

BOARD OF ZONING ADJUSTMENT MINUTES
MEETING OF NOVEMBER 3, 2008 - 2:00 P.M.
MOBILE GOVERNMENT PLAZA, MULTI-PURPOSE ROOM

MEMBERS PRESENT

Reid Cummings, Chairman
William Guess
Vernon Coleman
Mack Graham
J. Tyler Turner*
*supernumerary member

MEMBERS ABSENT

Sanford Davis
Russell Riley*

STAFF PRESENT

Frank Palombo, Planner II
Caldwell Whistler, Planner I
Joanie Stiff-Love, Secretary II

OTHERS PRESENT

John Lawler, City Attorney
Butch Ladner, Traffic Engineering

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

CALL TO ORDER:

Chairman Cummings 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 with the supernumerary member voting, if necessary, and called the meeting to order.

APPROVAL OF MINUTES:

The Chair announced that minutes had been presented for approval. Mr. Cummings moved, with second by Mr. Guess, to approve the minutes from the following, regularly held, Board of Zoning Adjustment meetings:

- December 2007

The motion carried unanimously.

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PUBLIC HEARINGS:

5501

(Case #ZON2008-02481)

Mike Schambeau

3806 Moffett Road

North side of Moffett Road, 240'± West of Stimpson Lane

Use, Access/Maneuvering, Parking, and Landscaping/Tree Planting Variances to allow an automotive repair shop in a B-2, Neighborhood Business District, with no direct vehicular public street access, no designated maneuvering and parking areas, and no landscaping and tree plantings; the Ordinance requires a B-3, Community Business District for an automotive repair shop, direct vehicular access to a public street, designated maneuvering and parking areas, 12% total site landscaping with 60% of the total as frontage landscaping, four frontage trees, fourteen perimeter trees, and one parking tree.

The 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.

Mike Schambeau, 3806 Moffett Road, Mobile, AL, spoke on his own behalf, and stated that when he purchased the property it had been an auto repair shop and to his knowledge, the location had always been an auto repair shop. He added that it was not his intent to put his business in an area where it was not authorized. He added that currently it was not feasible for him to move his business to another location. He also stated that due to current economic conditions, it would be difficult for him to comply with such things as landscaping and trees, as well as the creation of a new curb-cut. He added that there was joint access to the business through the adjacent auto repair site.

The Chair asked if there were any questions for the applicant.

Mr. Guess asked if there were an agreement regarding access between the applicant and the adjoining business regarding such.

Mr. Schambeau said that in the past there had been, however, he did not, personally, have such an agreement in writing at that time. He added that he also had access to his property from the rear as well.

The Chair asked how the applicant's customers accessed the business and Mr. Schambeau advised they entered from Moffett Road through the adjoining business.

Butch Ladner, City Traffic Engineering, asked the applicant for information regarding the driveway located off of Moffett Road.

Mr. Schambeau advised there was an approximately 12-14 feet wide curbed driveway, however, it was not wide enough for two cars to traverse at the same time.

Mr. Ladner commented that the current access proposed was not conducive to positive traffic flow and stated that the Alabama Department of Transportation would very likely want to review the matter as well.

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The Chair expressed his opinion that as the property had quite a bit of frontage onto Moffett Road, and that as a good part of the property was asphalted, it should not be an issue to put in a concrete apron and curb-cut from Moffett Road to the business. He added it would be in the applicant's best interest to do so as the "friendliness" enjoyed between the owners of the two adjacent businesses might not always be the case.

Mr. Coleman asked the staff if they were requesting some type of barricade between the two adjacent properties.

Mr. Palombo advised that staff simply wanted some type of barrier (i.e. seal, railroad tie, bumper) to prevent shared access between the properties.

The Chair asked if there were any more questions for the applicant. Hearing none, the Chair called for a motion.

A motion made by Mr. Coleman, with second by Mr. Guess, to approve the request for a **Use Variance to allow an automotive repair shop in a B-2, Neighborhood Business district**, as well as the request for a **Landscaping/Tree Planting Variance** at the above referenced location, subject to the following conditions:

- 1) **provision of designated parking and maneuvering area, as required by Section 64-6 of the Zoning Ordinance;**
- 2) **provision of a curb cut onto Moffett Road so as to provide direct vehicular public street access, with the size, location, and design to be approved by traffic engineering and ALDOT, with appropriate permits;**
- 3) **removal of the shared access with 3808 Moffett Road;**
- 4) **planting of two (2) frontage trees along Moffett Road, type to be determined by the City of Mobile's Urban Development Department;**
- 5) **submission of a revised site plan, illustrating compliance with this approval and all conditions, to the Planning Section of the Urban Development Department of the City of Mobile prior to the issuance of any permits or land disturbance activities; and,**
- 6) **full compliance with all municipal codes and ordinances.**

The motion also included denial of the request for variances in the areas of access/maneuvering and parking.

The motion carried unanimously.

#5502/5471/5422

(Case #ZON2008-02494)

Value Place Mobile, LLC

1350 West I-65 Service Road South

West side of West I-65 Service Road South, 500' ± South of Key Street

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Front Landscaping Variance to allow 6,380 square feet of frontage landscaping (45.25% of 12% total site area) for a 117,500 square-foot site in a B-3, Community Business District; the Ordinance requires 8,460 square feet of frontage landscaping (60% of 12% total site area) for a 117,500 square-foot site in a B-3, Community Business District.

The 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.

The following people spoke in favor of the variance:

- Greg Harnish, Woolpert, Inc., 8731 Red Oak Boulevard, Charlotte, North Carolina, for the applicant; and,
- Dave Matson, Value Place, 19 Hawthorne Drive, Valley Center, Kansas.

They made the following points in favor of the matter:

- A. in 2007, a land disturbance permit was applied for and granted, and through clerical error, a building permit was issued as well, without benefit of land use or tree approval;
- B. the site had been constructed and was ready for a final “walk thru”;
- C. in 2008, after construction was well under way, the clerical error was discovered and a hold was placed on that permit pending the submission of plans for both land use and trees;
- D. although the requirement is 60% of the 12% of the total site area that should have frontage landscaping, the project boasts a little over 39% of pervious area, one of the reasons for that being the accommodation of the City’s Engineering Department’s request to provide discharge from a 10 year stormwater run off but also above a 100 year stormwater discharge;
- E. issued a corporate apology for the error as an oversight on their part; and,
- F. as much landscaping and trees as possible have been planted on the site.

Mr. Palombo advised the Board that if the detention area were to be removed from the equation, the site would be in compliance with the landscaping and tree ordinance.

The Chair asked if there were any more questions for the applicant and hearing none, the Chair called for a motion.

A motion was made by Mr. Turner, with second by Mr. Guess, to approve the request for a **Front Landscaping Variance to allow 6,380 square feet of frontage landscaping (45.25% of 12% total site area) for a 117,500 square-foot site in a B-3, Community Business District**, at the above referenced location.

The motion carried unanimously.

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5503

(Case #ZON2008-02521)

Cottage Hill Tenn, LLC (Charles S. Christmas, Agent)

3920 Cottage Hill Road

North side of Cottage Hill Road, 240' ± East of Azalea Road

Sign Variance to allow an illuminated, double-faced, 16" x 30" off-premise directional sign with a corporate logo in a B-2, Neighborhood Business District; the Ordinance requires all directional signs to be located on-premise and not contain any corporate logo in a B-2, Neighborhood Business District.

The 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.

The following people spoke on behalf of the variance:

- Charlie Christmas, Christmas Properties, on behalf of Advanced Auto Parts; and,
- Patrick Tolbert, Frank A. Dagley and Associates, for the applicant.

They made the following points in favor of the matter:

- A. approximately a year prior, Advanced Auto Parts expressed their interest in doing business at the site noted;
- B. there was an easement behind an existing Hardee's, a Texaco station, and a doctor's office on the site to access Azalea Road, with signage on Azalea Road;
- C. they applied for a Planned Unit Development, which was approved; however, another one had been submitted for the new business because Planned Unit Development approvals are site plan specific;
- D. the request was simply for a corporate logo sign that would be located at the rear of the CVS property at the entrance to the property onto Azalea Road;
- E. as the proposed signage would be on CVS property, CVS approval was necessary and the applicant has obtained that approval; and,
- F. for no apparent reason, traffic backs up at the traffic light located at the intersection of Cottage Hill Road and Azalea Road, back up in front of the CVS location, which creates a hardship to the property in question with regards to ingress and egress to the property.

The Chair asked Mr. Palombo if the issue before the Board could be decided within the Planned Unit Development application.

Mr. Palombo advised that it could but as it was an off-site sign, it still required Board of Zoning Adjustment approval.

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The Chair expressed his thoughts that as there currently existed on the site and “enter/exit” sign, albeit for CVS, and as the same access way lead to the Advanced Auto Parts location, would not a second sign stating the same thing be redundant.

Mr. Christmas noted that certain businesses are recognized by the shape, size, and other design aspects of their building. He stated that CVS had recognition by virtue of those issues at the site, however, there was no such recognition for Advanced Auto Parts.

The Chair asked if there were any others in attendance who wished to speak regarding the matter to please do so at that time. The Chair noted there was no one else in attendance for the variance.

The Chair asked if there were any more questions for the applicant and hearing none, the Chair called for a motion.

A motion was made by Mr. Guess, with second by Mr. Coleman, to approve the request for a **Sign Variance to allow an illuminated, double-faced, 16” x 30” off-premise directional sign with a corporate logo in a B-2, Neighborhood Business District**, at the above referenced location, subject to the following conditions:

- 1) **the sign be a directional sign, which may include a corporate logo;**
- 2) **the sign may be no more than 15 inches high by 36 inches wide, and no higher than 4 feet above ground level;**
- 3) **submission and approval of a revised PUD for shared access between the two sites;**
- 4) **subject to Traffic Engineering approval; and,**
- 5) **the provision of obtaining a sign permit from the Planning Section.**

The motion carried unanimously.

5504/5455/4686/4646
(Case #ZON2008-02522)

James McAleer

3305 Spring Hill Avenue

East side of Ingate Street, extending from Spring Hill Avenue to Old Carline Street

Parking Ratio Variance to allow 32 parking spaces for an 18,084 square-foot retail showroom and 6-employee warehouse; the Ordinance requires one parking space per 300 square feet for an 18.084 square-foot showroom (61 parking spaces) and one parking space per three warehouse employees (2 parking spaces), for a total of 63 required parking spaces.

The 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.

Patrick Tolbert, Frank A. Dagley and Associates, spoke on behalf of the applicant and apologized for letting the matter expire.

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The Chair noted the applicant's comments and then asked if there were any in attendance who wished to speak on the matter. The Chair noted none and then asked if there were questions for the applicant from the Board. Hearing none, the Chair opened the floor for a motion.

A motion was made by Mr. Graham, with second by Mr. Coleman, to approve the request for a **Parking Ratio Variance to allow 32 parking spaces for an 18,084 square-foot retail showroom and 6-employee warehouse**, at the above referenced location, subject to the following conditions:

- 1) **completion of the Subdivision process;**
- 2) **revision, at the applicant's discretion, of the existing parking area to shift some parking to an expanded new parking area, and replacement of the shifted existing parking spaces with landscaping and directional arrows to create a one-way circulation in the existing parking area;**
- 3) **compliance with the tree and landscaping requirements to be coordinated with Urban Forestry; and,**
- 4) **full compliance with all municipal codes and ordinances for the new construction.**

The motion carried unanimously.

5505/5491

(Case #ZON2008-02528)

Jonathan H. & Kristen W. Rudolph

206 Ridgewood Place

East side of Ridgewood Place, 210'+ North of The Cedars

Side Yard Setback and Combined Side Yards Variances to allow an addition to an existing single-family dwelling to within 5.6' of a side property line with a combined side yard setback of 15.6' in an R-1, Single-Family Residential District; the Ordinance requires a minimum 8' side yard setback with a combined side yard setback of 20' in an R-1, Single-Family Residential District.

The 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. He then stated that if there were those in attendance who wished to speak to please do so at that time. The Chair noted there was no one in attendance for the variance.

A motion was made by Mr. Coleman, with second by Mr. Guess, to hold the matter over until the meeting of December 1, 2008, on the request for **Side Yard Setback and Combined Side Yards Variances to allow an addition to an existing single-family dwelling to within 5.6' of a side property line with a combined side yard setback of 15.6' in an R-1, Single-Family Residential District** at the above referenced location.

The motion carried unanimously.

5506/4711/4661

(Case #ZON2008-02538)

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Team Focus

6110 Grelot Road

Northwest corner of Grelot Road and Macarthur Place Court

Use Variance to amend a previously approved Use Variance to allow a youth outreach community center in an R-1, Single-Family Residential District: the Ordinance requires Planning Approval for a youth outreach community center in an R-1, Single-Family Residential District.

The 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.

Mickey Gottfried, 2600 Charlotte Oaks Drive, Mobile, AL, co-founder of Team Focus, spoke on behalf of the matter and stated they simply requested the use variance as they had moved to a new location that was currently a R-1, Single-Family Residential classified property. She stated that it would be the national office for Team Focus, which had now grown beyond the Mobile, AL, area. She added that there would be some tutoring and summer activities, but primarily it would be office work. She stated there would not be any unsupervised teen activities on the site.

The Chair asked if there were any questions for the applicant. Hearing none, the Chair asked if there were those in attendance who wished to speak on the matter to please do so at that time.

Vicki Florence, 1217 McArthur Place Court, Mobile, AL, stated she didn't have any real opposition to the matter; however, she would like some clarification regarding what would take place on the site.

The Chair had Mrs. Gottfried clarify the matter and then asked her what the hours of operation would be.

Mrs. Gottfried advised the hours would be 8:30 a.m. to 5 p.m. with the occasional evening activity, however, she stated that most of Team Focus' activities were off-site.

Ms. Florence stated that she was comfortable with the explanation regarding the scope of work done at the location. She asked if in the future, should Team Focus move from the site, what would happen to the site.

The Chair stated that when the use that has been granted by variance leaves the site for a period of two years or more, then the variance is no longer in effect and the site would revert to its original Zoning classification, which in this case would be R-1, Single-Family Residential.

The Chair asked if there were any more questions for the applicant or if there were any others who wished to speak on the matter. Hearing none, the Chair called for a motion.

A motion was made by Mr. Coleman, with second by Mr. Guess, to approve the request for a **Use Variance to amend a previously approved Use Variance to allow a youth outreach community center in an R-1, Single-Family Residential District**, at the above referenced location.

The motion carried unanimously.

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5507/5328
(Case #ZON2008-02540)
City Management Company, LLC
805 Church Street

South side of Church Street, 50'± East of South Jefferson Street

Administrative Appeal of a staff determination that the legal non-conforming office/warehousing use (a B-3, Community Business use) has expired for a former commercial site in an R-1, Single-Family Residential District.

The 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 Chair also took time to query the staff regarding the staff report. He stated the staff's position was the time period for appealing the decision had been allowed to expire. The Chair asked if that information was known when the application was made and if so why the application was allowed.

Mr. Palombo stated it was his belief that the applicant wanted to submit both applications.

Upon hearing this, the Chair stated that if the staff allowed it and received payment for it even though they were aware the time period for the appeal had expired, that the appeal should be heard.

The Chair polled the Board on their feelings regarding hearing the matter and all members were in favor of hearing the matter even though it was not filed in a timely manner.

John Peebles, City Management Company, spoke on behalf of the company and stated that it was his understanding that other than the fact the appeal had been filed late, the staff's recommendation for denial stemmed from the fact the building had not been used in its nonconforming status for over two years. He stated the reason for that had been the very public and drawn out case between the company and the City's Architectural Review Board. He reminded the Board that the non-conforming use had existed since 1954 through 2006 and it was only due to the protracted case that the site had gone unused for the two years that lead to the loss of its non-conforming status.

The Chair asked the staff, considering that for over 45 years the property was used for a similar purpose to what the applicant was requesting, what might have been their recommendation regarding that use had the applicant not had to go through the time intensive process just mentioned.

Mr. Palombo said he had no way of knowing that answer as the requested and approved use in 2005 was two apartments and the applicant would now like to see the property used as office space.

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 variance:

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- Celia Lewis, 158 South Jefferson Street, Mobile, AL;
- Marie Dyson, 203 South Dearborn Street, Mobile, AL, member of the Church Street East Historical District;
- Ralph Wilson, Chairman of the Board of Trustees, Big Zion A.M.E. Zion Church; and,
- Jim Maurer, 504 Church Street, Mobile, AL, president, Church Street East Historical District.

They made the following points against the matter:

- A. the applicant had publicly stated that the property in question would not be used in any way as residential property, so why was such being requested;
- B. questions regarding what an Administrative Appeal could grant to the applicant;
- C. the requirements for landscaping and trees needed to be upheld;
- D. requested the Board not approve the Administrative Appeal, but grant the business use variance requested with appropriate conditions;
- E. concern regarding the fact that the church is on the National Historic Register and that the proposed development would have a negative effect on their worship services; and,
- F. since the variance was allowed to expire, did that mean all of the conditions placed upon the property by the City Council were null and void.

Mr. Lawler explained that an Administrative Appeal did not allow for the attachment of conditions regarding approval in the matter; however, if the Board denied the Administrative Appeal and felt lead to approve the variance request on the agenda that day, that approval could be subject to conditions.

Jay Watkins, Armbrecht Jackson Law Firm, spoke on behalf of the applicant in an effort to clarify some of the statements made that day. Mr. Watkins stated that though there had been a variance granted previously, as it was not the variance requested, it was not his opinion that the granting of said variance constituted abandonment of the original non-conforming status, as the granted variance was not what the applicant desired. He stated that his client was not before the Board to argue the conditions placed upon the development by the Architectural Review Board and/or Mobile City Council or to try to change those in any way.

The Chair asked Mr. Lawler for information regarding any statutes that might support either position.

Mr. Lawler advised it was his opinion, which he had made known to the staff, Mr. Peebles, and Mr. Watkins, that when the use variance for apartments was granted, the previous non-conforming use was abandoned creating a need for a variance. He added that he advised all parties that the staff would recommend the approval of said variance, but that the recommended approval would come subject to the submission of a site plan and compliance with such things as the City's Landscaping and Tree ordinances.

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Mr. Watkins confirmed that Mr. Lawler had indeed issued those recommendations, however, Mr. Watkins stated his opposition to Mr. Lawler's opinion.

The Chair stated that as their attorney, Mr. Lawler, had made such recommendations, it would be in the best interested of the Board to follow Mr. Lawler's guidance and counsel in this matter. In stating such, Mr. Cummings then made a motion, with second by Mr. Coleman, to uphold the staff's determination that the legal nonconforming office/warehousing use (a B-3, Community Business use) has expired for a former commercial site in an R-1, Single-Family Residential District at the above referenced location

The decision was based on the fact that, per the Rules of the Board, appeals to the Board of Zoning Adjustment shall be filed within 30 days of the Zoning Administrator's decision, which was on June 18, 2008. Thus, as it has been well over 30 days since the determination was made, this application for appeal should be denied. Furthermore, no information has been provided to justify the granting of said appeal. Section 64-7.A.4. of the Zoning Ordinance states, "*a non-conforming use that has been abandoned or discontinued for a period of two (2) years shall not thereafter be re-established.*" While the site has business license history up through 2006, the most recent Zoning Clearance for this site was issued in 2001; thus, any legal non-conforming status previously linked to this site has long since expired.

The motion carried unanimously.

#5508/5328

(Case #ZON2008-02541)

City Management Company, LLC

805 Church Street

South side of Church Street, 50'± East of South Jefferson Street

Use, Access, Maneuvering, Parking, Landscaping/Tree Planting, and Buffer Variances to amend a previously approved Use Variance to allow office/light warehousing use with undesignated access, maneuvering, and parking, no landscaping or tree plantings, and no residential buffering in an R-1, Single-Family Residential District; the Ordinance requires a B-3, Community Business District for office/light warehousing use, with designated access, maneuvering and parking, appropriate site landscaping and tree plantings, and buffering along adjacent residential properties.

The Chair announced the matter, advising the staff had recommend it be held over until the December 1, 2008, meeting, however, the applicant could address the Board regarding the subject at that time.

The following people spoke in favor of the variance:

- John Peebles, City Management Company; and,
- James Watkins, Attorney at Law, for the applicant.

Mr. Peebles, after hearing the Board's vote on the Administrative Appeal heard immediately before, stated it was his assumption that the Board's action that day vacated the requirements

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imposed upon the development previously by the City Council and asked if that was the opinion of the City's counsel.

Mr. Lawler responded that it was his opinion that the Board's actions were an effort to make sure the applicant complied with those conditions.

Mr. Peebles then asked if Mr. Lawler was willing to stipulate that the only conditions to be imposed by staff would be those previously imposed by the City Council.

Mr. Palombo stated he could not agree to that as there was no site plan for the application, as required, on file.

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 variances:

- Ralph Wilson, Big Zion A.M.E. Church;
- Jim Maurer, Church Street East Historical District;
- David and Lillian Thomas, Big Zion A.M.E. Church; and,
- Marion Harris, Big Zion A.M.E. Church.

They made the following points against the matter:

- A. concern that the use would be counterproductive to the overall character of the neighborhood;
- B. concern that the use would interfere with worship practices and services of the adjacent church;
- C. feelings that everyone who lived in a historic neighborhood should comply with all of the rules and regulations of the Architectural Review Board; and,
- D. concern over the impact that any business might have on the life of the 150 year old Big Zion A.M.E. Church.

Mr. Peebles stated that he would make it clear with any tenant who leased the building that they were not to create any disturbance to the church or any of their functions and that the tenant was to be respectful of the nature and character of the church and the surrounding neighbors at all times.

Mr. Turner addressed the members of Big Zion A.M.E. Church who were in attendance. He stated he had celebrated Thanksgiving several times with the members of Big Zion A.M.E. Church through his membership in Government Street Presbyterian Church. He noted that Big Zion A.M.E. Church was a very beautiful church and that he, in good conscience, would not vote for anything that would be detrimental to the church.

The Chair asked if there were any more discussion on the matter. Hearing none, the Chair called for a motion.

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A motion made by Mr. Cummings, with second by Mr. Coleman, to approve the request for a **Use, Access, Maneuvering, Parking, Landscaping/Tree Planting, and Buffer Variances to amend a previously approved Use Variance to allow office/light warehousing use**, at the above referenced location, subject to the following condition:

- 1) **full compliance with all requirements previously approved by the Mobile City Council (see attached.)**

The motion carried unanimously.

5509

(Case #ZON2008-02545)

Thomas F. Karwinski, AIA

260 North Jackson Street

East side of North Jackson Street, 45' ± South of Congress Street

Access and Frontage Landscaping Variances to allow a 12' wide two-way driveway and provide 802 square feet of frontage landscaping (49.5% of the 12% total site landscaping) in an R-B, Residential-Business District; the Ordinance requires a 24' wide two-way driveway and 972 square feet of frontage landscaping (60% of the 12% total site landscaping) in an R-B, Residential-Business District.

The 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.

Thomas F. Karwinski, architect for the project, spoke on behalf of the owner, Lower Line Properties. He noted the property was located in the DeTonti Square Historic District and previously had three apartments located on the lower level with some type of commercial use on the upper level with no off street parking. The current owner would like the property to have four apartment units/condominiums with off street parking located to the north. He stated that as it would have four dwelling units, it constituted a commercial use for which Traffic Engineering typical required a 24 foot wide apron. He added that the area had a very definite residential character and that the associated driveways were single-laned, thus the reason for requesting the more narrow lanes, which were more in keeping with the residential character of the neighborhood.

The Chair asked if the Traffic Department had concerns regarding the potential stacking issue on the public road, especially as it was a 12 foot wide "one way in/one way out" driveway. He added that if there were ways to have the stacking occur within the site, it would alleviate the Traffic Department's concern and accomplish the developer's objective.

The Chair asked if there were any more questions for the applicant. Hearing none, the Chair called for a motion.

A motion to approve was made by Mr. Cummings, with second by Mr. Guess, on the request for an **Access and Frontage Landscaping Variances to allow a 12' wide two-way driveway and provide 802 square feet of frontage landscaping (49.5% of the 12% total site landscaping) in an R-B, Residential-Business District**, at the above referenced location, subject to the following conditions:

- 1) if a gated entry is provided, the gate must be positioned to allow the stacking of one vehicle (20 feet) within the street curbing and subject property;
- 2) removal of the two existing curb cuts not in use by the proposed development; and,
- 3) completion of the subdivision process prior to the issuance of any permits.

The motion carried unanimously.

5510/1193

(Case #ZON2008-02551)

1601 Dauphin Building Partnership LLP (Gregory Breedlove, Agent)

550 Lesesne Street

Southwest corner of Lesesne Street and Duncan Street

Use, Parking, Landscaping/Tree Planting Variances to amend a previous Use Variance to allow light warehousing storage for law office purposes with no on-site parking, and no landscaping and tree plantings in an R-1, Single-Family Residential District; the Ordinance requires a B-3, Community Business District for light warehousing, all parking to be on-site, 12% total site landscaping with 60% of the 12% to be frontage landscaping with 19 frontage trees in a B-3, Community Business District.

The 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.

John Dukes, Helmsing, Leach, Herlong, Newman, and Rouse Law Firm, 150 Government Street, Mobile, AL, spoke on behalf of the applicant and made the following points in favor of the variance:

- A. in 1960 a variance was granted for commercial use for a pole line hardware and equipment company and continued with that usage for approximately 38 years;
- B. for the past 10 years, it had been used by its current owners as storage for a law office;
- C. the staff has agreed that the site is a commercial warehouse and was not suitable for single family, residential use;
- D. there are concerns from the applicant regarding the condition calling for planting north of the truck well and the west end of the site, and the applicant wanted clarification that the staff meant the area northeast of the truck well, otherwise it would call for the removal of part of their loading area;
- E. due to the size and configuration of the property, the applicant did not realize that the staff was recommending changing the dynamics of the load yard by reconstructing the privacy fence and removing all of the concrete located in the load yard for the purpose of putting a small triangle of green space; and,

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- F. the relocation of the fence behind the setback line would cause the loss of 7.8 feet and negate the whole use of a substantial portion of the load yard.

Mr. Coleman noted the area in question was located in his neighborhood and advised the applicant's representative that anything done in the area needed to be an improvement to current conditions.

Mr. Palombo asked for clarification regarding the maneuvering of vehicles on the property, specifically if trucks backed out into the right-of-way.

Mr. Dukes stated the trucks were backed in.

Mr. Palombo reminded everyone that the variance approved in 1960 was for a pole hardware company to work from the location, with front, side, and rear setbacks. He expressed his opinion that the change of use from hardware to a container facility constituted a significant change that would not warrant the backing out of trucks into the right-of-way.

Mr. Turner noted that there was a significant amount of concrete on the site as well as in the City right-of-way.

Mr. Ladner spoke to the issue of maneuvering, saying it was undesirable, showed the potential for numerous traffic conflicts, and showed an inappropriate use of the City right-of-way.

Mr. Dukes advised that the volume of side street traffic was low and very few of the law firm's employees frequented the location so he was unclear as to the concern regarding traffic conflicts.

Mr. Coleman noted that there was a good bit of traffic on Duncan Street due to the apartment complex located there.

Mr. Dukes noted the fence in question was on the same setback as the building and saw no gain to moving it.

Mr. Whistler reminded the Board that 12 feet was the required side street setback as stated in the Zoning Ordinance.

Mr. Dukes noted that in 1960 the variance on the side yard setback was specifically permitted, hence the current location of the building and the fence.

Mr. Palombo advised that only the building setback variance was permitted at that time.

The Chair commented that the site had been overbuilt since that time and that the site, as it stood currently, would never be permitted by the City. He added that all of this took place prior to the 1967 adoption of the Zoning Ordinance. He also noted that the applicant was using property they did not own to accommodate their parking and maneuverability, the issues the staff had noted in the report.

November 3, 2008

Board of Zoning Adjustment

Mr. Palombo asked that the applicant address the use issue and asked what a law firm needed to store off-site of the actual law firm in off-shore shipping containers and have those remain on the site in question.

Mr. Dukes stated the firm had to provide secure space to store documents, evidence, and other such materials for legal cases being handled by the firm. He said that the applicant's only desire was to be able to continue to use the property as it was currently being used and not expand it to a standard warehouse.

Mr. Palombo said he could understand the need for a variance with regards to landscaping, however, with regards to the storage of the containers on site, he expressed his opinion that the use was not within the definition of warehouse and was actually an industrial use.

Mr. Whistler noted that the allowance of those containers to remain on site was not included in the variance request before the Board that day.

The Chair asked if there was anyone else in attendance that wished to speak on the matter and noted for the record there was no one.

Hearing no further discussion, the Chair called for a motion.

A motion was made by Mr. Guess, with second by Mr. Graham, to approve the request for a **Use, Parking, Landscaping/Tree Planting Variances to amend a previous Use Variance to allow light warehousing storage for law office purposes with no on-site parking, and no landscaping and tree plantings in an R-1, Single-Family Residential District** at the above referenced location.

The motion failed with Mr. Cummings, Mr. Graham, and Mr. Guess voting in favor and Mr. Coleman and Mr. Turner voting in opposition.

OTHER BUSINESS:

There being no further business, the meeting was adjourned.

APPROVED: April 5, 2010

Chairman of the Board

/jsl