clientele from the store to be able to come read the newspaper, smoke and have a drink.

Mr. Metcalfe asked what she envisioned for the outside cosmetically.

Ms. McLain stated that she would do a big upgrade.

Ms. Odom stated that they will do a facelift with cedar or lapped siding over the existing mansard and removing the white posts and maybe going back with rough-sawn cedar timbers and new paint.

The Chair asked if there were any more questions from the Board. Hearing none, he opened the floor for a motion.

A motion was made by Mr. Guess, with second by Mr. Reilly, to approve the above referenced request.

The motion passed unanimously.

The Board determined the following findings of fact for Approval:

- 1) approving the variance will not be contrary to the public interest in that the use will not be incompatible with the surrounding uses;

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- 2) special conditions exist, such as the fact that the building is vacant, such that the 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 proposed use and associated improvements will not be a detriment to the neighborhood.

The Board's approval is subject to the following conditions:

- 1) submission of a revised site plan, drawn to scale;
- 2) revision of the site plan to depict compliant off-street parking spaces that are a minimum 9' x 18' and parallel parking spaces that are a minimum 8' x 23' for interior spaces, and 8' x 20' for end spaces;
- 3) provision of a 6-foot high privacy fence around the perimeter of the property, except within the 25-foot front setback area; and
- 4) full compliance with all municipal codes and ordinances.

#5900

(Case #ZON2014-01175)

William and Brenda Broadus

7669 Avenue D

(South side of Avenue D, 150'± East of 6th Avenue).

Use Variance to allow a mobile home as a second residence on a single site in an R-1, Single-Family Residential District; the Zoning Ordinance does not allow more than one residence on a single site 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.

Brenda Broadus, 7669 Avenue D, Mobile, AL, spoke on her own behalf and made the following points in support of the matter:

- They previously had another trailer on this site that their oldest daughter lived in;
- When her oldest daughter got married, the trailer was sold;
- Now their youngest daughter has gotten married and would like to put a trailer there to live in;
- Mrs. Broadus travels, and her husband has a liver disease, so it would be helpful for their daughter to be nearby to check on him when Mrs. Broadus is out of town;
- Mr. Broadus's mother also lives one street over and lives alone so her daughter could check on her as well;
- There is a trailer on the property next to them that her sister-in-law lives in;
- There is also another trailer on the other side of them as well as trailers all around the neighborhood;
- They already have a separate septic tank, separate city water hook-up and a separate power pole on-site from when there was a trailer there previously.

The Chair noted that it appears that trailers are common to the area, but they all appear to be on individual lots unless they were in a park. He asked if her family had discussed subdividing the

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lot so the variance wouldn't be needed. He stated that the Board's dilemma is that she is wanting to put two homes on one piece of property.

Mr. Hoffman stated that the way that this would typically be handled for a mobile home to be used as a residence in a single-family district would be to go through the Planning Commission's subdivision process, create a legal lot for the structure and request Planning Approval.

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.

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

The motion passed unanimously.

The Board determined the following findings of fact for denial:

- 1) Approving the variance will be contrary to the public interest in that it will be contrary to Section 64-3.C.1. of the Zoning Ordinance regarding an R-1, Single-Family Residential zoning district;
- 2) The applicant has not presented any special conditions as required in Section 64-8.B.6.f.(3).(d). of the Zoning Ordinance, such as a hardship to the property, which may exist and a literal enforcement of the provisions of the chapter will not appear to result in an unnecessary hardship; and
- 3) The spirit of the chapter shall not be observed and substantial justice shall not be done to the surrounding neighborhood by granting the variance, as there is no hardship, and that a request for a 2-lot subdivision with Planning Approval through the Planning Commission would seem a more appropriate route for this site in upholding the spirit of the chapter.

The Board also recommended that the applicant submit the appropriate Subdivision and Planning Approval requests for consideration by the Planning Commission.

#5901

(Case #ZON2014-01185)

City of Mobile, Community Planning and Development Department

906 and 908 Delaware Street

(North Side of Delaware Street, 110'± West of South Broad Street).

Bulk, Front Setback, and Side Yard Setback Variances to allow a duplex on a 6,680 square foot site, with a 21'6" front yard setback and a 1' side yard setback in an R-3, Multi-Family Residential District; the Zoning Ordinance requires a minimum of 8,000 square feet for a duplex, with a minimum front yard setback of 25', and a minimum side yard setback of 8' in an R-3, Multi-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.

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Kristina Stone, Assistant Director of Community Planning and Development for the City of Mobile, 205 Government Street, Mobile, AL, spoke on her own behalf and made the following points in support of the matter:

- Her department administers federal funds that they receive from HUD, and among those funds are home funds that are used exclusively for affordable housing;
- She submitted a revised site plan showing the following changes: 1) the side setback variance request is now 5'; 2) the front setback variance request has been eliminated, and 3) they are now showing a third parking space;
- They are looking to do three things with this site: 1) meet commitment and expenditure deadlines associated with the federal funds; 2) do a pilot project to learn more about modular construction; 3) work in partnership with the City's Neighborhood Renewal Program to get a lot back into productive use;
- This is currently a vacant, blighted property, and they are soliciting via the website a design/build partner;
- They want to do a New Orleans-style double shotgun to keep it to one structure on the lot;
- It will be affordable income housing that is income and rent-restricted for a minimum of 20 years;
- There is a beautiful 41" live oak tree on the southeast corner of the parcel;
- The lot is currently being used as a garbage dump;
- When the City gets properties through the NRP program, it becomes the City's responsibility to mow and maintain and are also a liability;
- In reference to staff comments, theoretically, a single-family house could be built on this lot, but it isn't that attractive an area to do that;
- They are trying to get as close to the lot line on one side due to the size of the canopy of the tree.

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

Mr. Coleman stated that he grew up in this area, and he's glad to see the City doing something in it. There used to be a lot of duplexes in the area, and it was a vibrant neighborhood. He is in favor of this project.

Mr. Milling asked what kind of response they have had to the RFP.

Mrs. Stone stated that they didn't state that they required modular housing when they put out the RFP, but they did encourage modular. She has had inquiries from three people who do modular homes who are really interested and all three have asked if there will be future opportunities. The cost savings with modular housing versus site built is only about 10-15% per unit, but the real savings is the compressed time-frame from start to finish for having a unit ready for occupancy.

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

Bobby King, 1012 Hillcrest Lane, Mobile, AL, spoke on his own behalf and had some questions regarding the plans for the site:

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- He owns the property on the corner where the oak tree is;
- He asked if the site would be rezoned;
- He's had a business on that lot for over 30 years and wanted to know how the R-3 zoning would affect him;
- He tried to purchase the subject site previously.

The Chair advised that the zoning district allows single-family construction by right, and that the only thing changing would be the use for this site. The problem with this site being R-3 is the size of the lot.

Mr. Hoffman stated that Mr. King's lot is also zoned R-3.

The Chair stated that he didn't think that he would lose his non-conforming use. He asked Mr. King if he had any objection to the project or if he felt like the development would be an improvement.

Mr. King stated that he thought it would be an improvement.

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

The motion passed unanimously.

With the revised site plan and revised variance requests, the Board determined the following findings of fact for Approval:

- 1) approving the variance request will not be contrary to the public interest due to the fact that the property is in a blighted area, that it is zoned for multi-family use, and that there is a live oak tree of significant size on the property;
- 2) special conditions do exist, such as the live oak tree, the multi-family zoning, and the blighted nature of the area, such that the 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 proposed use and associated improvements will not be a detriment to the neighborhood.

#5902

(Case #ZON2014-01200)

Gavin Bender

166 South Royal Street

(Southwest corner of South Royal Street and Theater Street).

Use Variance to allow a brewery in a T5.1 District; the Downtown Development District Code requires a minimum of a SD-WH district to allow a brewery.

Council District 2

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Due to additional information submitted by the applicant just prior to the meeting, staff and legal counsel were able to determine that the use variance request was not required: that the use is allowed by right. Thus, the application was withdrawn.

#5903

(Case #ZON2014-01205)

Treska Ballard

5055 Overlook Road

(Southwest corner of Overlook Road and Joyce Road).

Use and Tree Planting Variances to allow a hair salon, with reduced tree plantings in an R-1, Single-Family Residential District; the Zoning Ordinance requires a minimum of a B-2, Neighborhood Business District with full compliance with tree plantings.
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.

Treska Ballard, 9446 Lake Woods Court, Semmes, AL, spoke on her own behalf and made the following points in support of the matter:

- She brought pictures of trees that are already planted in the yard, and she is willing to move those trees but feels there are adequate trees in the yard;
- If she puts in a parking lot, she feels like planting more trees would cause her to lose available parking;
- She has been in business as a hairdresser for 10 years;
- Everywhere she has been to rent a space for her salon, the landlord has had changes of plans that has caused her to have to move her business to other locations;
- She has now been able to purchase a home to use for her business;
- There are several businesses on the street: State Farm, Pearl Screen Printing, a lingerie shop, Godfathers, McDonalds and KFC;
- There isn't much residential use on the street – the residential areas are back off of Overlook Road.

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

Mr. Milling asked if there were any commercially zoned properties on her side of the street.

She replied that State Farm is a block down and Pearl Screen Printing is another block down.

Mr. Milling asked if there is a residence right next door to her or behind her.

She stated that there is a house to the side of her that faces Druid Drive. Hers is the only house that faces Overlook that is residential.

The Chair asked if when she was looking for property whether or not she looked for property that was commercially zoned and if she was already in business at this location.

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Ms. Ballard stated that she did look for commercially zoned property, but she couldn't afford to purchase any that were commercially zoned. She still has her shop in the MAWSS building on Moffett Road; MAWSS is moving all of their people into that building, so she has to move by the end of September.

Mr. Metcalfe asked Mr. Hoffman what zoning district would allow her to have a hair salon if she were to apply for rezoning. He stated that he was having difficulty with the hardship in this case.

Mr. Hoffman replied that the lowest district that would allow it would be LB-2.

Mr. Metcalfe, addressing Ms. Ballard, stated that it may be an option for her to apply for rezoning to LB-2 if she were denied the variance.

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. Metcalfe, with second by Mr. Milling, to deny the above referenced request.

The motion passed unanimously.

The Board determined the following findings of facts for denial:

- 1) 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 Ordinance pertaining to R-1, Single-Family Residential Districts, and Section 64-4.E.A.3. pertaining to tree planting requirements for commercial sites;
- 2) special conditions such as changing land uses within the immediate neighborhood, inadequacy for the structure to be used as a single-family dwelling, and insufficient area to plant trees or unusual site constraints do not 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 not be observed and substantial justice shall not be done to the surrounding neighborhood by granting the variance because the immediate neighborhood is used as single-family residential and no other Use Variances have been granted within this particular subdivision.

#5904

(Case #ZON2014-01212)

Melanie Friend

1801 Old Shell Road

(Southwest corner of Old Shell Road and Kenneth Street).

Administrative Appeal of a staff determination of food service as an accessory use to a retail business in a B-2, Neighborhood Business District; the Zoning Ordinance allows an accessory use to a retail business in a B-2, Neighborhood Business District. The applicant contends that the food service appears to now be an equal or primary use.

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The Chair announced the matter and advised the applicant should address the Board regarding the subject at that time.

Melanie Friend, 51 Kenneth Street, Mobile, AL, spoke on her own behalf and made the following points in support of her appeal:

- She doesn't have any problem with the retail use;
- Her concern is that the use has changed;
- The principal use of the business next to hers now is more of a food service and wine bar;
- She doesn't mind opening her parking lot for retail use of the building next door which is what it is licensed for but not for food service/bar use.

Mr. Hoffman stated that when Ms. Friend let staff know of her concern of the use of the neighboring building, inspectors were sent out to inspect the kitchen facilities at Red or White. The inspectors found that they have a convection oven and a commercial-style sink. The Director of Urban Development found that those facilities were insufficient to consider the restaurant/bar aspect of the business as the primary use. The fact that two-thirds of the floor space of the facility is still dedicated to the retail sale of wine makes retail the primary use. This decision is the aspect that the applicant is questioning.

The Chair asked for clarification as to whether the Board was to consider whether the ancillary use is in excess of what was originally licensed.

Mr. Hoffman stated that the Board is to consider whether or not they support the staff's determination that Red or White is primarily a retail wine sales facility or that it is instead more heavily favored toward a wine bar/small restaurant.

Ms. Friend stated that she is saying that the accessory use is now the primary use. It may not be a restaurant, but rather a food service as they are apparently preparing the food elsewhere and bringing it in. But, the patrons come to eat and drink after work as opposed to buying wine and leaving. The facebook page for the business has more information about the food than the wine sales. They have about 30 seats in the food service area. Her property is the uniform place next door, and she sells art on line and is licensed for customers to come to her site to purchase art as well.

Mr. Metcalfe asked if the patrons from Red or White were parking in her parking lot.

Ms. Friend stated that she has had her parking lot open for four weeks, and no one has been parking there. The property owner for Red or White wants Ms. Friend's parking lot open for Red and White customers to park there. Her concern is not the retail customers parking there, but that people who are drinking would be parking there. Her understanding is that even though it is zoned B-2, from talking to staff at Urban Development, there is insufficient parking even with her lot open for there ever to be a bar or restaurant on that site.

Mr. Metcalfe asked why it is a problem for her to open the parking lot if she agreed to do so.

She doesn't have a problem with the retail use, but she does have a problem with opening it for the bar/restaurant use. Most of the businesses there close around 5:30 or 6:00, but now Red or

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White is open later. She is concerned about liability. She is not appealing a variance, she is appealing a citation she was given for failing to open her parking lot to the adjacent business.

Mr. Hoffman stated that Ms. Friend's property, the subject site, and the building adjacent to it are all part of a Planned Unit Development that was approved in 2005 or 2006 for shared parking and access. Most of the parking is on Ms. Friend's property as there is only a few spaces in front of the old Nixon's Drugs building, and there is none in front of the building next door. As part of the PUD, all the parking is supposed to be available to all three buildings.

Mr. Metcalfe asked if in the PUD there was a specific use approved for Red or White and that use has now changed, and it isn't in compliance with the PUD.

Mr. Hoffman replied that there was no specific use listed in the PUD. He stated that Red or White opened as a retail wine store, then around 2010, permits were obtained for plumbing and electrical to make some changes. Then, the Revenue Department amended their business license to add a restaurant code. This change wasn't reviewed by Land Use in Urban Development; therefore, Land Use staff never had the opportunity to weigh in on the parking issue. By adding the accessory food and wine consumption use, that changes the required parking ratio for Red or White making the parking more of a problem than was originally considered.

Mr. Metcalfe asked if there was anyone there from Red or White as he saw in the newspaper that they were moving. He wondered if this was a moot point.

Mr. Anderson asked if the Board ruled in favor of the applicant, what would be the end result?

Mr. Hoffman stated that it may result in the PUD having to be amended to provide more parking or the need for a parking ratio variance to be obtained by the property owner for Red or White.

Mr. Anderson stated that Red or White was to be in their new building in two months so there wasn't time for them to get a variance. He understands the applicant's concern, but they wouldn't shut Red or White down, they would ask them to amend something, so he wasn't sure where any decision the Board made would take them.

Mr. Metcalfe stated that he understood that Ms. Friend's concern was not about parking but about liability. He asked Ms. Friend if she had approached the tenant to be named as an additional insured on their general liability policy to solve that concern.

Ms. Friend stated that the owner of the property had been told that; however, she understands that it is not the tenant who demanded that the parking be opened but the property owner. With Red or White moving now, her concern is that if there are things being done without Zoning review, what may come in there next?

Mr. Metcalfe asked what she was cited for.

Ms. Friend stated that the citation was for not opening her parking lot.

Mr. Metcalfe asked how she was keeping that from happening.

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Ms. Friend stated that she had a gate put in as part of the security for her building. No one had asked her to use the parking lot, but all they had to do was ask her to open the gate.

Mr. Metcalfe asked her to clarify that there was a physical barrier that she closed off that prevented customers from parking in her parking lot. He also asked for verification that a complaint was then filed against her for not opening the parking lot. He asked if anyone approached her to try to work this situation out.

Ms. Friend stated that she did have a gate that she had not opened, and a complaint was filed against her. She had been approached to try to work it out, and she was in the process of working with Urban Development to see exactly what her requirements were when she was threatened with a lawsuit. She then started opening the gate until they could further resolve the issue.

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

Jean Lankford, 1801 Old Shell Road, Mobile, AL, spoke on her own behalf and made the following points in opposition to the matter:

- She is a business owner, she owns the building, and Red or White is her tenant;
- Several years ago, she came to Ms. Friend and asked for additional parking. The tenant, Brandi Williams asked Ms. Lankford to ask for the parking. Insurance certifications and other protections were discussed. Ms. Friend made it as difficult as possible for them, so they finally backed away;
- The gates have been closed for eight years now;
- None of her tenants have been able to use the parking;
- The only reason she asked Ms. Friend to come to Urban Development to discuss the PUD is because she heard that her tenant was leaving;
- Ms. Lankford asked for help from the City to help enforce the terms of the PUD;
- It meets the guidelines of the B-2 zoning, and Ms. Friend had to agree to the terms of the PUD to purchase the property;
- The gates weren't just closed for eight years; they have been locked until May;
- The stresses that her tenants have had over the years because of this issue have been passed on to her;
- Losing her tenant due to lack of parking is a hardship on her, and she isn't going to tolerate it;
- She stated that she expects the gates to remain open for future use by her tenants, they will gladly exchange insurance certificates and do what they are supposed to do under the PUD, and they should be able to get along as good neighbors should.

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

Ms. Friend wished to clarify that two to three years ago, they asked to use her easement but nothing was said about the parking lot. She asked for insurance certificates and never heard anything back from them.

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Mr. Metcalfe asked if the fence was put up after the PUD was approved and if that was a violation of the PUD since it is siteplan specific.

Mr. Hoffman stated that in the report the staff addressed that she did get a permit for a fence, and that perhaps should have been looked at through the PUD, but staff did not do it so staff made an error as well.

Mr. Milling asked Ms. Friend if she was aware at the time she bought the property that there was shared parking situation.

Ms. Friend replied that she was aware of it and that all the businesses had been operating historically as retail businesses.

Mr. Milling asked if she put the fence up for security purposes.

Ms. Friend stated that she did put it up for security purposes as she had people breaking down, leaving there cars there, there were tenants from the rentals on Kenneth Street parking there, Alabama Power landscaping staff were parking there also.

Mr. Milling asked if she communicated with Ms. Lankford the reason for putting up the fence.

Ms. Friend stated that Ms. Lankford was aware that she was putting up the fence as there was a chain-link fence between the properties that had been broken down by Mobile Water when they were working out there, and Ms. Lankford asked her to put up something similar in the area where the other fence was taken down.

Mr. Milling stated that with Red or White moving that problem should rectify itself shortly, but was her concern with the type of business that would go in there in the future.

Ms. Friend stated that was correct. She had no problem with a retail tenant, but she was told she couldn't have any sort of food service because there was insufficient parking. She stated that essentially it is a restaurant/bar operating right next to her and that is what was taking up the parking.

The Chair asked Mr. Anderson if he had any comments for the Board to take into consideration.

Mr. Anderson stated that what was before the Board today was to decide whether staff made an error in making the decision that the restaurant is still an ancillary use and not the primary use. Mr. Anderson stated that he didn't feel that there had been enough evidence submitted to the Board to overrule the staff's decision.

A motion was made by Mr. Metcalfe, with second by Mr. Coleman, to deny the applicant's Administrative Appeal request.

The motion passed unanimously

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OTHER BUSINESS:

With there being no further business before the Board, the meeting was adjourned at 3:42 p.m.

APPROVED: January 5, 2015



Chairman of the Board

/lw