

**BOARD OF ZONING ADJUSTMENT MINUTES**  
**MEETING OF JANUARY 6, 2003 - 2:00 P.M.**  
**MOBILE GOVERNMENT PLAZA, MULTI-PURPOSE ROOM**

**MEMBERS PRESENT**

John Peebles, Chairman  
Reid Cummings  
Richard Collier  
H. Lamar Lee  
Edley Hubbard (S)

**MEMBERS ABSENT**

Rev. P. H. Lewis  
Rev. Clarence Cooke

**STAFF PRESENT**

Richard Olsen, Planner II  
Tim Ashley, Planner I  
Jennifer Henley, Secretary II

**OTHERS PRESENT**

David Roberts, Traffic Engineering  
Wanda Cochran, Assistant City Attorney

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

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

**APPROVAL OF MINUTES:**

A motion was made by Mr. Collier and seconded by Mr. Hubbard to approve the minutes of the meeting of December 2, 2002, as submitted. The motion carried unanimously.

**HOLDOVER:**

**#5146**

**(Case #ZON2002-02479)**

**Mrs. Carzetta Scott**

**213 Furr Street**

(West side of Furr Street, 208' ± South of Old Carline Street)

**Use, Off-Site Parking and Parking Surface Variances to allow a lounge, with 34 off-site parking spaces and an aggregate parking and maneuvering surface in an R-1, Single-Family Residential District; a lounge is allowed by right in a B-2, Neighborhood Business District, the Zoning Ordinance requires all parking to be located on-site; asphalt, concrete or an approved alternative paving surface is required for all parking and maneuvering areas.**

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Ms. Carzetta Scott stated that the application was heard at the December 2, 2002, meeting and there was a question raised concerning business and alcohol licenses for the previous business. She said the licenses were misplaced when new tenants took over. She did have evidence of a business there from 1979 until 1994 from the ABC Board.

Ms. Cochran stated that she spoke to Mr. Paul Arnold of the City's Revenue Department. Mr. Arnold researched Revenue Department records and went to the City Archives. He was unable to find any record of a City of Mobile business license for the subject property. Ms. Cochran said that the licensing procedure changed around 1990, and that liquor license applications must first go before the City Council.

Mr. Peebles asked when Ms. Scott ceased to operate a lounge on the subject site.

Ms. Scott said 1993.

Mr. Paul Whitfield, the potential tenant, said that Ms. Scott had received a gross receipts tax report for 1992 and felt there should have been a record of a license.

Mr. Peebles stated that the most recent record of a license issued to the building was for 1995. When a structure with a non-conforming use is vacant for two years, the use reverts to previous zoning. The Board previously had made exceptions for structures constructed for commercial use.

In discussion, Mr. Olsen stated that the property proposed for parking was the subject of a previous variance for a business on Beltline Highway. At that time it was not part of the use for the building. Because variances were site plan specific, the area could not have been used for parking because it was not shown that way in the previous variance.

A motion was made by Mr. Cummings and seconded by Mr. Lee to deny the request for Use, Off-Site Parking and Parking Surface Variances to allow a lounge, with 34 off-site parking spaces and an aggregate parking and maneuvering surface in an R-1, Single-Family Residential District.

The motion carried unanimously.

**PUBLIC HEARINGS:**

**#5149**

**(Case #ZON2002-02485)**

**First Church of the Nazarene (Reverend H. Lamar Smith)**

**669 Azalea Road**

(North side of Azalea Road, 570' ± East of Village Green Drive)

**Sign Variance to allow a second freestanding sign; a maximum of one freestanding sign is allowed on a single-tenant site.**

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Rev. Lamar Smith, Pastor of First Church of the Nazarene, stated that they were seeking a variance to allow a second freestanding sign for a day care operated by the church. They wanted the day care to have its own visible signage.

Mr. Hubbard asked if the purpose of the sign was to increase numbers for the day care or for visibility.

Rev. Smith said the day care was near capacity, but without visibility it is difficult to replace any turnover in number of children.

There was a brief discussion about an existing sign with a reader board and whether the church would be willing to compromise. It was determined that the reader board sign for the church was new, and other signs on the property had to be removed in order to comply with the Ordinance. An electronic sign was not financially feasible. The church was required to submit a variance request for an additional sign for the day care. They felt a separate sign was necessary.

There was no one present in opposition.

In discussion, Mr. Ashley stated that the applicant was allowed 200 sq. ft. maximum signage for the site. There were 116 sq. ft. per side remaining to utilize on the existing sign. The proposed sign was 32 sq. ft. and could be attached to the existing sign under the reader board.

Mr. Cummings felt that it was inappropriate to combine the signs.

Mr. David Roberts, Traffic Engineering requested that department have input as to location of the sign.

Mr. Ron Jackson, Urban Forester, requested that frontage trees be required.

Mr. Collier noted that the site plan showed wooded areas on both sides of the property and asked if there were not sufficient trees.

Mr. Olsen stated that there were no frontage trees indicated along Azalea Road.

A motion was made by Mr. Cummings and seconded by Mr. Collier to approve the Sign Variance to allow a second freestanding sign, subject to the following conditions:

- (1) final placement of the sign to be approved by Traffic Engineering; and
- (2) provision of four frontage trees, to be coordinated with Urban Forestry.

The motion carried unanimously.

**#5150**

**(Case #ZON2002-02604)**

**John E. and Mary Y. Witherington, Jr.**

**4511 Kingswood Drive**

(South side of Kingswood Drive, 280' ± West of Queens Way)

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**Side Yard and Combined Side Yard Variances to allow the construction of a 21' x 28' carport to an existing structure within 7.9' of the (West) side property line and to allow a combined side yard total of 17.8'; a 8' minimum side yard setback and a 20' combined side yard total are required on a 60' or wider lot.**

Ms. Mary Witherington, the applicant, stated that they were seeking a variance to allow construction of a carport on an existing paved driveway. There were several large Oak Trees and native plants that would have to be removed in order to relocate the carport. They wanted to keep the Oak Trees and plants. She was unaware of any opposition from neighbors and presented a letter of support from an adjacent neighbor. She noted that other houses in the area had carports, some adjacent to houses and others in rear of houses.

There was no one present in opposition.

A motion was made by Mr. Collier and seconded by Mr. Hubbard to approve the request for Side Yard and Combined Side Yard Variances to allow the construction of a 20' x 28' carport to an existing structure within 7.9' of the (West) side property line and to allow a combined side yard total of 17.8'.

The motion carried unanimously.

**#5151**

**(Case #ZON2002-02605)**

**Mark D. Fillers (Grady Ray Palmer, Jr., Owner)**

**1916 Old Government Street**

(North side of Old Government Street, 500' ± East of Williams Street)

**Side Yard, Combined Side Yard and Site Coverage Variances to allow the construction of a 35.3' x 19' (868 Square foot) addition within 5' of the (East) side property line, to allow a combined side yard total of 17' and to allow 37.5% site coverage; a minimum side yard setback of 7.7', 18' combined side yard total and a maximum site coverage of 35% is required for a 54' wide lot in an R-1, Single-Family Residential District.**

Mr. Mark Fillers, the applicant, stated that he now was the sole owner of the residence at 1916 Old Government Street and the purpose of the application was to allow construction of an addition to the rear of the existing structure. The addition would be in line with the west side of the existing structure and would have gutters and downspouts.

There was no one present in opposition.

A motion was made by Mr. Collier and seconded by Mr. Cummings to approve the request for Side Yard, Combined Side Yard and Site Coverage Variances to allow the construction of a 35.3' x 19' (868 Square foot) addition within 5' of the (East) side property line, to allow a combined side yard total of 17' and to allow 37.5% site coverage, subject to the following condition:

- (1) provision of gutters and downspouts.

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The motion carried unanimously.

**#5152**

**(Case #ZON2002-02614)**

**Mobile Area Water and Sewer Board**

(East side of North Catherine Street, 130' ± North of Center Street)

**Use and Off-Site Variances to allow 45 off-site (paved) parking spaces in an R-1, Single-Family Residential District for an adjacent (across the street) utility company; a minimum of B-1, Buffer Business District is required.**

Mr. Jimmy Rogers of McCrory & Williams, Inc. represented the applicant and stated the purpose of the application was to allow off-site parking to alleviate traffic and customer parking problems that existed. The current 25 parking spaces in front of the office were insufficient to accommodate the flow of traffic. The Mobile Area Water & Sewer Board owned a parcel to the north that it utilized for employee parking. The proposed parking lot would be paved and landscaped to City standards.

The type of trees proposed for removal was discussed. It was determined that the trees were Water Oaks.

There was no one present in opposition.

A brief discussion centered on the need for requiring the applicant to submit a subdivision application to the Planning Commission. It was determined that the applicant owned several parcels and in order to have one use, it was appropriate to have one legal lot of record created of the various parcels.

A motion was made by Mr. Collier and seconded by Mr. Lee to approve the request for Use and Off-Site Variances to allow 45 off-site (paved) parking spaces in an R-1, Single-Family Residential District for an adjacent (across the street) utility company subject to the following conditions:

- (1) full compliance with the landscaping and tree planting requirements of the ordinance;
- (2) full compliance with all municipal codes and ordinances;
- (3) the provision of a buffer where the site adjoins residential property;
- (4) the parking design and pedestrian crosswalk to be approved by the Traffic Engineering Department; and
- (5) the submission and approval of a subdivision application.

The motion carried unanimously.

**#5153**

**(Case #ZON2002-02615)**

**Verna Bennett**

**8 Houston Street**

(West side of Houston Street, 165' + south of Dauphin Street)

**Use Variance to allow a second dwelling unit on one lot; only one dwelling unit per lot is allowed in an R-1, Single-Family Residential District.**

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The applicant, Ms. Verna Bennett, stated that she was seeking a variance to allow use of an existing second dwelling on her property. The dwelling existed for over 40 years. She was unaware that she needed a variance to rent the dwelling when she purchased the property 18 years ago. Family and tenants had used the dwelling in the past. Utility service had been active in the dwelling since 1998. She was unable to provide verification of utility service.

Mr. Peebles asked how long Ms. Bennett owned the property and how long she had tenants.

Ms. Bennett said she owned the property for 18 years. Family and tenants had occupied the dwelling for the last four years.

Mr. Peebles asked how long it was vacant before family and tenants occupied the dwelling.

Ms. Bennett said approximately six years.

A brief discussion centered on the reason for a variance request at this time. It was determined that the request resulted from an electrical inspection for a new water heater installation.

A neighbor stated that she had lived in the area for 30 years and Ms. Bennett was a good neighbor for the 18 years Ms. Bennett owned 8 Houston Street. While she was sympathetic to Ms. Bennett's reason for wanting the second dwelling, she was opposed because this was a single-family residence in a Historic District.

Mr. Peebles asked if she was aware if the second dwelling was new.

The neighbor said the second dwelling was partially there, but was remodeled by Ms. Bennett.

Mr. Cummings asked the size of the second dwellings.

Ms. Bennett said less than 500 sq. ft.

Mr. Devereaux Bemis of the Mobile Historic Development Commission noted that this area was in the Old Dauphinway Historic District was primarily single-family residential area. He felt the use of the second dwelling would present a problem with future owners.

Ms. Bennett restated that she was unaware of the need for a variance to use the second dwelling until she began the remodeling process. She noted that there were other occupied garage apartments in the same Historic District. Ms. Bennett was dismayed that she could not rent one of the two dwellings if she chose.

Discussion centered on the length of time the second dwelling existed with separate utilities. It was decided that the dwelling likely existed approximately 60 years, but the length of time it had separate utilities could not be determined.

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A motion was made by Mr. Collier and seconded by Mr. Hubbard to approve the request for a Use Variance to allow a second dwelling unit on one lot.

The motion carried unanimously.

**#5154**

**(Case #ZON2002-02617)**

**Jeffery Cosgrove**

**261 Rapier Avenue**

(Northeast corner of Selma Street and Rapier Avenue)

**Fence Height Variance to allow the construction of a 7' high wooden privacy fence 3' from a side street property line; a 19.3' side yard setback is required from a side street property line for a fence higher than 3', on a 58' wide lot, in an R-1, Single-Family Residential District.**

Mr. Jeffery Cosgrove, the applicant, stated that the purpose of the variance request was to allow construction of a privacy fence on a corner lot near the property line for security purposes. He noted that this had been done for other properties in the area. He requested a 7' high fence, but was willing to compromise with opposing neighbors with a 6' high fence. Mr. Cosgrove did not feel the fence would be a detriment to the character of the neighborhood. He requested approval of the application.

Mr. Peebles asked if the Architectural Review Board (ARB) required the landscape plan.

Ms. Cochran said yes.

Mr. Cosgrove was unaware that the requirement.

Mr. Collier questioned the design of the fence on the southeast corner of the property.

Mr. Cosgrove explained that the purpose was to avoid removing an Oak Tree and to allow access to a neighbor's gas meter.

There was discussion concerning the need for Architectural Review Board approval and the maximum height for the fence. Mr. Olsen explained that ARB approval would be required and the maximum height for a fence in the City was 8 feet.

Mr. Cummings asked the type of materials the ARB would allow for the fence on Selma Street.

Mr. Bemis said wood was generally acceptable and that 6' was the maximum height allowed in a Historic District.

Mr. Olsen noted that Traffic Engineering reviewed the site and found no problem with line-of-sight.

Mr. Amin Rathle of 1203 Selma Street opposed the location of the fence. He indicated that a majority of fences in the neighborhood began at the rear of the houses. He did not feel there was a hardship to

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the property and requested that the applicant be required to begin the fence to the southeast corner of the house.

Mr. Cosgrove stated that the proposed placement of the fence was necessary because an Oak Tree and a Pecan Tree would interfere with the placement of a proposed swimming pool if the fence were moved back.

Mr. Rathle noted that there was a school bus stop at the intersection and felt that the proposed placement of the fence would add to traffic problems that existed on Selma Street.

A brief discussion centered on previous approvals of similar requests for fences in the area. It was determined that there had been several approvals previously.

A motion was made by Mr. Collier and seconded by Mr. Hubbard to approve the request for a Fence Height Variance to allow the construction of a 6' high wooden privacy fence 3' from a side street property line, subject to the following conditions:

- (1) the approval from the Architectural Review Board prior to the issuance of any permits; and
- (2) the fence location to be approved by the Traffic Engineering Department.

The motion carried unanimously.

**#5155**

**(Case #ZON2002-02618)**

**Sheree Dees**

**2200 Old Government Street**

(Northwest corner of Old Government Street and Crenshaw Street)

**Use, Front Yard, Side Yard and Combined Side Yard Variances to allow the construction of a 38' x 43' second dwelling unit within 15' of the (South) front property line, within 6' of the (East) side street property line and to allow a combined side yard total of 16'; a 25' front yard setback, a 16.3' minimum side street yard setback and a 24' combined side yard total are required on a 54' wide lot; only one dwelling unit per lot is allowed in an R-1, Single-Family Residential District.**

Mr. Mike Dees, husband of the applicant, stated that he co-owned the property. He noted that the staff recommended denial of the application. There was a small residence on the rear of the property. He presented a 1958 tax bill addressed to 230 Crenshaw Street. He stated that intent of purchasing the property was to construct a residence for their son, leaving the small rear residence for possible use by their daughter. He presented photographs indicating other residences in the area constructed too near side yard setbacks. Another issue was two dwellings on one parcel. Mr. Dees said the original address for the property was 230 Crenshaw Street, and felt that it was formerly a separate parcel. He presented a survey, which he felt indicated that a second dwelling was located on the subject property at one time. He presented photographs that indicated garage apartments on other properties in the area. Mr. Dees felt this request was in character with the neighborhood.



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Mr. Cummings asked how Mr. Dees accessed the subject property.

Mr. Dees said access was from Crenshaw Street. There was no access to the property from Old Government Street.

Mr. Peebles stated that the Board was familiar with applications seeking relief from front yard setbacks for in-town neighborhood. He felt the principle question in this case was two dwellings on one parcel. He asked why this had not gone through the subdivision process.

Mr. Olsen said it would not meet requirements for a two-lot subdivision.

Mr. Dees stated that this lot was larger than others in the area.

Mr. Peebles asked the size of the two lots that were subdivided on George and Church Streets.

Mr. Olsen said those lots were over 5,000 sq. ft. each and this lot alone was 7,500 sq. ft.

Mr. Cummings asked if a Planned Unit Development (PUD) was possible.

Mr. Olsen said the applicants could apply, but he could not say how the Planning Commission would rule. He did not feel the staff would recommend approval of a subdivision or a PUD.

Mr. Hubbard asked if there were ever two houses on the lot.

Mr. Dees was not sure.

Ms. Jacquelyn Benedict of 2159 Old Government Street felt that the staff recommendation was correct. She opposed the application. She stated that the applicant purchased the property in November with the knowledge that it was zoned R-1 and were now seeking a variance. She went on to say that the existing structure was occupied and used as rental property for the last several years. She suggested that the applicant had other alternatives for constructing a new residence. She felt there was no hardship on the property to prevent R-1 use. She went on to say that the area had recently been identified as a National Historic District. Ms. Benedict presented a petition with signatures of 30 neighbors opposed to the application. She said they wanted to protect the integrity of the neighborhood.

Mr. Dees stated that it appeared no one had significant problems with the setbacks. He presented a copy of a zoning map for the area, which did not indicate any multi-family zoning in the area of the subject property. He did not feel they were asking for relief that was greater than existed in the area where numerous properties had garage apartments and duplexes rented. It was not his intent to rent the property, but to provide a suitable dwelling for his son. Mr. Dees did not feel it practical or feasible to construct the addition to the existing dwelling.

Mr. Cummings asked if the area was identified as a local Historic District.

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Ms. Cochran said no and that it was not subject to the Architectural Review Board.

Mr. Cummings stated that the neighbors might be concerned about the type of structure that would be built.

Mr. Dees said their intent was to construct a home that would blend with the existing homes in the neighborhood. He and his wife were in the real estate business and realized the importance of creating value in a neighborhood. He felt it would not be economically feasible to tear down the existing structure to build a new home.

A brief discussion centered on the type of construction and finish for the new home. Mr. Dees indicated that he did not have plans, but the home would be 1600 sq. ft.

A 30-day holdover was discussed. Mr. Dees preferred a ruling today because he felt a holdover would place a large burden on him.

Mr. Lee asked the size of the existing dwelling.

Mr. Dees said it was 700 sq. ft. with the front door facing Crenshaw Street.

Neighbors in the audience objected to this statement. Mr. Dees presented a drawing that he interpreted to indicate the front of the house was on Crenshaw Street.

Ms. Kathy Stauter of 2156 Old Government Street voiced concern about the possibility of the property becoming rental property.

Mr. Collier expressed concern about setting precedence for two dwellings on single lot by approving the application as submitted. He would prefer the applicant pursue a subdivision of the property.

Mr. Cummings stated that the Board was aware that this type of use was prevalent, but there was not hardship that would prevent the property from being used as one lot. He wished the applicant success if he chose to pursue the subdivision process.

Mr. Collier agreed.

A motion was made by Mr. Collier and seconded by Mr. Cummings to deny the request for Use, Front Yard, Side Yard and Combined Side Yard Variances to allow the construction of a 38' x 43' second dwelling unit within 15' of the (South) front property line, within 6' of the (East) side street property line and to allow a combined side yard total of 16'.

The motion carried unanimously.

**#5156**  
**(Case #ZON2002-02631)**

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**Judith D. Wells (Dianne D. Sanford, Owner)**

**3413 Broadway Drive**

(South side of Broadway Drive, 115' ± East of Wacker Lane)

**Administrative Appeal to determine the decision of the Land Use staff concerning a “non-conforming” structure.**

Mr. Peebles stated that the owner, Ms. Dianne Sanford, requested a 30-day holdover because she nursing a sick relative out of town. He felt it was the consensus of the Board to rule on the case today and that the staff acted appropriately in its interpretation of the Ordinance. He stated the Board would not hear any remarks regarding the case and dismissed interested parties in the case seated in the audience.

In discussion, Ms. Cochran stated that Mr. Don Williams, representative of Ms. Judith Wells, requested the opportunity to speak on the case before a decision was made on the application. She felt due process required that Mr. Williams be allowed to speak.

Mr. Williams stated that Ms. Sanford was present at the beginning of the meeting, but left after Mr. Peebles opening statement. He was not certain if a holdover was proper, but requested the opportunity to speak at this meeting or in 30 days.

Mr. Peebles asked Ms. Cochran if a holdover were necessary.

Ms. Cochran said yes.

A motion was made by Mr. Cummings and seconded by Mr. Hubbard to holdover the request for an Administrative Appeal to determine the decision of the Land Use staff concerning a “non-conforming” structure for 30 days.

The motion carried unanimously.

Mr. Peebles noted that the structure was in existence for 17 years without complaints. He felt that the statute had expired.

Ms. Cochran stated that this application was odd because normally a building official was asked to make an interpretive decision with regard to code issues. She felt there was nothing to interpret in this case, but the building was not a non-conforming use and violated the Ordinance. There were complaints that the staff refused to take enforcement action. She did not feel the Board had any issue to address. The staff agreed that this was a non-conforming use. The policy of the City has been to not use police power to require the destruction of structures in these circumstances. She felt the issue should be taken up in another forum.

Mr. Olsen stated that the appeal process was the only body of remedy available when the staff takes action in enforcing the Zoning Ordinance.

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Discussion centered on whether the Board had jurisdiction over this issue. It was noted that the Board had a very narrow role and it was unclear if this complaint fell within that role.

**OTHER BUSINESS:**

A motion was made by Mr. Cummings and seconded by Mr. Hubbard to go into Executive Session to discuss pending litigation.

The motion carried unanimously.

**APPROVED:** February 3, 2003

/s/ Chairman of the Board

/rm