

BOARD OF ZONING ADJUSTMENT MINUTES
MEETING OF MARCH 10, 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
✓	Lewis Golden
✓	Adam Metcalfe
✓	Jeremy B. Milling
✕	Russell Reilly

CALL TO ORDER:

Chairman Guess advised all in attendance as to the policies and procedures of the Board of Zoning Adjustment. He noted the numbers of members present constituted a quorum and that the Board was on a supermajority voting system, so it would require approval of five members to pass a variance. He called the meeting to order at 2:00 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.

The following people spoke in support of the matter:

- 1) Brett Orrell, Polysurveying, 5588 Jackson Road, Mobile, AL, who spoke on behalf of the applicant;
- 2) John Kirby, 7060 Airport Boulevard, Mobile, AL, who spoke on his own behalf; and
- 3) Reggie Copeland, 3707 Swansea Drive, Mobile, AL, who spoke on behalf of the applicant.

They made the following points in support of the matter:

- A letter from Barry Vittor & Associates regarding the environmental impact of the project was submitted for consideration;
- The application has been before the Planning Commission, and they have received the necessary approvals pending the rezoning going before the City Council;
- The application has been heldover several times waiting on the decision of the Planning Commission;
- Mr. Kirby has an automotive shop, and on the property in the back, they store damaged automobiles for a few months at the time while awaiting car titles to be sent to them from the insurance companies;
- The property currently has aggregate surfacing;
- Work was done on the property without permits, and they are now trying to get the permits after the fact;
- The residential structure that was previously on the property has been removed;
- They had received the permit for the removal of the structure, and they are working to get the land disturbance permit as soon as they can get a decision on the surface variance;
- Mr. Kirby uses heavy equipment such as fork lifts and backhoes to move the vehicles around on the property;
- If the site were surfaced with asphalt, the asphalt would be constantly torn up by the heavy equipment;

March 10, 2014

Board of Zoning Adjustment

- There is a significant amount of fall down to the lower area towards the floodway mentioned by Mr. Vittor, and they are trying to keep the environmental impact of the runoff to a minimum;
- The area with the aggregate surface is about 350' from Airport Boulevard, so there is no danger of the aggregate getting into the right-of-way;
- They have closed off access to Dickens Ferry Road with fencing so there will be nothing leaving the site in that area;
- Last month, one of Mr. Kirby's tenants was before the Board requesting a sign variance which was denied;
- As part of the rezoning process, they have agreed to remove all the signs and put in a multi-tenant sign;
- They should not have moved forward without a permit, but he didn't realize that it would matter;
- The fire department does a lot of training on his site as well as carrying cars to the fire department's training center, and the heavy equipment is needed to load the cars onto the flatbeds;
- They will have up to four fire trucks out there at one time, and they needed more space to maneuver;
- The crushed concrete was added before the site was investigated;
- Mr. Grant Harkness had the same problem with Blue Rents, and he was approved for aggregate on his site, and it does exist on other sites as well;
- If the site is asphalt, the stormwater would runoff, but the aggregate would allow it to go through to the ground.

The Chair asked if there was anyone present in opposition to the matter. Hearing none, he stated that he was on the Board when the Blue Rents application was heard and that heavy equipment use was a large factor in the decision. He further stated that Board has to be a little more careful now when considering a variance. They have been instructed to consider three points beyond the normal requirements. They must explain what the variance is about, list the conditions that are causing a hardship with the property from an enforcement standpoint, and consider how the spirit of the chapter is maintained while doing justice to the applicant and the surrounding neighbors. He noted that one of the things he found in the packet for this case is a petition signed by many of the neighbors in opposition to this matter, although he didn't see any of them in the audience.

After discussion, a motion was made by Mr. Milling and seconded by Mr. Coleman to approve the above referenced parking surface variance.

The Board approved the request, finding that:

- 1) Based on the use of the property for vehicle storage and the movement of heavy equipment on the site, which would destroy a paved area, the aggregate surface variance will not be contrary to the public interest;
- 2) These special conditions of proximity to wetlands and flood zones, and the desire to reduce storm water runoff, 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 that will otherwise comply with the setback and buffering requirements from adjacent residential uses, and that will be a use which will not impact adjacent residential uses.

March 10, 2014
Board of Zoning Adjustment

The approval is subject to the following conditions:

- 1) Compliance with Engineering comments (*If the aggregate surfacing is approved for use as requested the applicant will need to have the following condition met to address unpermitted land disturbing activity on-site: Submit and receive a Land Disturbance Permit for the existing site development additions, including within the AE and X (shaded) Flood Zones.*); and
- 2) Compliance with Traffic Engineering comments (*As it pertains to the surface variance, any required parking spaces should be delineated by curb stops, as spaces can not be painted on aggregate surface. Other concerns related to this site include the point(s) of access to both public right-of-way and adjacent properties, which should be addressed with the applications to the Planning Commission.*).

The motion passed unanimously.

PUBLIC HEARINGS:

#5879/4504/2211

(Case #ZON2014-00216)

Damu Kunche

2306 & 2308 Airport Boulevard

(Northeast corner of Airport Boulevard and Morgan Street).

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

Council District 1

The Chair announced the matter, advising that the applicant had requested a holdover to allow them to submit additional information.

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

A motion was made by Mr. Coleman, with second by Mr. Metcalfe, for holdover to the April 7, 2014 meeting at the applicant's request, to allow the applicant to address the following:

- 1) revise site plan to illustrate existing drive-through with Zoning Ordinance compliant queuing spaces and the proposed canopy; and
- 2) revise site plan to depict the correct right-of-way width of Airport Boulevard.

The motion passed unanimously.

#5880

(Case #ZON2014-00233)

Victor Sign Co.

3811 Airport Boulevard

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

Sign Variance to allow a third wall sign for a single tenant commercial site with two (2) wall signs and a freestanding sign, for a total of four (4) signs in a B-2, Neighborhood

March 10, 2014

Board of Zoning Adjustment

Business District, the Zoning Ordinance allows a total of three (3) signs at a single tenant site in a B-2, Neighborhood Business District.

Council District 5

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

Mr. Orrin Robinson, Victor Sign Company, 5000 Whitworth Road, Mobile, AL, spoke on behalf of the applicant and requested a holdover until the April 7, 2014 meeting.

The Chair asked if anyone was present in opposition to the matter; hearing none, he opened the matter for a motion.

A motion was made by Mr. Coleman, with second by Mr. Metcalfe, for holdover to the April 7, 2014 meeting at the applicant's request.

The motion passed unanimously.

#5881/5597

(Case #ZON2014-00273)

Self Radcliff

3700 Tuthill Place

(East terminus of Tuthill Place extending to the West side of College Lane [unopened right-of-way]).

Rear Yard Setback Variance to amend a previously approved Rear Yard Setback Variance to allow a roof enclosure for an existing structure within 5' of rear property line; the Zoning Ordinance requires a minimum 8' setback for all structures 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.

The following people spoke in support of the application:

- 1) Mr. Don Williams, Don Williams Development, 6300 Piccadilly Square Drive, Mobile, AL, spoke on behalf of the applicant, and;
- 2) Mr. Self Radcliff, 3700 Tuthill Place, Mobile, AL, spoke on his own behalf.

They made the following points in support of the matter:

- The Board approved a variance five years ago for construction of an exercise room with a flat roof with a 5' rear yard setback. The roof of the exercise room is used as a second floor patio;
- This house appears from the front to be a two-story house, but it is actually a three-story house due to a severe dropoff in the back;
- They are requesting approval for the second floor patio to be roofed due the design of the flat roof causing leaks in the interior and windows of the house;

March 10, 2014

Board of Zoning Adjustment

- Staff pointed out that the previous variance was approval for the lower story; therefore they would be required to get a second variance for the second floor although it is actually an open porch;
- The site plan shows that the room is at an angle and not parallel to the rear property line so part of it is within five feet of the property line and the other corner is eight feet from the property line;
- There is 40' of densely wooded area that is an unopened right-of-way from College Lane directly behind the subject property;
- The nearest residence from the corner of the subject residence is 93 feet away through dense woods;
- They are not asking to be allowed to screen, glass, or otherwise enclose the patio. However, it was noted in the staff report that should the Board consider approval, it should recommend that a condition of the approval state that the area under the proposed roof cannot be enclosed and the enclosure of said area would be in direct violation of the approval of this variance request. Mr. Williams and Mr. Self requested that such a condition not be tagged onto the approval to hinder construction for future owners as they don't see the difference between a roof and a room;
- The vicinity map appears to show that just about every residence in Tuthill Place either touches or extends over the property lines;
- They do intend to include gutters and downspouts when adding the roof.

Mr. Guess asked Mr. Hoffman to elaborate on the recommended approval condition regarding disallowing future enclosure of the room.

Mr. Hoffman replied that enclosing the room is a concern because it would change from an open area with temporary use to an area with continuous occupation and would perhaps be a greater encroachment, although he saw no problem with screening due to mosquitoes in Mobile. The density and square footage do not come into consideration.

The Chair verified with the applicant that the primary hardship here was protecting the property from water damage. He asked if there was anyone present in opposition to the matter, and there were none.

Mr. Anderson informed the Board that, in the interest of the Board having as much information as possible, he had been retained by one of the neighbors whose property backs up to the right-of-way to vacate the right-of-way. They tried to have it vacated a couple years previously, but Mr. Long, the previous property owner to the north of Tuthill Place, had not yet subdivided his property and would not agree to it. That property has now been subdivided into about five or six lots and, to his knowledge, access was denied to the right-of-way. Mr. Anderson is in the process of having the right-of-way vacated on the south end for one of the other neighbors. The vacation of the right-of-way would alleviate the problem for the current application as each of the property owners would gain about another 10-15 feet to the halfway point of the right-of-way.

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

Mr. Metcalfe made a motion for approval which was seconded by Mr. Coleman.

After discussion, the Board approved the request, finding that:

March 10, 2014

Board of Zoning Adjustment

- 1) Based on the consistency of the setback request as it relates to other development within the neighborhood, the variance will not be contrary to the public interest;
- 2) These special conditions of a leaking roof over an existing structure within the setback 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 due to the unopened right-of-way adjacent to the setback, and in order to be consistent with the previous variance approval granted by the Board.

The motion passed unanimously.

APPROVAL OF MINUTES:

A motion was made by Mr. Metcalfe, with second by Mr. Coleman, to approve the minutes from the following Board of Zoning Adjustment meetings:

- December 3, 2012;
- January 7, 2013;
- February 4, 2013;
- March 4, 2013;
- April 1, 2013;
- May 6, 2013;
- June 3, 2013.

The motion carried unanimously.

OTHER BUSINESS:

Mr. Anderson discussed the appeals process for the recent cell tower case on Cottage Hill Road. He stated that the denials by both the Board of Zoning Adjustment and the Planning Commission had been appealed to federal court under the federal telecommunications act and not under the City's ordinances. The basis for the appeal is that they feel that they have a right to the variance and planning approval under the federal telecommunications act.

He stated that the City filed a motion two weeks ago to dismiss the case because the appeal was filed under the name of their engineering firm, Foresight, and not the name of the cell phone tower or the developer. It is the City's position that the company who filed the appeal does not have standing to raise those issues and file the appeal. Thursday is the deadline for the plaintiff's response.

If the motion to dismiss is denied, the City will file an answer to the complaint and move forward.

If the court did rule in favor of the cell tower, it would set a precedent for future cases coming before the Board and the Planning Commission that lessens the burden of proof on the applicants because the opposition would not be able to rely on arguments based on health and safety as that would be governed federally.

March 10, 2014
Board of Zoning Adjustment

The plaintiffs also plan to argue that there was not enough evidence presented to the Board or the Planning Commission to deny the request. They will argue that the engineering data submitted with their application showed that they had done due diligence to find other locations within the subject area, and the all the information submitted by the opposition was not prepared by an engineer.


Mr. Anderson further stated that under federal law, there is a time deadline allowed for an appeal to be filed, and that it is too late for another party to be substituted as the plaintiff or to file an appeal in this case. Therefore, if the City wins this motion, the case is over.

Mr. Metcalfe, Mr. Guess, Mr. Milling and Mr. Hoffman discussed the formatting of the finding of facts statements that the Board is now rendering to justify the decision-making process.

Mr. Guess asked that the rules and procedures of the Board of Zoning Adjustment be made available at the sign-in table for meeting attendees to pick up.

There being no further business, the meeting was adjourned at 2:46 p.m.

APPROVED: December 1, 2014



Chairman of the Board

/lw