

BOARD OF ZONING ADJUSTMENT MINUTES
MEETING OF DECEMBER 6, 2010 - 2:00 P.M.
MOBILE GOVERNMENT PLAZA, MULTI-PURPOSE ROOM

MEMBERS PRESENT

William Guess
Vernon Coleman
Sanford Davis
Adam Metcalfe
Russell Reilly*
*supernumerary member

MEMBERS ABSENT

Reid Cummings, Chairman
J. Tyler Turner*

STAFF PRESENT

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

OTHERS PRESENT

John Lawler, City Attorney
Butch Ladner, Traffic Engineering
Gerard McCants, Urban Forestry

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

CALL TO ORDER:

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. He advised that it would require all four members present to vote in the affirmative to approve any variance and then called the meeting to order.

HOLDOVERS:

#5634/5616

(Case #ZON2010-02277)

Apostolic Overcoming Holy Church of God

2257 St. Stephens Road

(West side of St. Stephens Road, extending from Vetter Street to Allison Street, and Northeast corner of St. Stephens Road and Dickens Avenue).

Parking Ratio, Parking Surface and Off-Site Parking Variances to allow a total of 214 parking spaces for an existing 905-seat sanctuary and 8-bed domiciliary care facility and grass parking on-site in a B-1, Buffer Business District, and expanded off-site parking in a B-3, Community Business District; the Zoning Ordinance requires a minimum of one parking space per four seats for a sanctuary and one space per four beds for a domiciliary care facility (229 total spaces) and parking surfaces to be asphalt, concrete, or an approved alternative paving surface in a B-1, Buffer Business District, and non-conforming off-site parking expansion is not allowed in a B-3, Community Business 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 following people spoke on behalf of the application:

December 6, 2010
Board of Zoning Adjustment

- Joseph Cleveland, Joseph Cleveland Architects, 1102 Dauphin Street, Suite B, Mobile, AL, on behalf of the applicant; and,
- Bishop Ayers, International presiding prelate of the Apostolic Overcoming Holy Church of God, headquartered in Mobile, AL.

They made the following points in favor of approving the matter:

- A. Noted the church was expanding its presence in the community and had previously been granted a variance to create a multi-purpose building;
- B. The previous variance had allowed the church to have off premise parking as well as parking that was not paved;
- C. Noted that based upon the request regarding parking made by the City's Traffic Engineering Department that the parking spaces by nine feet wide, the site came up short for parking spaces by 14;
- D. Noted that across the street from the site, on Allison Street, there were about 15 on street parking spaces that the church could use when in session;
- E. Noted that the birthplace for the Apostolic Overcoming Holy Church of God was Mobile, AL, under Bishop W.T. Phillips, in 1916; and,
- F. Noted that at that time parking spaces were eight and a half feet wide when they were created so that with the new code requirements, they lost the 14 required.

Mr. Coleman asked if the staff had any approval conditions prepared.

Mr. Palombo stated that if the Board was considering approving the matter that the staff would ask that full compliance with all municipal codes and ordinances be made a condition of that approval.

Mr. Davis recognized the good work that the Apostolic Overcoming Holy Church of God under the leadership of Bishop Ayers had done in the Roger Williams community.

Hearing no opposition or further discussion, a motion was made by Mr. Coleman, with second by Mr. Davis, to approve the Request for Parking Ratio, Parking Surface and Off-Site Parking Variances to allow a total of 214 parking spaces for an existing 905-seat sanctuary and 8-bed domiciliary care facility and grass parking on-site in a B-1, Buffer Business District, and expanded off-site parking in a B-3, Community Business District, subject to the following condition:

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

The motion carried unanimously.

December 6, 2010
Board of Zoning Adjustment

#5635

(Case #ZON2010-02290)

Eddie Spence

2540 Old Shell Road

(Northeast corner of Old Shell Road and North Florida Street).

Sign Variance to allow a total of three wall signs for a single corner tenant with frontage on two streets in a multiple-tenant commercial site in a B-2, Neighborhood Business District; the Zoning Ordinance allows one wall sign per street frontage the tenant faces for a multiple-tenant commercial site in a B-2, Neighborhood Business 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.

Pamela Shield, 2540 Old Shell Road, Mobile, AL, spoke on behalf of the applicant and made the following points in favor of approval:

- A. Noted that there were eight other Shrimp Basket restaurants and that part of their branding was the use of the awning with lettering at each location; and,
- B. Noted that since the Deep Horizon Oil Spill incident, the restaurants had seen a decrease in the amount of shrimp sold so they were dependant on being able to tell customers that the restaurants sold chicken, fish, and other things.

Mr. Guess noted that from the pictures the awning did not carry the Shrimp Basket name but only things that were considered menu items.

Ms. Shields stated that “Shrimp Basket” existed as back lit, 3-D letter signage on the face of the building, but that the awning existed specifically to advertise that they sold more than shrimp.

Mr. Guess noted that the awning was still not permitted.

Mr. Palombo stated that the site did have the Shrimp Basket logo located somewhere else on the building face. He added that the item requested would be a canopy that listed gumbo, pasta, and other items they sold on the face of said canopy, which the staff considered to be a third sign on the site. He noted on the over head the locations of all of the signs and stated they were allowed one wall sign.

Mr. Guess noted that he remembered that the location had previously been approved for some type of signage out at the sidewalk and wondered how those were being utilized.

Mr. Palombo stated that the strip had some two foot in diameter circle signs that were allowed in the right-of-way. He noted that some of the other tenants did use those signs but that it was unclear if the applicant was using said signage. He then reminded the Board that those were free standing signs and the matter before them was for wall signs.

Mr. Metcalfe addressed the issue of logo on the signs noting that based upon what he saw as proposed, the applicant would simply be using menu items on the awning and not the restaurant’s name, which would be much like a gas station having signage that stated they had

December 6, 2010

Board of Zoning Adjustment

gas, food, and such. He then asked if this was a retro-active request with the signage already in place.

Mr. Palombo stated that the signage was proposed and awaiting approval by the Board and not currently in place. He also reminded the Board that though the restaurant occupied the corner of the strip, the site was multi-tenant, so they were only allowed the one wall sign.

Hearing no opposition or further discussion, a motion was made by Mr. Coleman, with second by Mr. Metcalfe, to approve the Sign Variance to allow a total of three wall signs for a single corner tenant with frontage on two streets in a multiple-tenant commercial site in a B-2, Neighborhood Business District, subject to the following condition:

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

The motion carried unanimously.

EXTENSIONS:

#5613

(Case #ZON2010-00956)

Board of Water and Sewer Commissioners of the City of Mobile

East side of Shelton Beach Road Extension, 2/10 mile± North of Moffett Road.

Use, Buffer and Parking Surface Variances to allow a contractor's storage yard in a B-3, Community Business District (rezoning pending), with a partially open buffer fence and gravel equipment parking surface; the Zoning Ordinance requires I-1, Light Industry District, for a contractor's storage yard, with the storage area to be completely enclosed with an 8' high wall or fence, and the equipment parking area to be paved in asphalt, concrete, or an approved alternative paving surface.

The Chair announced the matter, advising it had been recommended for approval and that anyone who wished to speak should address the Board regarding the subject at that time.

Ray Miller, Volkert & Associates, P.O. Box 7434, Mobile, AL, spoke on behalf of the applicant and noted that the matter had been approved previously and that they were simply asking for an extension of said variance to allow them time to put the project out for bid, as required, and then pull the appropriate permits.

Mr. Guess asked for an approximate time frame for such.

Mr. Miller advised that he believed that six months would be appropriate for now.

Mr. Palombo asked for a time line with regards to construction.

Mr. Miller advised they hoped to issue the bid advertisements during the first quarter of the year, approximately the Spring of 2011 and break ground within a month of approval of the bid. He noted that the advertising process usually took three to four weeks, with two to four weeks to award the bid, with an additional couple of weeks for the contractor to sign, so sometimes the whole process could take three to six months.

December 6, 2010

Board of Zoning Adjustment

Hearing no opposition or further discussion, a motion was made by Mr. Coleman, with second by Mr. Metcalfe, to approve the requested extension of the Use, Buffer and Parking Surface Variances to allow a contractor's storage yard in a B-3, Community Business District (rezoning pending), with a partially open buffer fence and gravel equipment parking surface; the Zoning Ordinance requires I-1, Light Industry District, subject to the following condition:

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

The motion carried unanimously.

PUBLIC HEARINGS:

#5637/3172

(Case #ZON2010-02358)

Nephrology Associates Real Estate, LLC

124 South University Boulevard

(West side of South University Boulevard, 270'± North of Bit and Spur Road).

Side Yard Setback Variance to allow the construction of canopy within 1'-3" of a side property line in a B-1, Buffer Business District; the Zoning Ordinance requires a 5' side yard setback for structures in a B-1, Buffer Business 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.

Harry Bishop, Clinic Administrator, Nephrology Associates, 124A South University Boulevard, Mobile, AL, spoke on behalf of his organization and made the following points for approval:

- A. noted that the organization purchased the building and property within the last year and it had undergone some very extensive renovations;
- B. noted that at present there was no canopy or shelter from the elements at the entrance of the building for patients, family members, or others who might have ambulatory issues;
- C. noted that currently the handicapped access to the building meant that patients had to travel a great deal around the building to get in, which created a difficulty for those patients;
- D. noted they were installing a handicapped ramp parallel to the building so that patients would be much closer to the front parking;
- E. noted that the veterinarian at the adjacent Bit & Spur Animal Hospital had written a letter supporting the matter;
- F. noted that creating a covered handicapped parking space would only allow for one client to be out of the elements at a time and due to the nature of their business, needed to be able to provide a covered entrance way that was accessible to all; and,
- G. noted that stormwater from the roof would be directed by gutters to piping that would take it to a storm drain.

December 6, 2010

Board of Zoning Adjustment

Mr. Guess noted from driving past the site that work seemed to have already begun on the project and asked if permits had been issued for the same.

Mr. Bishop advised they had not been pulled and recognized that would have to be done.

Mr. Palombo noted that if the Board was considering approving the matter that the staff would like conditions for that approval to include the illustration of the dumpster pad on the site as well as full compliance with all municipal codes and ordinances.

Mr. Guess asked if Traffic Engineering had any comments to make on the matter.

Mr. Ladner asked if the parking shown was currently in existence.

Mr. Bishop stated that it was.

Mr. Ladner noted that his department would like assurances that there was adequate space to back up in the parking aisle located on the property. He also noted that the radius at University Boulevard needed to be improved and that the exit for the site needed to be clearly marked as a one way exit.

Mr. Metcalfe noted that it had been the Board's past practice that when an applicant came in for a variance and that the situation requiring the variance was already in place without benefit of permits, that Board stipulated in the conditions for approval a penalty equal twice the additional permit fee in addition to permitting.

Mr. Guess asked what had been the previous uses for the building.

Mr. Bishop noted it had been vacant for several years but had previously been used as an orthopedic office. He also noted that part of the second building had been used as an insurance agency and an office in the telephone communication industry. He stated that currently the other half of the building was home to a LabCorp office.

Mr. Guess asked if there were any canopies in place currently to protect the walkways.

Mr. Bishop noted there was a covered breezeway.

Hearing no opposition or further discussion, a motion was made by Mr. Metcalfe, with second by Mr. Coleman, to approve the Side Yard Setback Variance to allow the construction of canopy within 1'-3" of a side property line in a B-1, Buffer Business District, subject to the following conditions:

- 1) illustration of the dumpster pad on the site plan;**
- 2) doubling the permit fee due to starting of the project prior to the issuance of permit by Urban Development;**
- 3) coordination with Traffic Engineering on the issue of circulation; and,**
- 4) full compliance with all other municipal codes and ordinances.**

The motion carried unanimously.

December 6, 2010
Board of Zoning Adjustment

#5638

(Case #ZON2010-02399)

Stratford LLC

North side of Grelot Road, 160'± West of Chimney Top Drive West.

Use and Parking Surface Variances to allow a contractor's storage yard and helicopter landing/refueling pad with gravel vehicle parking in a split-zoned B-1, Buffer Business District, and LB-2, Limited Neighborhood Business District, in support of construction of an electric transmission line; the Zoning Ordinance does not allow a contractor's storage yard in a B-1, Buffer Business District, or an LB-2, Limited Neighborhood Business District, and a helipad as an accessory use to commercial facilities requires Planning Approval in a B-1, Buffer Business District, and is not allowed in an LB-2, Limited Neighborhood Business District, and all vehicle parking surfaces must be asphalt, concrete, or an approved alternative paving surface in such districts.

The Chair announced the matter, advising it had been recommended for approval, with conditions, and that anyone who wished to speak should address the Board regarding the subject at that time.

Ruffin Graham, 6451 Merritt Boulevard, Suite B, Daphne, AL, spoke on behalf of the applicant and noted the project had already been completed and there was no longer a need for the use and parking surface variances.

Mr. Palombo advised the Board that the work to utilize the property in the fashion requested was indeed done, and done so without benefit of the necessary permits. He noted that it needed to be approved so that the applicant would have to pay for those permits after the fact.

Hearing no further opposition or discussion, a motion was made by Mr. Guess, with second by Mr. Coleman, to approve the Use and Parking Surface Variances to allow a contractor's storage yard and helicopter landing/refueling pad with gravel vehicle parking in a split-zoned B-1, Buffer Business District, and LB-2, Limited Neighborhood Business District, in support of construction of an electric transmission line; the Zoning Ordinance does not allow a contractor's storage yard in a B-1, Buffer Business District, or an LB-2, Limited Neighborhood Business District, subject to the following conditions:

- 1) helicopter approach and departure patterns are restricted so that no flights with equipment lifts are made over any developed properties, or at least structures thereon;**
- 2) aircraft fuel tanks and/or fuel trucks are to be located as far to the West side of the landing pad as possible to minimize any damage from fire or explosion to the residences along the East side of the site;**
- 3) helicopter flight operations are to be limited to the time frame of 7:00 AM to 6:00 PM to minimize noise intrusion into surrounding neighborhoods;**
- 4) obtaining of all necessary permits after-the-fact for land disturbance already completed without permits;**
- 5) obtaining of all necessary permits for further land disturbance activities;**

December 6, 2010

Board of Zoning Adjustment

- 6) the site is not to be used for its proposed purposes until November 17th, at the earliest, to allow for a Circuit Court appeal by aggrieved parties, if the variance is approved; and,
- 7) full compliance with all other municipal codes and ordinances.

The motion carried unanimously.

#5639

(Case #ZON2010-02413)

Bishop Lane, LLC

702 Bishop Lane North

(East side of Bishop Lane North, 200'± South of Spring Hill Avenue).

Off-Site Parking Variance to allow twelve additional parking spaces off-site for an existing office complex in a B-1, Buffer Business District; the Zoning Ordinance requires all parking spaces be on-site for businesses in a B-1, Buffer Business District.

The Chair announced the matter, advising it had been recommended for approval, with conditions, and that anyone who wished to speak should address the Board regarding the subject at that time.

Frank Dagley, 717 Executive Drive, #A, Mobile, AL, spoke on behalf of the applicant. He noted that the application was for off site parking for a doctor's office. He stated that the doctor had adequate on site parking but that the site was to be used for overflow parking.

Mr. Ladner asked that the site be subject to Traffic Engineering's requirements as a condition of approval.

Hearing no opposition or further discussion, a motion was made by Mr. Coleman, with second by Mr. Metcalfe, to approve the Off-Site Parking Variance to allow twelve additional parking spaces off-site for an existing office complex in a B-1, Buffer Business District, subject to the following condition:

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

The motion carried unanimously.

#5640/5506/4711/4661

(Case #ZON2010-02459)

Jim Barnes Enterprises, Inc.

6110 Grelot Road

(Northwest corner of Grelot Road and Macarthur Place Court).

Use Variance to allow general offices in an R-1, Single-Family Residential District; the Zoning Ordinance requires B-1, Buffer Business District, for general offices.

The Chair announced the matter, advising it had been recommended for approval, with conditions, and that anyone who wished to speak should address the Board regarding the subject at that time.

December 6, 2010

Board of Zoning Adjustment

John Vallas, Vallas Realty, 165 West I-65 Service Road North, Mobile, AL, spoke on behalf of the applicant and made the following points:

- A. the site was zoned R-1 but was originally developed as a funeral home site in 2000 and granted a use variance for the same at that time;
- B. in 2008, the use variance was amended so the property could be used for youth ministry after it was purchased by Teen Focus;
- C. the property was currently under contract to be bought by Barnes Enterprises, a McDonald's restaurant franchisee, for use as their corporate offices;
- D. noted that Barnes Enterprises had four full time office personnel but that the site would have a number of people come and go from it on a weekly basis, with an approximate total of 50 visitors at any given time;
- E. noted that based upon the former uses, the proposed traffic to the site was significantly less; and,
- F. noted the reason for the variance request was due to the east property line being along MacArthur Place Court, as it was a thoroughfare into that neighborhood and it was felt by staff that a variance was more appropriate than rezoning the property to B-1.

Mr. Metcalfe noted that though the application was valid, he felt rezoning the property to B-1 would have been the better idea and suspected that might have to be done at a later date.

Mr. Vallas said that at this time the variance was the better option but they had not completely negated rezoning the property at a later date.

Hearing no opposition or further discussion, a motion was made by Mr. Metcalfe with second by Mr. Davis, to approve the Use Variance to allow general offices in an R-1, Single-Family Residential District, subject to the following condition:

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

The motion carried unanimously.

#5641

(Case #ZON2010-02464)

Wrico Signs

5441 US Highway 90 West

(East side of US Highway 90 West, 580' ± North of Coca-Cola Road).

Sign Variance to allow an existing nonconforming freestanding sign structure at a multi-tenant commercial site containing 608.5 square feet ± of signage per face to be relocated and maintain the same square footage in a B-3, Community Business District; the Zoning Ordinance requires nonconforming freestanding sign structures at multi-tenant commercial sites to be brought into compliance with the allowable square footage of signage (1 square foot of signage per linear foot of street frontage, with a maximum of 350 square feet per face) when relocated in a B-3, Community Business District.

December 6, 2010

Board of Zoning Adjustment

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.

Doug Anderson, Burr and Foreman Law Firm, 11 North Water Street, Suite 22200, Mobile, AL, spoke on behalf of the applicant and made the following points for approval:

- A. Noted that the property had been annexed into the city after the current sign was built;
- B. Noted that a short time later, an out-of-state developer contacted the property owners and wanted to build a Kentucky Fried Chicken restaurant on the site, which resulted in the subdivision of the property;
- C. The existing sign needed to be move approximately 50 feet to the north to keep it on the shopping center owner's property, however, to do so would mean that the sign was located right in front of exit for the restaurant's drive-thru and take up at least one parking space in that area;
- D. Noted that relocating the sign would also allow the owners to reduce the size of the foundation and reinforce it to a degree that it would be in compliance with current wind load standards;
- E. Noted that while the staff report was correct in stating that the sign could remain without a variance, doing so would not allow the Kentucky Fried Chicken restaurant to have signage;
- F. Noted the shopping center's owner could not simply tear down the current sign and build a new one as they were contractually obligated to have signage in place for the number of tenants on the site as that would require the new sign comply with the current city sign ordinance;
- G. Noted that the staff report stated the hardship was self-imposed but felt that was incorrect as the site owner had the shopping center and the signage in place prior to the annexation and had provided signage to the tenants without benefit of the City of Mobile's sign ordinance and it was through no choice of the site owner that they were now governed by that sign ordinance; and,
- H. Expressed the opinion that the argument for the Moonpie signage on the Bank Trust Bank Building, which was recommended for approval, was the same argument for the application before the Board at that moment, so if one were approved then the other should be approved as well.

Mr. Palombo added that if the shopping center site had an addition 50 feet it would have been allowed two free standing signs by right and expressed that the staff would have no problem with the Board approving the matter, if that should be their choice.

Mr. Guess recognized the presence and support of the matter by Mr. John Williams, District 4 Councilperson.

December 6, 2010
Board of Zoning Adjustment

Hearing no opposition or further discussion, a motion was made by Mr. Metcalfe, with second by Mr. Davis, to approve the Sign Variance to allow an existing nonconforming freestanding sign structure at a multi-tenant commercial site containing 608.5 square feet ± of signage per face to be relocated and maintain the same square footage in a B-3, Community Business District, subject to the following condition:

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

The motion carried unanimously.

#5642

(Case #ZON2010-02455)

Lyman Ramsay (Gulf Equipment Company)

5540 Business Parkway

(Northwest corner of Kooiman Road and Business Parkway).

Use and Parking Surface Variances to allow a contractor's storage yard with gravel equipment parking in a B-5, Office-Distribution District; the Zoning Ordinance does not allow a contractor's storage yard and equipment parking areas must be paved with asphalt, concrete, or an approved alternative paving surface in a B-5, Office-Distribution 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.

Don Williams, Williams Engineering, 6300 Piccadilly Square Drive, Mobile, AL, spoke on behalf of the applicant and made the following points for approval:

- A. noted the need and desire to expand their business to a location across the street;
- B. noted they currently had a trailer located on the current office property which indicated the real need for more interior office space;
- C. noted they simply wanted to duplicate the current conditions on the opposite side of the road, while keeping their present offices and storage space;
- D. noted that they would be installing an eight foot high privacy fence on the new site and that none of their materials was currently over that height nor did they anticipate receiving any materials that would be over that height;
- E. noted that the site would not be the home for larger equipment as that was housed at another location in the county;
- F. noted the storage would be for middle material for cell towers and the cable launch spools;
- G. noted their business was much quieter than other businesses in the area and sited such organizations as Shaw Industries and GE Power Systems; and,

December 6, 2010

Board of Zoning Adjustment

H. expressed the feelings that the hardship was brought about by the area being annexed into the City of Mobile.

Mr. Guess asked, with regards to the Parking Surface Variance, why the applicant wished to use gravel and not asphalt, since the site would not have heavy equipment on it, which was the usual basis for such a request.

Mr. Williams advised the current site was gravel and it had been determined that gravel was an easier surfacing material with regards to the storage of cable spools as they tended to sink in asphalt when it got hot. He added that the applicant could agree to asphalt surfacing if necessary.

Mr. Metcalfe asked if all portions of the fence would be privacy fencing and the location of the gate.

Mr. Williams advised it would all be eight foot high privacy fencing as recommended by the staff. He noted that the gate would be located on the north side of the property.

Mr. Guess asked if there were drainage issues associated with this property.

Mr. Williams stated there were none and that they would actually provide another storm drainage retention pond due to the expansion and that would be located between the building and the street.

Hearing no opposition or further discussion, a motion was made by Mr. Coleman, with second by Mr. Metcalfe, to approve the Use and Parking Surface Variances to allow a contractor's storage yard with gravel equipment parking in a B-5, Office-Distribution District, subject to the following condition:

- 1) **storage of equipment associated with telecommunications towers only;**
and,
- 2) **full compliance with all other municipal codes and ordinances.**

The motion carried unanimously.

#5643/5040

(Case #ZON2010-02531)

Crown Communication Inc.

2007 Nicholas Lane

(Southwest corner of Nicholas Lane and Dauphin Island Parkway).

Use, Height, Setback, Separation Buffer, and Access Variances to allow a 156-foot high monopole communications tower (already constructed) in an R-1, Single Family Residential District, within 34 feet of a lease parcel line and within 68 feet of another residentially zoned property, and with aggregate accessways and no designated parking; the Zoning Ordinance does not allow communications towers in R-1, Single Family Residential Districts, and requires a minimum setback from the lease parcel line of 156 feet, a minimum separation buffer of 234 feet from another residentially zoned property, and requires adequate accessways and parking paved with either asphalt or concrete.

December 6, 2010

Board of Zoning Adjustment

The Chair announced the matter, advising it had been recommended for approval, with conditions, and that anyone who wished to speak should address the Board regarding the subject at that time.

Susan Holmes, 197 Charmant Drive, Suite 2, Ridgeland, MS, spoke on behalf of the applicant. She recognized that in 2001 the tower had inadvertently been built to 150 feet rather than the permitted 145 feet. She presented a letter from Fulton Road Baptist Church, who owned the property where the tower was located, stating they had no problem with the tower remaining as it was.

Mr. Palombo stated this happened frequently and the City trusted the contractors to build according to their plans, however, that did not always take place. He noted that they often came back and added such things as lighting rods which added to the tower's height as well.

Ms. Holmes asked when additions happened that went over the specified height, were they required to get each of those re-permitted.

Mr. Palombo advised yes, that must be done.

Hearing no opposition or further discussion, a motion was made by Mr. Coleman, with second by Mr. Davis, to approve the Use, Height, Setback, Separation Buffer, and Access Variances to allow a 156-foot high monopole communications tower (already constructed) in an R-1, Single Family Residential District, within 34 feet of a lease parcel line and within 68 feet of another residentially zoned property, and with aggregate accessways and no designated parking was approved, subject to the following condition:

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

The motion carried unanimously.

#5644/4775/4631/1836

(Case #ZON2010-02598)

Goodwyn, Mills & Cawood for Retirement Systems of Alabama

107 St. Francis Street

(South side of St. Francis Street between St. Joseph Street and North Royal Street).

Sign Number, Sign Size, and Off Premise Sign Variances to allow a 100 square foot address sign, eight (8) tenant signs with a total of 1,554 square feet including one roof-mounted sign, and a 103.8 square foot off-premise advertising sign on a multi-tenant building in a B-4, General Business District and also in the Lower Dauphin Historic District; the Zoning Ordinance allows one wall sign up to a maximum of 64 square feet per tenant, requires that building address signs be no larger than one (1) square foot, and does not allow any off premise signage or roof-mounted signs in a Historic District.

The Chair announced the matter, advising it had been recommended for approval, with conditions, and that anyone who wished to speak should address the Board regarding the subject at that time.

December 6, 2010

Board of Zoning Adjustment

Tracy Bassett, 11 North Water Street, Mobile, AL, spoke on behalf of the Retirement Systems of Alabama, agreed with the staff recommendations and noted the off premise sign variance was for the signage associated with the City's Moonpie drop which took place on New Year's Eve.

Mr. Metcalfe asked how the Moonpie would descend and ascend and the safety associated with the same.

Mr. Bassett noted there were large diameter cables involved, with one in the center of the Moonpie which actually raised and lowered it. He added the two on either side of the Moonpie anchored it so it did not act like a sail, allowing it to "track" between them on its 60 second journey from the top of the building to the top of the parking deck below.

Mr. Guess noted the site was within one of the City's historical districts and asked if the project had received Architectural Review Board approval.

Mr. Palombo stated it had such approval.

Hearing no opposition or further discussion, a motion was made by Mr. Coleman, with second by Mr. Reilly, to approve the Sign Number, Sign Size, and Off Premise Sign Variances to allow a 100 square foot address sign, eight (8) tenant signs with a total of 1,554 square feet including one roof-mounted sign, and a 103.8 square foot off-premise advertising sign on a multi-tenant building in a B-4, General Business District and also in the Lower Dauphin Historic District, subject to the following condition:

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

The motion carried with Mr. Reilly voting for Mr. Guess, who abstained due to his being a member of the Retirement Systems of Alabama as a State employee.

#5645

(Case #ZON2010-02604)

Joseph Wayne Smith and Mimi Michelle Smith

451 Harding Boulevard Extension (private road)

(Northern terminus of Harding Boulevard Extension).

Use Variances to allow two (2) dwelling units on a single building site and to allow a mobile home as a dwelling without Planning Commission Approval in an R-1, Single Family Residential District; the Zoning Ordinance only allows one dwelling unit per lot and requires mobile homes used as dwellings to receive approval from the Mobile City Planning Commission.

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.

Joseph Smith, 451 Harding Boulevard, Mobile, AL, spoke on his own behalf. He stated that he and his wife lived on the property which was owned by his family. He added that his mother, Judy Nicholas, wanted a mobile home located on the trailer so that she could live there and be cared for by her son and his wife.

Mr. Guess asked if the mobile home had already been moved to the site.

December 6, 2010
Board of Zoning Adjustment

Mr. Smith said it had.

Mr. Coleman wanted to know if the mobile home was properly anchored in place and if the area in question had recently been annexed into the city.

Mr. Smith stated the mobile home was properly anchored and tied down.

Mr. Palombo stated that the property was part of an area that had been recently annexed. He also noted there were two other residences on the site.

Mr. Smith responded that one was his mother's house and one was his grandfather's house.

Hearing no other questions for the applicant, Mr. Guess opened the floor for anyone in favor of the application to speak.

Cynthia Driscoll of Grand Bay, AL, spoke on the matter. She stated that her grandparents had purchased the original 80 acre parent property over 100 years ago and that over time some of the land had been sold off. She stated that there were currently two home sites on that property with one of them owned by Mr. Nicholas, the 93 year old son of the original owners. She noted she held his power of attorney as he was dying. She stated that his daughter-in-law, Judy Nicholas, mother of Mr. Smith, lived on the adjacent property to her elderly uncle. She also advised that when Mr. Nicholas passed away, his house and property would be left to Ms. Nicholas. She stated that in her opinion the trailer did not devalue the property and that it was simply a case of family needing to be able to take care of family.

Mr. Guess asked if anyone else wished to speak in favor or against the proposal and none was heard.

Mr. Metcalfe asked the staff how large was the property in question and if it was a legal lot of record.

Mr. Palombo stated that he did not know if it was a legal lot of record due to the age of the parent parcel and that it appeared to be approximately an acre.

Mr. Metcalfe noted that based upon that information it appeared to be an acre within an 80 acre parcel and that acre had no legal right-of-way.

Mr. Palombo stated that instead of a legal right-of-way, the property owners in question had probably been granted an easement of some form.

Mr. Metcalfe noted that it appeared to have access via a dirt driveway. He then asked whether the family still owned the surrounding 80 acres.

Ms. Nicholas stated that all of the acreage, with the exception of the home site, had been sold some 20 years prior.

December 6, 2010

Board of Zoning Adjustment

Mr. Palombo noted there were serious issues with developing any more of the 80 acre parent parcel as there was no legal access to the small, child parcel so it could not be subdivided without building some roads.

Mr. Smith noted that White-Spunner Associates had purchased the 80 acres and had given them a letter granting the Nicholas family easement to their property.

Mr. Palombo asked that if the Board were leaning towards approving the matter, the staff would like to impose a condition that if the property were ever subdivided or the trailer not lived in, that said trailer be removed.

Mr. Metcalfe asked if the matter were approved and that the larger parcel was subdivided would the trailer have to be removed from the site as it was in violation of the Zoning Ordinance or would it be able to remain, enjoying non-conforming status.

Mr. Lawler, the Board's attorney, responded it would maintain its non-conforming status, and though at this juncture, it did not have a major impact on the property around it, in the future it definitely could. He also brought up the fact that variances were supposed to be granted for hardships associated with the land, not personal hardships, but with all things considered, it looked like granting the variance for a few years would be reasonable under the circumstances.

Mr. Metcalfe expressed his belief that the Board was trying to keep from setting a precedent regarding mobile homes and newly annexed areas that they would not like to see duplicated later. He did note that the property was not part of a subdivision but simply a piece of property under separate ownership contained within its parent tract. He stated that fact could be enough to prevent others from using their ruling to allow mobile homes in areas haphazardly. He offered that he felt comfortable approving the matter on the condition that it be reviewed within a certain time frame and asked the Board for their feelings on said time frame.

Mr. Guess noted that with churches doing missionary work, the Board had allowed them with a two year time period under the understanding that at the end of that two year period it would be removed or they would come back to the Board for an additional variance or an extension of the current variance. Mr. Guess then asked Mr. Smith if he understood and agreed to the Board's recommendation.

Mr. Smith asked how often they would have to come back regarding the variance and was advised every two years unless circumstances changed.

Hearing no opposition or further discussion, a motion was made by Mr. Metcalfe, with second by Mr. Davis, to approve the Use Variances to allow two (2) dwelling units on a single building site and to allow a mobile home as a dwelling without Planning Commission Approval in an R-1, Single Family Residential District, subject to the following conditions:

- 1) the variance be approved for two years, then the applicant remove the mobile home or seek another variance; and,**
- 2) full compliance with all other codes and ordinances.**

The motion carried unanimously.

December 6, 2010
Board of Zoning Adjustment

#5646

(Case #ZON2010-02644)

Ben Cummings for Glenwood Investors, LLC

2101 Airport Boulevard and 306 Glenwood Street

(South side of Airport Boulevard between Glenwood Street and Mohawk Street)

Parking Ratio Variance to allow a 13,378 square foot retail antiques store and a 3,426 square foot restaurant on a site with 41 parking spaces provided; the Zoning Ordinance requires a minimum of 79 parking spaces on the site.

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 following people spoke in favor of the matter:

- Ben Cummings, Cummings and Associates, 1 Houston Street, Mobile, AL; and,
- Marl Cummings, Cummings and Associates, 1 Houston Street, Mobile, AL, both on behalf of the applicant.

They made the following points in favor of approving the matter:

- A. noted that the property had been the location of both an antique shop and a restaurant for a number of years;
- B. noted that there were a number of small businesses and restaurants that “shared” small spaces and that the general public seemed to be very accepting of this;
- C. noted that the co-existence of such businesses was the character of the neighborhood;
- D. noted that the hardship was that the past and current use of the property by both commercial ventures simply did not meet the requirements as stated in the Zoning Ordinance;
- E. noted that both buildings in question and their uses were in existence prior to the adoption of the City’s Zoning Ordinance; and,
- F. noted that the property could not physically accommodate the necessary parking, as stipulated in the Ordinance, which was part of the hardship.

Mr. Guess asked if both of the businesses in question were owned by the same individuals.

Mr. Cummings noted that all of the property was owned by the same entity.

Mr. Metcalfe asked the proposed seating capacity of the restaurant in question.

Mr. Cummings advised he did not know that figure.

Mr. Metcalfe then asked if it was known how the non-restaurant tenant felt regarding the matter.

Mr. Cummings stated that he had been told that the owners of the antique store had stated they were thrilled to have what was to be known as the Cannon Grill in that location.

December 6, 2010

Board of Zoning Adjustment

Mr. Metcalfe asked if there were potential traffic issues and if a Traffic Impact Study had been done.

Butch Ladner, City of Mobile Traffic Engineering, stated there were no issues that he was aware of and that if the application only applied to the site as it currently stood, his department had no issues with granting the variance. He added that should they make improvements to the site that would affect curb-cuts, surfacing, or other traffic related issues, the applicant would need to see the Traffic Engineering Department for approval.

Mr. Palombo noted that if the Board were leaning in favor of approving the matter, the staff would like to add the condition of full compliance with all municipal codes and ordinances.

Hearing no opposition or discussion, a motion was made by Mr. Coleman, with second by Mr. Reilly, to approve the Parking Ratio Variance to allow a 13,378 square foot retail antiques store and a 3,426 square foot restaurant on a site with 41 parking spaces provided, subject to the following condition:

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

The motion carried unanimously.

#5647

(Case #ZON2010-02650)

Shivram S. Dasappa

602 Bishops Lane North

(East side of Bishops Lane North, 58' ± North of Broadway Drive).

Side Yard Setback Variance to allow an addition to be constructed within 5.42 feet of a side property line with a side yard sum of 14.75 feet on a 58 foot wide lot in an R-1, Single Family Residential District; the Zoning Ordinance requires a minimum side yard of eight (8) feet and a side yard sum of 19.3 feet for a 58 foot wide lot.

The Chair announced the matter, advising it had been recommended for approval and that anyone who wished to speak should address the Board regarding the subject at that time.

Shivram Dasappa, 602 Bishops Lane North, Mobile, AL, spoke on his own behalf.

Mr. Guess noted to the applicant that the staff had recommending approving the matter and asked if the project had already been started.

Mr. Dasappa stated that it had not been started.

Mr. Lawler wanted it noted for the record the Board's appreciation of the applicant doing the project the correct way and asking of approval of the matter prior to beginning said project.

Mr. Palombo noted that if the Board were leaning toward approving the matter, that the staff would like the addition of full compliance of all other codes and ordinances be added as a condition of that approval, to which the applicant agreed.

December 6, 2010

Board of Zoning Adjustment

Hearing no opposition or further discussion, a motion was made by Mr. Coleman, with second by Mr. Metcalfe, to approve the Side Yard Setback Variance to allow an addition to be constructed within 5.42 feet of a side property line with a side yard sum of 14.75 feet on a 58 foot wide lot in an R-1, Single Family Residential District, subject to the following condition:

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

The motion carried unanimously.

#5648

(Case #ZON2010-02652)

Clement C. Pope

425 Dogwood Drive

(East side of Dogwood Drive, 242'± South of Flame Court)

Side Yard Setback Variance to allow an accessory storage building (already constructed) within 4.5 feet of a side property line with a side yard sum of 16.9 feet in an R-1, Single Family Residential District; the Zoning Ordinance requires a minimum side yard of eight (8) feet and a side yard sum of 20 feet.

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.

Clement Pope, 425 Dogwood Drive, Mobile, AL, spoke on behalf of the application and made the following points:

- A. noted that the shed in question had already been built;
- B. noted that it did not have permits prior to beginning the project, however, City inspectors came out several times during its construction and did not stop the project nor did they mention permitting; and,
- C. noted that the inspectors had stated that the steps and landing were incorrect during the process, however, it was only after the project was completed that the inspectors found it to be too close to the property line.

Mr. Coleman asked if the Board were to be leaning towards approving the matter, would the staff want gutters and downspouts required.

Mr. Palombo stated that was the standard practice of the Board when approving variances that were less than 5 feet away from the side yard setback or rear setback.

Mr. Guess asked how the structure had been constructed and anchored.

Mr. Pope noted it was made of cinder block piers with concrete footing and a small amount of crawl space between the ground and the wooden floor of the shed.

Mr. Whistler commented that City building inspectors did go to the site as there were several notes concerning problems with the stairs on the file, however, it was only noted during Final Inspection that there seemed to be a problem with being too close to the property line, at which time the City Zoning technician became involved.

December 6, 2010

Board of Zoning Adjustment

Doug Westbrook spoke on behalf of his mother-in-law, Mrs. Jepko, who lived to the east of the property in question. He noted her concern as being further encroachment on the property line. He stated she had no problem with what was currently constructed being allowed to remain, however, she did not want any further encroachment on the shared property line.

Mr. Guess asked the applicant for assurances that the structure in question would only be used for storage and not as a shop and was given such assurances.

Hearing no opposition or discussion, a motion was made by Mr. Metcalfe, with second by Mr. Davis, to approve the Side Yard Setback Variance to allow an accessory storage building (already constructed) within 4.5 feet of a side property line with a side yard sum of 16.9 feet in an R-1, Single Family Residential District, subject to the following condition:

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

The motion carried unanimously.

#5649

(Case #ZON2010-02653)

Clarence J. Angelette

1603 Oak Forest Court

(South side of Oak Forest Court, 88' ± West of Woodspointe Circle).

Side Yard Setback Variance to allow an addition to be constructed within 6.75 feet of a side property line with a side yard sum of 16.5 feet in an R-1, Single Family Residential District; the Zoning Ordinance requires a minimum side yard of eight (8) feet and a side yard sum of 20 feet.

The Chair announced the matter, advising it had been recommended for approval, with conditions, and that anyone who wished to speak should address the Board regarding the subject at that time.

Clarence Angelette, 1603 Oak Forest Court, Mobile, AL, noted they simply wanted to expand their master bathroom as they were getting older and wanted the space to be able to accommodate such things as walkers and wheelchairs.

The Chair noted there was a letter in opposition to the matter from a neighbor, however, that neighbor was not in attendance.

Mr. Angelette expressed his confusion over the letter as he had spent a good bit of time with the writer the past weekend to resolve any issues the neighbor might have.

Mr. Metcalfe asked the staff what hardship existed.

Mr. Palombo stated the hardship was based upon the interior design of the house. He also noted that the initial encroachment on the setback was approximately one foot and three inches, however, as the lot was pie shaped, the end result was no encroachment at all.

Mr. Reilly noted that the writer of the opposition letter was not present at the meeting.

December 6, 2010

Board of Zoning Adjustment

Hearing no further opposition or discussion, a motion was made by Mr. Coleman, with second by Mr. Davis, to approve the Side Yard Setback Variance to allow an addition to be constructed within 6.75 feet of a side property line with a side yard sum of 16.5 feet in an R-1, Single Family Residential District, subject to the following condition:

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

The motion carried unanimously.

OTHER BUSINESS:

There being no further business, the meeting was adjourned.

APPROVED:

Chairman of the Board

/sg