

**BOARD OF ZONING ADJUSTMENT MINUTES**  
**MEETING OF MAY 3, 2004 - 2:00 P.M.**  
**MOBILE GOVERNMENT PLAZA, MULTI-PURPOSE ROOM**

**MEMBERS PRESENT**

Reid Cummings, Chairman  
H. Lamar Lee  
Stephen J. Davitt  
William L. Guess

**MEMBERS ABSENT**

Edley Hubbard (S)  
Rev. Clarence Cooke  
Horace L. Christian

**STAFF PRESENT**

Margaret Pappas, Planner II  
Frank Palombo, Planner I  
Rose Murphy, Secretary II

**OTHERS PRESENT**

David Roberts, Traffic Engineering  
David Daughenbaugh, Urban Forestry  
Wanda Cochran, Assistant City Attorney

Chairman Cummings 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. Davitt and seconded by Mr. Lee to approve the minutes of the meeting of April 5, 2004, as submitted. The motion carried unanimously.

**HOLDOVER:**

**#5234**

**(Case #ZON2004-00548)**

**Eliska Wireless Ventures I, Inc. (T-Mobile), (David Wilkins, Agent)**

South side of Osage Street, 180' ± East of Dr. Martin Luther King, Jr. Avenue.

**Height, Setback, and Buffer Separation Variances to allow a 150' monopole Telecommunications Tower, setback 25' from a lease parcel line, and 152' from residentially zoned property; the maximum allowable height is 45', a 150' tower must be setback at least 150' from a lease parcel line, and a minimum separation of 225' (150% of the height of the tower) is required from residentially zoned property in a B-2, Neighborhood Business District.**

*The plan illustrates the proposed structures and parking.*

Mr. David Wilkins, Agent, represented the applicant and stated that they concurred with the staff recommendations.

There was no one present in opposition.

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A motion was made by Mr. Davitt and seconded by Mr. Lee to approve the request for Height, Setback, and Buffer Separation Variances to allow a 150' monopole Telecommunications Tower, setback 25' from a lease parcel line, and 152' from residentially zoned property subject to the following conditions:

- 1) completion of the subdivision process prior to the issuance of any permits;
- 2) the entire lot (Lot 2) be brought into full compliance with landscaping, tree planting and sidewalk requirements; and
- 3) full compliance with all municipal codes and ordinances, including but not limited to the Telecommunications Towers and Facilities Ordinance.

The motion carried unanimously.

**PUBLIC HEARINGS:**

**#5237**

**(Case #ZON2004-00809)**

**Triple C Properties, L.L.C.**

**2054 Senator Street**

(North side of Senator Street, 75'± East of Holcombe Avenue)

**Use, Parking Surface, Parking Ratio and Access/Maneuvering Variances to allow two structures (2 units) as apartments in a B-2, Neighborhood Business District, to allow 2 on-site parking spaces, an aggregate surface parking lot, and a substandard (12') width driveway; the Zoning Ordinance requires R-2, Two-Family or B-1, Buffer Business zoning for apartments, 3 on-site parking spaces, that parking be asphalt, concrete or an approved alternative paving surface, and a 24' wide drive for two-way traffic.**

*The plan illustrates the existing structures and proposed parking.*

Mr. Tommy Christopher of Triple C Properties, LLC stated that he was requesting a variance to allow use of a garage apartment in the rear of the subject property as a residence. Mr. Christopher said that the main structure was renovated and occupied. He went on to say that the rear structure was in a state of disrepair. Because he was unable to prove conclusively that the garage apartment had been used as a residence within the preceding two years, the structure lost its nonconforming use status. He felt that this project would improve the aesthetics of the neighborhood.

A brief discussion centered on the use of other commercially zoned properties in the area. It was determined that many of the commercial structures were used as residences.

There was no one present in opposition.

A motion was made by Mr. Guess and seconded by Mr. Davitt to approve the request for Use, Parking Surface, Parking Ratio and Access/Maneuvering Variances to allow two structures (2 units) as apartments in a B-2, Neighborhood Business District, to allow 2 on-site parking spaces, an aggregate surface parking lot, and a substandard (12') width driveway subject to the following condition:

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1. the provision of two parking spaces in front of the primary residence, and for adequate turn-around area.

The motion carried unanimously.

**#5238**

**(Case #ZON2004-00901)**

**Crewe of Columbus, Inc.**

**1106 South Conception Street**

(Bounded by South Franklin Street, Pillans Street, South Conception Street, and Illinois Central Gulf Railroad right-of-way)

**Front Yard Setback, Side Yard Setback, Landscaping and Tree Planting Variances to allow the expansion (16,300 sq. ft.) of an existing float barn within 0.5' of the front (West) property line, within 2.4' from the side (South) property line, 0% landscaping and no trees to be planted; the Zoning Ordinances requires a minimum 25' front yard setback, a side yard setback of 0' or 5', a minimum of 12% landscaping and the provision of one frontage tree for each 30-feet of road frontage in an I-2, Heavy Industrial District.**

*The plan illustrates the existing structures, along with the proposed addition and future expansion.*

Mr. Cummings advised the applicant that Mr. Davitt recused himself from discussion and voting on this case. He stated that four affirmatives were required to approve a variance, and with Mr. Davitt's recusal, a quorum of the Board would not exist and the variance would be denied. He suggested that the applicant request a holdover of the application until the June 7, 2004 meeting.

The applicant concurred and requested a holdover.

There was no one present in opposition.

A motion was made by Mr. Lee and seconded by Mr. Guess to holdover the application until the June 7, 2004 meeting.

The motion carried unanimously.

**#5239**

**(Case #ZON2004-00918)**

**Kathleen T. Breland**

**1152 Santa Maria Court**

(West terminus of Santa Maria Court)

**Use Variance to allow a second dwelling unit (second kitchen) in a R-1, Single-Family Residential District; the Zoning Ordinance requires a minimum of R-2, Two-Family Residential.**

*The plan illustrates the existing structures and parking.*

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Mr. Stevan Breland, son of the applicant, represented his mother and stated that they were seeking a variance to allow a second kitchen to be constructed in the lower level of the existing residence. He went on to say that his mother wanted to prepare for anticipated future needs. There were steps leading to the existing kitchen area, and she felt that she would be unable to negotiate the steps in the future. They wanted to construct an additional kitchen and he had considered converting the existing kitchen to another use, but his mother would not agree to the conversion at this time.

Mr. Cummings stated that the Board was sympathetic to the applicant's situation. However, the Board was without authority to grant relief unless a hardship for the property could be proven.

There was no one present in opposition.

A motion was made by Mr. Lee and seconded by Mr. Davitt to deny the request for a Use Variance to allow a second dwelling unit (second kitchen) in a R-1, Single-Family Residential District.

The motion carried unanimously.

**#5240**

**(Case #ZON2004-00919)**

**Pitsios Family Limited Partnership**

**258 North Claiborne Street**

(East side of North Claiborne Street, 97'± South of Congress Street)

**Building Site Area Variance to allow an 8-unit apartment complex on a 12,773 sq. ft. lot; the Zoning Ordinance requires a minimum size lot of 15,000 sq. ft for an 8-unit apartment complex in an R-B, District.**

*The plan illustrates the proposed structure and parking.*

Charles Morris, 424 Byron Avenue, represented the applicant and stated that they proposed to construct an eight-unit apartment complex on the subject property. They were seeking a variance to allow the structure on a lot smaller than the minimum allowed by the Zoning Ordinance. It was not financially feasible to reduce the size of the apartment complex.

A brief discussion centered on alternatives for design and use that would allow the structure to be built without a variance. It was determined by the applicant that any alternative suggested was not economically feasible.

Mr. Cummings asked if the applicant owned the abutting property.

Mr. Morris said yes.

Discussion ensued on the possibility of subdividing the two properties in such a way as to allow sufficient area for the proposed complex. Another suggested alternative was combining the two properties into one lot and seeking a Planned Unit Development approval from the Planning Commission. Mr. Morris felt the owner would not be agreeable to these alternatives for future

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disposition of the property. It was strongly suggested that Mr. Morris consider a hold over until the June 7, 2004, meeting to allow time to pursue the alternatives with the owner.

Mr. John Brindler of 255 N. Jackson Street opposed the application. He owned property on N. Jackson Street, State Street, and N. Claiborne Street, adjacent to the subject property. He felt that if the proposed off-street parking area were eliminated so that the area could be used for the structure, on-street parking would become a major problem. He felt that off-street parking was vital for the area.

Mr. Cummings noted that the proposed off-street parking had no affect on the area of the property to be used for the structure.

Mr. Steven Arroyo of Williams Architects expressed concern that the building footprint and parking might not meet PUD requirements.

Ms. Pappas noted that there was no requirement for on-site parking for residential areas in the downtown area.

A motion was made by Mr. Davitt and seconded by Mr. Lee to hold over the application until the June 7, 2004, meeting.

The motion carried unanimously.

**#5241**

**(Case #ZON2004-00920)**

**Reverend Henry and Sherrell E. Jackson, Jr.**

**669 Burden Street**

(West side of Burden Street, 180'+ South of Shell Street)

**Rear Yard Setback and Side Yard Setback Variances to allow a 25.7' x 24.2' double-car garage 5.9' from the rear (West) property line and 2' from the side (South) property line; a minimum rear yard setback of 8' and a minimum side yard setback of 8' is required for a 60' wide lot in an R-1, Single-Family Residential District.**

*The plan illustrates the existing structures and parking.*

Rev. Henry Jackson, Jr., the applicant, stated that they were seeking a variance to allow construction of a double-car garage within 5.9' of the rear property line and 2' from the side property line. He began construction and following a neighbor's complaint to the City, he obtained a permit; then he proceeded with the construction. Another complaint was filed, alleging that the structure was too near the property lines and a stop work order was issued. Land Use staff advised him that he had two alternatives, relocate the structure to the proper setbacks, or seek a variance. He chose to seek a variance. Rev. Jackson stated that he surveyed the area and numerous properties, including the property next-door, had secondary structures within the allowable 8' setback. He went on to say that, in conversation with the next-door neighbor, the neighbor only complained about water runoff. The Jacksons agreed to install a gutter system to direct runoff to the end of the property.

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Mr. Cummings asked if a drawing indicating setbacks was submitted at the time he obtained a building permit, and if the staff raised questions at the time the permit was issued.

Rev. Jackson said he submitted a drawing with the setbacks, as well as pictures depicting his boat attached to his truck. The structure was for the boat, and he felt the hardship was the difficulty in maneuvering the boat into the structure.

Mr. Cummings asked the width of the driveway between the property line and the side of the dwelling.

Rev. Jackson said 10 to 11 feet. They installed a privacy fence next to the neighbor's chain link fence after the neighbors filed a complaint, and that reduced the width of the driveway. He was unsure how the new structure was calculated to be 2' from the property line. He had measured 4' from the chain link fence.

Mr. Davitt referred to a copy of the building permit that indicated the structure would be 8' from the property line. He asked if Rev. Jackson measured to be certain of the proper placement.

Rev. Jackson said construction had begun before he obtained the building permit and the foundation was already laid. Rev. Jackson said that a Building Inspector told him he could proceed with the construction as long as there was no sidewalk. This would allow the building to collapse on his property if it caught fire. Rev. Jackson thought, from this conversation, that the structure was within the allowable setbacks.

Mr. Demetrica and Mrs. Wanda Hawkins of 667 Burden Street spoke in opposition to the application. Mrs. Hawkins stated that she filed the complaints about the structure. They had attempted to construct a similar structure and were unable to complete the project because it did not meet minimum setbacks. They felt the Jacksons should abide by the same regulations. They also expressed concern about water runoff from the new construction. Their property was lower than the neighbor's, and rainwater flooded her property during a heavy downpour. The Jacksons had made an addition to their dwelling with a flat roof, and water ran off that addition onto the Hawkins' property after it was constructed.

Mr. Cummings recounted the cycle of the project as follows: construction began without a permit; an inspector determined that a permit was required; and a permit was obtained. He asked staff if the applicant was instructed to move the structure to the proper setback.

Mr. Ashley was unaware that construction began without a permit. Mr. Whistler signed off on the permit application for the Zoning Office, and that application indicated the structure would meet the required minimum setbacks. After the permit was issued a Building Inspector was dispatched to inspect the footings and discovered the structure was not 8' off the property line. He issued a Stop Work Order and advised Rev. Jackson to cease construction. A Zoning Inspector confirmed that the structure was too near the property lines, and Rev. Jackson was issued a Notice of Violation. At that time Mr. Ashley advised Rev. Jackson of alternatives for the project. Subsequently, another complaint was filed alleging that the construction was ongoing. A Building Inspector confirmed that construction had continued in violation of the Stop Work Order and he issued a Municipal Offense Ticket.

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Mr. Cummings asked the applicant if he began the project without a permit; then obtained a permit with the proposed location to be within the 8' setbacks.

Rev. Jackson said yes.

Mr. Cummings then asked if, after obtaining the permit, he began construction closer to the property line than allowed by the permit, and if at the time of the footing inspection, the building inspector advised Rev. Jackson the structure was too close to the property line and would have to be moved.

Rev. Jackson said yes. He said he removed the existing posts and installed posts every 4' in accordance with the inspector's instructions.

Mr. Cummings noted that the survey submitted indicated that the structure was 5.9' from the rear and 3.1' from the side property lines. He asked why the structure was built in violation of the permit issued.

Rev. Jackson said the survey was done after the structure was completed. Rev. Jackson felt that water runoff would be a problem even if he did not have a garage because the neighbor's yard was lower than the his.

Mr. Cummings stated that the reason for granting a variance was that a hardship existed for the property, not for the property owner. He asked why the structure could not be built within the required setbacks.

Rev. Jackson stated that the hardship was that he could not maneuver his boat and trailer into the garage with an 8' setback. Additionally, he could not put the same size garage 8' from the side property line due to the location of a pool.

In discussion, consideration was given to the facts that construction began without a permit; that once a permit was issued, it was discovered that the structure was not within the allowed minimum setback and a Stop Work Order was issued; that construction continued in violation of the Stop Work Order; that a March 30, 2004, survey indicated the structure was 5.9' from the rear property line and 3.1' from the side property line; and whether a hardship existed for the property.

A motion was made by Mr. Lee to deny the request for Rear Yard Setback and Side Yard Setback Variances. The motion died for lack of a second.

A motion was made by Mr. Davitt to grant the variance for Rear Yard Setback and Side Yard Setback Variances subject to provision of gutters and downspouts on the new structure and on the flat roof addition to the existing dwelling. The motion died for lack of a second.

A motion was made by Mr. Lee and seconded by Mr. Guess to deny the request for Rear Yard Setback and Side Yard Setback Variances to allow a 25.7' x 24.2' double-car garage 5.9' from the rear (West) property line and 2' from the side (South) property line.

The motion carried unanimously.

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**#5242**

**(Case #ZON2004-00924)**

**Elijah Mateen**

**751 North Carolina Street**

(Southwest corner of North Carolina Street and South Scott Street)

**Side Yard (Street) Setback Variance to allow a (2,216 sq. ft) addition to an existing dwelling within 14' of the East (street) side property line; a minimum side yard setback of 20' is required along a side street in an R-1, Single-Family Residential District.**

*The site plan illustrates the proposed addition, existing building, and existing driveway.*

Mr. Elijah Mateen, the applicant, stated that he was seeking a variance to construct an addition to his existing dwelling within 14' of the side property line. The addition would be in line with the existing structure and include a carport.

There was no one present in opposition.

A motion was made by Mr. Davitt and seconded by Mr. Lee to approve the request for a Side Yard (Street) Setback Variance to allow a (2,216 sq. ft) addition to an existing dwelling within 14' of the East (street) side property line.

The motion carried unanimously.

**#5244**

**(Case #ZON2004-00929)**

**Joseph Ferguson**

**420 Holcombe Avenue**

(West side of Holcombe Avenue, 160'+ North of Little Flower Avenue)

**Use Variance to allow an existing structure to be used as a barber shop in an R-1, Single-Family Residential District; the Zoning Ordinance requires a minimum of B-2, Neighborhood Business District.**

*The site plan illustrates the existing building and parking lot.*

Mr. M. Don Williams of Williams Engineering represented the applicant and stated that they concurred with the staff recommendations.

There was no one present in opposition.

A motion was made by Mr. Davitt and seconded by Mr. Lee to approve the request for a Use Variance to allow an existing structure to be used as a barber shop in an R-1, Single-Family Residential District subject to the following conditions:

1. the leasing of at least three parking spaces within 300 feet of the site; and
2. the complete removal of the gazebo on the northern portion of the property.

The motion carried unanimously.



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**OTHER BUSINESS:**

None.

**APPROVED:**            June 7, 2004

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Chairman of the Board

/rm