

BOARD OF ZONING ADJUSTMENT MINUTES
MEETING OF NOVEMBER 12, 2009 - 2:00 P.M.
MOBILE GOVERNMENT PLAZA, MULTI-PURPOSE ROOM

MEMBERS PRESENT

William Guess
Vernon Coleman
Sanford Davis
Adam Metcalfe
*supernumerary member

MEMBERS ABSENT

Reid Cummings, Chairman
Russell Riley*
J. Tyler Turner*

STAFF PRESENT

Frank Palombo, Planner II
Caldwell Whistler, Planner I
Derek Peterson, Planner I
Sondi Galanti, Secretary I

OTHERS PRESENT

John Lawler, City Attorney
David Roberts, Traffic Engineering
David Daughenbaugh, Urban Forestry

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

CALL TO ORDER:

Acting Chairman Guess advised all in attendance as to the policies and procedures of the Board of Zoning Adjustment. He noted the number of members present constituted a quorum and called the meeting to order.

PUBLIC HEARINGS:

#5571

(Case #ZON2009-02603)

Board of Water and Sewer Commissioners of the City of Mobile

4800 Moffett Road

(Northwest corner of the Moffett Road and Shelton Beach Road Extension)

Use, Height, Side Yard Street Setback and Tree Planting Variances to allow the construction of a 153-foot monopole communications tower 112-feet from the side street property line and no tree plantings in an R-1, Single-Family Residential District; the Zoning Ordinance prohibits telecommunications towers in R-1, Single-Family Residential Districts, the maximum height allowed in R-1 Districts is 35' with a minimum 20' side yard street setback, and one tree per 30 linear feet of the leased parcel (with at least 50% of the number of trees to be overstory trees) is required for such a use.

The Acting Chair announced the matter, advising it had been recommended for approval and that the applicant should address the Board regarding the subject at that time.

Jay Davison, Thompson Engineering, spoke on behalf of the applicant.

November 12, 2009

Board of Zoning Adjustment

The Acting Chair stated it was his understanding that the tower had already been constructed, placed and was being used for radio communications.

Mr. Davison stated that was correct and that it was being used as a booster station for service throughout the city and the Big Creek Lake area.

The Acting Chair stated it was his understanding that the applicant also wanted to expand the service for one co-location cell service tower as that was what was on the water tower, to which Mr. Davison replied yes.

The Chair asked if there were any more questions from the Board. Hearing none, he asked if there were those in opposition to the matter and opened the floor to their comments.

The following people spoke in opposition to the matter:

- Mike Breland, 4824 Mercedes Road, Mobile, AL, member of the Forest Heights Community Action Group; and,
- Eileen Corkern, president, Forest Height Community Action Group.

They made the following points against the request:

- A. were not aware it had already been constructed and was in place;
- B. expressed feelings that the water tower was already in disrepair and did not need to be used in this fashion; and,
- C. expressed the belief that the current water tower should be brought down and the grounds around it taken care of appropriately.

The Acting Chair gave the applicant's representative the opportunity to respond to the opposition.

Mr. Davison stated the water tower was going to be removed and the single communication tower was already in place.

It was asked when the water tower was to come down and Mr. Davison stated that was to take place the next week.

It was then asked if the tower would be higher than 35 feet and Mr. Davison stated it already was and that was one of the reasons for the variance request.

Mr. Palombo stated that it was true the tower had been installed without the correct permits or prior approval and the applicant, Mobile Area Water and Sewer Service was now asking for that approval. He noted there were several variances that would be required, with height being one of those as 35 feet high was the maximum structure height allowed in a single family residentially zoned area, however, that property had not been used as R-1 in quite some time, instead it had been used by Mobile Area Water and Sewer Service as a ponding area. He noted that the unpermitted tower now in place was farther behind the setback lines than the water tower. He also suggested adding the condition of removing of the current water tower before permitting the new tower.

November 12, 2009
Board of Zoning Adjustment

The Acting Chair, in response to the opposition's concern regarding the area being blighted, wondered if Mobile Area Water and Sewer Service had any intention of doing additional clean up, etc., at the location once the water tower was removed.

After a short discussion with all parties, it was determined that the blighted area was not the property owned by Mobile Area Water and Sewer Services.

Mr. Metcalfe asked for clarification regarding the tower's height, when it was constructed, and how it came to be constructed without benefit of permits.

The applicant's agent responded the tower's height was 153 feet, it had been constructed during the summer, and that the lack of permits must have resulted from an oversight by the engineers.

Mr. Breland expressed his shock at an organization's ability to completely disregard an ordinance and then come before the Board of Zoning Adjustment to request a variance and then have the staff report find in favor of such. He expressed his opinion that the matter should have been denied right away due to the fact they constructed a tower completely outside of the guidelines for same as set by the City.

Mr. Metcalf responded that it appeared that the staff looked at the application as if the tower did not exist in the first place and was advised he was correct in that assumption.

The Acting Chair asked Mr. Lawler's opinion regarding the Board's scope of duties in this matter.

Mr. Lawler responded by stating that the Board had the authority to grant variances from the stated height restriction in the Ordinance and typically those have been allowed on these type towers across the city. He noted that in this instance, there appeared to be something, though now unsightly, that had existed for quite some time but was being replaced by the tower. He reminded those listening that the Federal Telecommunications Act made it very difficult to deny those type towers. He stated that though the Board could help dictate the placement of said towers, the fact that this tower would replace an older tower supported the request.

Hearing no further opposition or discussion, he opened the matter up to the Board for a motion.

A motion was made by Mr. Guess, with second by Mr. Metcalfe, to approve the above referenced request, subject to the following conditions:

- 1) limited to the one existing private collocation;**
- 2) permitted demolition of existing on-site water tower prior to the issuance of any other permits; and**
- 3) full compliance with all other municipal codes and ordinances.**

The motion carried unanimously.

November 12, 2009
Board of Zoning Adjustment

#5572

(Case #ZON2009-02583)

Jeff Quinnelly

East side of North McGregor Avenue, 170' South of Springhill Avenue

Vehicular Access Variance to allow the construction of a 16' wide drive in a Traditional Center District; the Zoning Ordinance requires a minimum access width of 24' for developments invoking the Traditional Center District overlay.

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

The following people spoke in favor of the matter:

- Doug Anderson, Burr and Foreman Law Firm, represented the applicant;
- Thomas Meyers, volunteer with the Village of Springhill, Inc.; and,
- John Williams, District 4 Council person, on behalf of Gina Gregory, Council person for the District.

They made the following points in favor of the request:

- A. the applicant wanted to develop a small business office on the site;
- B. the applicant was a contractor who sold construction equipment all over the world and had no real "on site" customers;
- C. the site fell under the Springhill overlay district which also affected the need for a variance;
- D. it was noted that certain aspects of the overlay district could be in conflict with the City Code regarding setbacks;
- E. the proposed building would be all the way to the front property line as allowed by the overlay;
- F. six parking spaces would be allowed in the rear of the building;
- G. noted the Code required a 24 foot driveway but due to the small nature of the lot, there is only room for a 16 foot driveway;
- H. due to the applicant's desire to comply with the overlay, the variance was necessary;
- I. the Village of Springhill has written a letter in support of the development and said letter had been given to the Board;
- J. noted that the traditional center development was a higher standard than the city wide code; and,
- K. noted that the traditional center development was more expensive to implement than the city wide code, a cost the applicant willingly accepted.

The Chair asked if there were any more questions from the Board. Hearing none, he asked if there were those in opposition to the matter and opened the floor to their comments. Hearing none, he opened the matter up to the Board for a motion.

A motion was made by Mr. Coleman, with second by Mr. Davis, to approve the above referenced request, subject to the following condition:

November 12, 2009
Board of Zoning Adjustment

- 1) **full compliance with all other municipal codes and ordinances.**

The motion carried unanimously.

#5573

(Case #ZON2009-02571)

Robert & Eleanor Broadnax

606 Good Pay Street

(East side of Good Pay Street, 160' North of Pecan Street)

Use and Side Yard Setback Variances to allow a duplex 2' from a side property line in an R-1, Single-Family Residential District; the Zoning Ordinance requires a minimum R-2, Two-Family Residential District for a duplex, with a minimum setback of 8' from a side property line.

The Acting Chair announced the matter, advising it had been recommended for approval and that the applicant should address the Board regarding the subject at that time.

Robert Broadnax, 5340 Natchez Highway, Wilk, AL, noted that the variance requests had been recommended for approval and unless he had opposition to the staff's recommendations, he was in agreement with the same.

Mr. Metcalfe asked for clarification that they were moving a property line but was advised that was not the case as the applicant would be going through the subdivision process.

The Chair asked if there were any more questions from the Board. Hearing none, he asked if there were those in opposition to the matter and opened the floor to their comments. Hearing none, he opened the matter up to the Board for a motion.

A motion was made by Mr. Metcalfe, with second by Mr. Davis, to approve the Use Variance request, subject to the following condition:

- 1) **obtaining of any required building permits for residential duplex use;**

and, to approve the Setback Variance request, subject to the following condition:

- 1) **completion of the subdivision process to shift the common property line between this property and the adjacent property to the South to 2' off the porch eave.**

The motion carried unanimously.

#5574

(Case #ZON2009-02572)

Robert & Eleanor Broadnax

604 Good Pay Street

November 12, 2009

Board of Zoning Adjustment

(East side of Good Pay Street, 120' North of Pecan Street)

Use and Side Yard Setback Variances to allow a duplex 2' from a side property line in an R-1, Single-Family Residential District; the Zoning Ordinance requires a minimum R-2, Two-Family Residential District for a duplex, with a minimum setback of 8' from a side property line.

The Acting Chair announced the matter, advising it had been recommended for approval and that the applicant should address the Board regarding the subject at that time.

Robert Broadnax, 5340 Natchez Highway, Wilk, AL, noted that the variance requests had been recommended for approval and unless he had opposition to the staff's recommendations, he was in agreement with the same.

The Chair asked if there were any more questions from the Board. Hearing none, he asked if there were those in opposition to the matter and opened the floor to their comments. Hearing none, he opened the matter up to the Board for a motion.

A motion was made by Mr. Metcalfe, with second by Mr. Davis, to approve the Use Variance request, subject to the following condition:

- 1) obtaining of any required building permits for residential duplex use.**

A motion was made by Mr. Metcalfe, with second by Mr. Davis, to approve the Setback Variance request, subject to the following condition:

- 1) completion of the subdivision process to shift the common property line between this property and the adjacent property to the North to 2' off the porch eave.**

The motion carried unanimously.

#5575/4244/4226/3428

(Case #ZON2009-02577)

Gulf Health Properties, Inc.

1835 Old Shell Road

(Southeast corner of Old Shell Road and North Carlen Street)

Use Variance to allow a Pediatric Medical Office and Tutoring Center in an R-1, Single-Family Residential District; the Zoning Ordinance requires a minimum B-1, Buffer Business District for professional offices and educational services.

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

The following people spoke in favor of the matter:

- Scott Browning, 1 St. Louis Street, Mobile, AL, spoke as attorney for Gulf Health Properties; and,

November 12, 2009

Board of Zoning Adjustment

- Dr. Jennifer Allen Johnson, pediatrician with the non-profit medical practice involved; and,

They made the following points in favor of the request:

- A. noted the property was encumbered by zoning use issues;
- B. currently zoned R-1 but enjoyed a use variance for administrative purposes as they only employed 25 persons with operating hours of 8 a.m. to 6 p.m. Monday through Friday;
- C. the current variance being sought was to operate a pediatric medical practice to occupy the property and to extend the operating hours by one, making them 8 a.m. to 7 p.m. Monday through Friday; and,
- D. they also wanted to expand service to Saturdays between 10 a.m. and 12:30 p.m. for a pre-academic tutoring program put on by the pediatric medical group for their disadvantaged patients.

The Acting Chair noted that from the report, there had been several variance requests and court appearances regarding this property.

Mr. Metcalfe asked for a brief history of the building.

Mr. Browning stated he did not know the original date the building was constructed but that it had been in place for some time. He noted that it had served as a residence until some time in the 1970's when the original variance authorized a cardiology practice and they were simply trying to return to that earlier medical use.

The Acting Chair noted that since its first variance request, the building had been used for some type of medical practice.

The Chair asked if there were any more questions from the Board. Hearing none, he asked if there were those in opposition to the matter and opened the floor to their comments.

The following people spoke in opposition to the matter:

- Jeff Amy, 108 South Street, Mobile, AL, and a member of the Historic Murphy District Association; and,
- Richard Coleman, 1852 ½ Old Shell Road, Mobile, AL.

They made the following points against the request:

- A. agreed with the staff report that stated there was no hardship to the property associated with the land;
- B. expressed the opinion that there would be no way to expand the parking lot without taking the lawn currently in existence on Old Shell Road;
- C. allowing the proposed use would increase the traffic at that very tight corner;
- D. in the area in question, R-1 properties were under extreme pressure to be converted to commercial uses;

November 12, 2009

Board of Zoning Adjustment

- E. noted that the property in question had not been a medical office in over 19 years;
- F. noted there were approximately a dozen land parcels between the property in question and the nearest commercial property; and,
- G. expressed the sincere belief that the area was a viable R-1 district and the property in question could easily be used as a single family residential property.

Mr. Coleman noted that he lived in the area and that he had never noticed any of the traffic issues the opposition had described.

The Acting Chair asked if Traffic Engineering had any issues with the way the proposed office was laid out.

Mr. Ladner asked how far was the driveway from the intersection in question and was advised it was the length of the building.

Mr. Palombo noted that the use would not require any more parking spaces than what had been provided for the administrative office.

The opposition noted that the variance requested the allowance of up to 25 employees on the site which would leave only 8 parking spaces for patients.

Mr. Palombo explained that the applicant had requested a use variance to allow a medical office with a “training and tutoring center” but that the application had not mentioned anything with regards to 25 employees.

The Acting Chair noted from the analysis the following statement “the applicant now coming before the Board wishes to modify the existing use variance by allowing the operation of a pediatric medical practice not to exceed 25 employees, including practitioners, to allow patient traffic to allow office hours from 8 a.m. to 7 p.m. Monday through Friday, to allow academic tutoring on Saturdays from 10 a.m. to 12:30 p.m. for 20 to 25 children and 20 volunteers.”

Mr. Palombo stated that Dr. Johnson was asking for one pediatrician at the medical practice with the tutoring center on Saturdays.

Mr. Davis commented that he, too, lived in the area and traveled it a great deal and that he was of the same opinion on the matter as Mr. Coleman.

Mr. Lawler addressed the Board and reminded them that the property in question had had a variance in place for use under medical type work for many, many years, and at this time they simply wanted to modify that variance slightly to allow for on-site medical services and tutoring. He added that this was neither the time nor the venue to reverse the earlier decision to grant the use variance.

Hearing no further opposition, the Acting Chair opened the matter up to the Board for a motion.

November 12, 2009

Board of Zoning Adjustment

A motion was made by Mr. Davis, with second by Mr. Coleman, to approve the above referenced request, subject to the following conditions:

- 1) **the practice be limited to two pediatricians;**
- 2) **office hours be limited to 8:00 AM to 7:00 PM Monday through Friday, and 10:00 AM to 2:00 PM on Saturday; and,**
- 3) **full compliance with all other municipal codes and ordinances.**

The motion carried unanimously.

#5576

(Case #ZON2009-02558)

Hurley Crews, Sr., et al

4300 Coalesway Drive

(Northwest corner of Coalesway Drive and Belvedere Drive)

Use Variance to allow a garage apartment in an R-1, Single-Family Residential District; the Zoning Ordinance requires a minimum R-2, Two-Family Residential District for two dwellings on a single building site.

Mr. Crews addressed the Board and withdrew the application.

Mr. Metcalfe moved, with second by Mr. Guess, to accept the applicant's letter of withdrawal.

The motion carried unanimously.

#5577

(Case #ZON2009-02555)

J.M. LLC

200 South Florida Street

(Southwest corner of South Florida Street and Ralston Road)

Vehicle Stacking and Side Street Yard Setback Variances to allow no queuing spaces from the street right-of-way at an entrance gate and to allow the construction of an arbor and balconies 2' and 17' respectively from the side street property line in a B-2, Neighborhood Business District; the Zoning Ordinance requires a minimum of three vehicle queuing spaces from the street right-of-way at entrance gates and a minimum 25' side street yard setback in a B-2, Neighborhood Business District.

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

Larry Jones, 1171 Santa Maria Court, Mobile, AL, spoke on behalf of J.M. LLC and made the following points in favor of the request:

- A. the building was already in existence and had always been two feet over the setback line along Ralston Road;
- B. noted the developers wanted to add wrought iron balconies to each of the units, which would cause the units to extend an additional 6 feet out over the setback line;

November 12, 2009

Board of Zoning Adjustment

- C. with regards to the arbor, it was noted that the structure was for garbage receptacles as well as lawn maintenance equipment;
- D. noted the City would not pick up at a location of more than 4 units, so the developer has gone to a private company for garbage pick up;
- E. they would have garbage pick up on the site three times a week; and,
- F. regarding the issue of stacking, the Property Owners' Association would submit a letter stating that if Florida Street were ever expanded, that at the property owners' expense, they would change the gate for the community.

Mr. Metcalfe asked for clarification regarding the stacking and what was required by the code.

Mr. Palombo stated it was 60 feet from the property line with a three car stack.

Mr. Metcalfe asked why a curb-cut was not wanted along the Ralston Street side and was advised the Planning Commission denied a curb-cut at that location.

With regards to the gate, Mr. Palombo asked for the location of the slide card key as well as the dimensions of the gate as it was located on the Florida Street side.

Mr. Jones noted the exact location had not yet been determined, however, it would be located on the property. With regards to the gate, Mr. Jones noted it was 15 feet.

Mr. Palombo noted that a car would not be entirely on private property to utilize the gate and Mr. Jones noted that was correct.

Mr. Ladner noted that currently they had a stacking room from the edge of the street to the gate of 60 feet, however, it now appeared this was not the case. He also noted that drivers wishing to access the property would have to stop to access the gate, causing traffic flow issues.

Mr. Metcalfe asked what was the reasoning behind not pulling the gate back into the property.

Mr. Jones said the gate could be moved so that the car would be entirely on the property when accessing the gate.

Mr. Ladner stated that Traffic Engineering would have preferred three car lengths as they had been led to believe were present, however, the two car lengths would be sufficient. He also stated that regarding the letter, for Traffic Engineering purposes, it would have to clearly state that the gate would be removed if Florida Street were ever widened to the point they lost the ability to stack two cars in the driveway.

Mr. Palombo asked for clarification regarding the garbage issue to verify if there would be a dumpster on site or if it would be cans.

Mr. Jones stated it would be cans very similar to those used by the City, however, a contract with a private company would be in place to have those cans dumped.

Mr. Palombo expressed his concern that there were no measures in place to prevent those small cans from being rolled into the right-of-way after they were dumped.

November 12, 2009
Board of Zoning Adjustment

Mr. Jones stated it would be part of the contract with the private garbage pick up company that they put the cans in the pre-determined secure space and lock it back.

The Chair asked if there were any more questions from the Board. Hearing none, he asked if there were those in opposition to the matter and opened the floor to their comments.

The following people also spoke in opposition to the matter:

- Paula Stadther, 2529 Oakview Drive, Mobile, AL;
- Bernadine Grafton, 2621 Ralston Road, Mobile, AL; and,
- Francine Reese, 2307 Pennington Street, Mobile, AL, member of St. John's Deliverance Church.

They made the following points against the variance:

- A. asked to see an architectural rendering of the project as the neighbors did not know what was planned for the property;
- B. wondered what was the proposed time table for the project, as it had been inactive since the summer, and wondered if the variance request was the reason behind the inactivity;
- C. wondered if there were any plans to restore the handicapped ramps on the west side of the Florida Street sidewalks;
- D. asked for an explanation of what was meant by "stacking;"
- E. regarding the sidewalk that divided the property in question from the adjacent church's property, it was wondered which way would the balconies be facing;
- F. wondered if a fence would be put down the middle of the sidewalk, separating the two parcels;
- G. expressed concern that the developer was "using up" the available space on the property meaning he would not have the necessary green space;
- H. expressed concern that the developer was trying to put too many living units on the property;
- I. expressed concern that due to the number of units and the stacking, there would be an increase in safety issues regarding traffic in the area

Mr. Palombo advised that regarding the time table for the project, they had two years to begin the project before any variances requested for it became null and void.

Mr. Jones responded that the needed variance was one of the reasons for the inactivity in the project, with another being awaiting the completion of the architectural plans.

Mr. Palombo asked Mr. Jones to please get Mrs. Stadther a copy of the architectural rendering and Mr. Jones stated he would.

Regarding the handicapped ramps mentioned, Mr. Ladner advised that Ms. Stadther should contact the City's Right-of-Way Department to discuss those.

November 12, 2009

Board of Zoning Adjustment

Mr. Palombo stated that it was a requirement of the developer that any sidewalks damaged by their development must be replaced by them.

The Acting Chair advised there was a 15 day waiting period that had to expire before any licenses or permits could be issued. He also explained “stacking” as related to traffic.

Mr. Palombo advised the balconies would be along the north side of the building, facing Ralston Street.

Mr. Jones stated that there would be no fence in the middle of the sidewalk and that the walkway would be left open.

Mr. Metcalfe asked if the property was completely fenced with the exception of the west property line and Mr. Jones stated that was correct.

Mr. Metcalfe asked what type of fence was in place and Mr. Jones responded a wooden board fence would be placed on the south side, with a wrought iron fence along all of the other sides, including a wrought iron fence on the east side of the walkway that lead to Ralston Road.

Mr. Metcalfe asked, regarding the west facing elevation, what was the height of the building that faced the church, to which Mr. Jones expressed his belief that it was two stories.

Hearing no further opposition or questions, the Acting Chair opened the matter up to the Board for a motion.

Mr. Palombo asked that the following conditions be added to any approval given by the Board:

- A. the queuing gate be moved to 20 feet from the property line on Florida Street and put in line with the edge of the parking located there;
- B. the inclusion of a note or letter stating the gate would be removed if Florida Street were ever widened; and,
- C. enclosure of the garbage area so that it be closed and secured at all times.

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

- 1) the entrance gate be relocated to not less than 20’ from the dedicated property line along Florida Street;**
- 2) the gate is to be removed if Florida Street is ever widened;**
- 3) the arbor for garbage receptacles be enclosed;**
- 4) garbage receptacles are not to be left unattended along the right-of-way; and**
- 5) full compliance with all other municipal codes and ordinances.**

The motion carried unanimously.

November 12, 2009
Board of Zoning Adjustment
#5578
(Case #ZON2009-02523)
Isaac Taylor

1813 Idell Street
(East side of Idell Street, 250' South of St. Stephens Road)

Front Yard Setback and Site Coverage Variances to allow a 1,016 square foot addition to an existing dwelling 13' from the front property line at 42% site coverage in an R-1, Single-Family Residential District; the Zoning Ordinance requires a minimum front setback of 25' and a maximum site coverage of 35% in an R-1, Single-Family Residential District.

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

The following people spoke in favor of the matter:

- Jerry Byrd, Byrd Surveying Inc., spoke on behalf of the applicant; and,
- Isaac Taylor, 1813 Idell Street, Mobile, AL, the applicant/property owner.

They made the following points in favor of the matter:

- A. stated the applicant simply wanted to add on to his existing structure and planned to stucco the entire front so that it did not appear to be added to;
- B. noted that many of the houses in the area were over the minimum setback line;
- C. the addition was being done as the applicant had expanded his family with a fiancé, her two children, and his own child, making it necessary to have more living space in the home; and,
- D. the applicant noted it was not necessary for him to have the garage; however, it was necessary to have the additional living space.

Mr. Guess noted there were a number of temporary structures on the property as well.

Mr. Byrd responded that was correct and then advised that though the drawings denote a block garage, it was actually only the walls for a garage as it had no roof. He also stated there was a utility shed located at the back of the building that would be removed.

Mr. Palombo asked Mr. Byrd if the 42% site coverage included the unroofed, block garage, and Mr. Byrd advised it did. Mr. Palombo advised that without a roof, the department did not consider the structure a legitimate structure.

Mr. Guess noted that the applicant's intent was that all of the temporary attachments on the back of the building would be removed if the addition were allowed.

Mr. Metcalfe asked if the garage, the dwelling, and the addition were all calculated into what percentage in excess that would that make the proposed expansion.

Mr. Palombo state it would have 42% site coverage as opposed to the 35% stipulated by the Zoning Ordinance.

November 12, 2009
Board of Zoning Adjustment

Mr. Metcalfe then asked Mr. Byrd how the driveway issue would be addressed to which Mr. Byrd answered it would have to be relocated but that had yet to be determined or shown.

Mr. Palombo stated that the driveway would not be an issue as the area was zoned R-1 so the applicant could have a gravel, asphalt, or concrete driveway. He did add that the applicant would need to get a right-of-way permit from the City's Right-of-Way Department regarding the driveway.

The Chair asked if there were any more questions from the Board. Hearing none, he asked if there were those in opposition to the matter and opened the floor to their comments. Hearing none, he opened the matter up to the Board for a motion.

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

The motion carried unanimously.

#5579

(Case #ZON2009-02581)

Spencer M. Adams IV

3418 Riviere Du Chien Loop North

(North side of Riviere Du Chien Loop North, 535' East of Riviere Du Chien Loop West)

Side Yard Setback Variance to allow construction of a boat house 0' from a side property line in an R-1, Single-Family Residential District; the Zoning Ordinance requires a minimum side yard setback of 8' in an R-1, Single-Family Residential District.

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

The following people spoke in favor of the matter:

- Doug Anderson, Burr and Foreman Law Firm, spoke on behalf of the applicant; and,
- Spence Adams, 3418 Riviere Du Chien Loop North, and 3800 Cypress Shores Drive, Mobile, AL, the owner/applicant.

They made the following points in favor of the variance:

- A. the property had been family owned for many generations;
- B. there had been a boathouse on a small slough that came onto the property;
- C. noted that the first drawings done in 1988 did not show the boathouse however, the ones submitted by Byrd Surveying did show the new, existing boathouse;
- D. noted that the staff report referenced that the boathouse was built without a permit, which was not quite correct as the applicant had hired Fountain Marine Construction, a Mobile/Baldwin County licensed marine contractor, to build said boathouse and they had received a permit to build

November 12, 2009

Board of Zoning Adjustment

- the boathouse from the Corps of Engineers, which is the typical entity to grant such as it was considered to be built on water, not land;
- E. Fountain Marine Construction also contacted the City and was advised a permit from them was not necessary;
 - F. during later part of construction, it was determined that because part of the boathouse was actually over land, a permit from the City was, indeed, necessary;
 - G. presented pictures that showed the structure itself was within the required lines and that only the overhang of the roof encroached on the setback lines;
 - H. noted that the 1988 survey showed the entire canal as being within their property line, with the property line being several feet off toward the east;
 - I. based upon the Corps of Engineers' permit, the applicant was shocked to have been given a Notice of Violation by the City for no permit, which lead to the new survey, which revealed the encroachment;
 - J. it was asked that the variance be granted subject to the applicant getting an easement from the neighbor allowing the encroachment;
 - K. noted the home had been under renovation for almost a year; and,
 - L. the applicant had made an offer to purchase some of the next door neighbor's property to alleviate the encroachment issue but had yet to hear back on that offer.

Mr. Guess noted that he did not believe that relief could be granted regarding the encroachment on the neighbors' property and asked for confirmation of the same from the staff.

Mr. Palombo stated no relief could be given in that area to which Mr. Anderson agreed and noted that was why getting an easement from the neighbor in this manner was a self-imposed condition for approval.

Mr. Palombo noted that it was within the Board's discretion to allow for a zero setback line.

Mr. Metcalfe asked if the two owners agreed to a property line agreement.

Mr. Anderson stated that to date one had not been reached.

The Chair asked if there were any more questions from the Board. Hearing none, he asked if there were those in opposition to the matter and opened the floor to their comments.

Vincent George, 3412 Riviere Du Chien Loop North, Mobile, AL, spoke in opposition to the matter and made the following points:

- A. noted the current boathouse was beyond the previous structure, being much wider and further to the river than the previous structure;
- B. he had received no information from anyone regarding an offer to purchase property to alleviate the encroachment issue; and,
- C. wanted the encroachment removed, as their property was for sale and felt the encroachment was hindering the sale of the property.

November 12, 2009

Board of Zoning Adjustment

Hearing no further discussion, the Acting Chair opened the matter up to the Board for a motion.

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

- 1) the obtaining of any required permits; and**
- 2) the obtaining of a survey to verify that the property line encroachment has been resolved.**

The motion carried unanimously.

#5580

(Case #ZON2009-02580)

Sam Covert, Jr.

South side of Grant Street, 155' West of Cottage Hill Road

Site Coverage Variance to allow 40% site coverage in an R-1, Single-Family Residential District; the Zoning Ordinance requires a maximum site coverage of 35% in an R-1, Single-Family Residential District.

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

Don Williams, Williams Engineering, spoke on behalf of the applicant and made the following points in favor of the request:

- A. the proposed house is for an older lady who has mobility issues, so making the structure a two story home was not an option;
- B. the lady anticipated that this would be her last home;
- C. the additional 80 square feet accounted for the additional 5% site coverage, making it 40% as opposed to the maximum site coverage of 35% as stipulated by the Zoning Ordinance;
- D. if the covered porches were removed, the site would fall within the 35% site coverage, however to do so would limit her recreational access to her yards; and,
- E. the additional site coverage was well within character for the neighborhood.

The Chair asked if there were any more questions from the Board. Hearing none, he asked if there were those in opposition to the matter and opened the floor to their comments. Hearing none, he opened the matter up to the Board for a motion.

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

The motion carried unanimously.

OTHER BUSINESS:

November 12, 2009

Board of Zoning Adjustment

There being no further business, the meeting was adjourned.

APPROVED: August 2, 2010

Chairman of the Board

/jsl