

BOARD OF ZONING ADJUSTMENT MINUTES
MEETING OF MARCH 14, 2011 - 2:00 P.M.
MOBILE GOVERNMENT PLAZA, MULTI-PURPOSE ROOM

MEMBERS PRESENT

William Guess, Acting Chair
Adam Metcalfe
Sanford Davis
J. Tyler Turner*
*supernumerary member

MEMBERS ABSENT

Reid Cummings, Chairman
Vernon Coleman
Russell Reilly*

STAFF PRESENT

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

OTHERS PRESENT

David Daughenbaugh, Urban Forestry
Gerard McCants, 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. 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.

APPROVAL OF MINUTES:

A motion was made by Mr. Guess, with second by Mr. Davis, to approve the minutes from the following meeting:

- August 2, 2010

The motion carried unanimously.

PUBLIC HEARINGS:

#5660

(Case #ZON2011-00265)

Gloria Sterling

1452 Fleetwood Drive East

(West side of Fleetwood Drive East, 250'± North of Morningside Drive).

Side Yard and Combined Side Yard Setback Variances to allow the construction of a rear addition 4.5' of a side property line with combined side yards of 16.5' in an R-1, Single-Family Residential District; the Zoning Ordinance requires an 8' minimum side yard setback with combined side yards of 20' in an R-1, Single-Family Residential District.

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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.

Gloria Sterling, 1452 East Fleetwood Dr., Mobile, AL, spoke on behalf of the application, Gloria Sterling and made the following points in favor of the matter:

A. Noted that she was extending a bedroom onto the existing property.

Mr. Guess asked if the extension would be in-line with the existing structure.

Ms. Sterling stated yes, that it would be in-line.

Mr. Guess asked if she had looked at any other configuration to avoid being within the setback.

Ms. Sterling stated that it was the only option.

Mr. Metcalfe asked what the existing setback was on the structure.

Mr. Palombo noted that it was 5-6 feet because of the angle that was skewed in towards the north.

Mr. Metcalfe asked if she had talked to the neighbors on either side of the house and if there were any objections to the extension.

Ms. Sterling stated that there were none.

Mr. Guess asked how close the adjacent house was to Ms. Sterling's house.

Ms. Sterling stated that there was a fence and a pool house closest to her property and then the actual house was 6-8 feet off the fence.

Mr. Guess asked if there was anything unusual about the property that guided the decision to do the extension in the back.

Ms. Sterling noted that she could not go to either side rather only straight back on the property.

Hearing no opposition or further discussion, a motion was made by Mr. Davis, with second by Mr. Metcalfe, to approve the **Side Yard and Combined Side Yard Setback Variances to allow the construction of a rear addition 4.5' of a side property line with combined side yards of 16.5' in an R-1, Single-Family Residential District, with the following condition:**

- 1) the placement of gutters and downspouts along the northern side property line.**

The motion carried unanimously.

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Board of Zoning Adjustment
#5661/5550/5345
(Case #ZON2011-00294)
Austal/Thompson Engineering

100 Dunlap Drive
(Southeast corner of Addesco Road and Dunlap Drive).

Sign Variance to allow two additional wall signs (471 square feet and 443 square feet) in an I-2, Heavy-Industry District; the Zoning Ordinance allows three signs with each allowed to be up to 30% of the usable wall area or 350 square feet, whichever is less, in an I-2, Heavy Industry 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.

Wade Burcham, Thompson Engineering, 2970 Cottage Hill Rd. Mobile, AL, spoke on behalf of the application, Austal/Thompson Engineering and made the following points in favor of the matter:

- A. Noted that they wanted to add signs onto a new assembly bay that was being built. The zoning ordinance allowed for 2% of the building area and they were requesting to go up just under 3%.

Mr. Palombo stated that the surface area was 30% max up to 350 square feet. This was going to be over the square footage but it would be significantly under the 30% due to the large face front.

Mr. Guess asked if this was similar to previous variance requests.

Mr. Palombo noted that Austal had been approved for a similar sign variance in 2007.

Mr. Guess noted that there were two other occasions that the sign variance had been approved.

Bill Harrison, of Tomely Corporation, 176 Dunlap Dr., Mobile, AL, noted that he was not sure if he was in favor or in opposition.

Mr. Harrison asked if they were asking for a billboard or a sign on the building.

Mr. Burcham stated there would be no billboard just a sign on the building.

Mr. Harrison stated that he was then in favor of the matter.

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 two additional wall signs (471 square feet and 443 square feet) in an I-2, Heavy-Industry District; with the following condition:**

- 1) **the obtaining of a sign permit for each sign.**

The motion carried unanimously.

March 14, 2011
Board of Zoning Adjustment
#5531/5662
(Case #ZON2011-00311)
Napoleon McCovery

208 North Lafayette Street

(Southeast corner of North Lafayette Street and St. Stephens Road).

Use, Off-Site Parking, Buffer Fencing, and Buffer Fence Height Variances to allow a 363 square feet addition and parking in an R-1, Single-Family Residential District, and off-site parking in a B-2, Neighborhood Business District, no buffer fencing facing across-street residential zoning, and to allow 4' high and 5' high buffer fence heights; the Zoning Ordinance does not allow parking in an R-1, Single-Family Residential District, requires all parking to be on-site in a B-2, Neighborhood Business District, requires a 3' high privacy fence along a parking lot street frontage facing across-street residential use, and requires a buffer fence to be 6' high along adjacent residentially used properties.

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:

- Jerry Byrd, Byrd Surveying, 2609 Halls Mill Rd, Mobile, AL, on behalf of the applicant, and,
- Napoleon McCovery, 208 North Lafayette St., Mobile, AL.
 - A. Noted that the staff report was asking for the buffer fencing and the buffer fencing height variance even though it had been approved 12-15 months ago;
 - B. Noted that the club wanted to expand the dance floor by adding 10 feet on the south side of the building for a length of 36 ft., 36.3; and,
 - C. Noted that the expansion of the building would eliminate 3 parking spaces and would still meet the parking requirement.

Mr. Byrd noted that prior to the meeting he was told that since this was another variance request that all of the variances before this had to be sited.

Mr. Palombo concurred saying that since the variances were site specific that those same variances and any new ones had to be asked for again.

Mr. Davis noted concerns from current residences about loud music.

Mr. Byrd stated that a car playing loud music on a public street could only be stopped by a policeman.

Mr. Davis read from letters that noted that the loud music from the club patron cars would go away if the current business was not at that location.

Mr. Byrd and Mr. McCovery stated that since they had not seen the documents in question that they would step aside and read the documents that Mr. Davis had been referencing.

Mr. Tyler noted the goodwill gesture of the club in letting churchgoers utilize the club parking lot on Sundays.

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Mr. Metcalfe noted that the club was indeed allowed under the B-2 zoning.

Mr. Byrd noted that the letters in question which were from October 2008, May 2009 and January 2010, were not written on a current basis. He additionally noted that since that time the variances had been granted and had been in operation.

Hearing no further questions for the applicant, the Chair then stated that if there were those in attendance who wished to speak in favor or opposition, to do so at that time.

Stephanie Jackson, 204 North Lafayette Street, Mobile, AL, spoke in opposition to the matter and made the following points:

- A. Noted that she had lived there since she was 9 years old when her parents had owned the house and that currently she owned the house;
- B. Noted that the current club patrons were most disrespectful of private property. She stated that regularly alcohol containers were found in both the front and backyard, that club patrons urinated on her fence, had left broken bottles both on her fence and driveway and they routinely sat in their parked cars with headlights on and music blaring. Additionally, the patrons loitered on the streets talking loudly and abusively. Cleanup was always at Ms. Jackson's expense;
- C. Noted an expanded dance floor would bring in more patrons and that would mean more customers causing an increase in traffic, noise and debris;
- D. Noted that Law Enforcement had been frequently called out at 3 AM;
- E. Noted that a nightclub did not bring value to the residential properties, rather it lent itself to more loitering, congestion, questionable behaviors and even poorer property values;
- F. Noted that safety would become an even greater issue;
- G. Stated that the Smart Growth policy for Mobile lent itself to establishing neighborhood character through mixed use development by integrating neighborhood oriented businesses of compatible scale into a residential area. Noted that allowing a nightclub to expand in a largely residential neighborhood was diametrically opposed to the City's plan for a progressive Mobile;
- H. Noted that local residents wanted to protect their residential investments while preserving one of Mobile's older communities. Also noted that these homes were where they lived, worked, paid taxes and voted in this city. Their homes displayed pride of ownership; and,
- I. Noted that there was an elementary school three blocks away, a housing development filled with young impressionable children less than 100 feet away, a home for retarded citizens 300 feet away and residential homes directly next door and adjacent to the club.

Mr. Metcalfe noted that that no matter what the Board did today, that it was not going to stop whatever situation Ms. Jackson already had to deal with.

Mr. Davis asked if the Elementary School was St. Mary's.

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Ms. Jackson stated that it was St. Mary's Catholic School.

Mr. Byrd stated that Ms. Jackson knew the situation she was letting herself in for when she moved into the house because she had moved there after the club had been purchased by Mr. McCovery and was in operation.

Mr. Byrd noted that the club on Friday & Saturday nights normally had three police that worked inside the club and three that worked outside covering the parking lots.

Mr. Byrd stated that if a patron turned up the volume after a policeman walked by, then it would be a very hard situation to control. He also stated that the club itself was located in a B-2 district and was allowed. He added that the parking lot between the club and the Jackson residence had been grandfathered in as a parking lot.

Mr. Davis stated that he was very concerned because not only was Ms. Jackson speaking for herself but that the document was signed by others who gave their address in the same community.

Ms. Jackson stated that her parents bought the house over 40 years ago and that she herself had legally owned it for the last 16 years.

Mr. Guess enquired of Ms. Jackson if she had come to any of the previous Board of Zoning Adjustment meetings.

Ms. Jackson replied that yes, she had attended each and every one of the meetings.

Mr. Byrd noted that perhaps the other people who signed the letter did not live in those houses anymore.

Ms. Jackson stated that Ms. Frommer, Mrs. Edith McClinton, Ms. Helen Williams, Ms. Helen Prichett and Mr. Kaiser did indeed still live in their houses. She also mentioned that while Mr. Koger did not reside there that the Koger family still owned the house.

Mr. Byrd noted that while Ms. Jackson claimed that she had called the police at 3am, Mr. McCovery said that the club closed at 1am.

Mr. Guess asked if Mr. McCovery had ever had the police called out to the club aside from those that he hired on a temporary basis.

Mr. McCovery said he had never had a citation, fine or a ticket but that Ms. Jackson had called the police out to his club.

Mr. Guess noted that this supported her statement.

Mr. Guess asked how late the police and patrons were at the club.

Mr. McCovery stated that they both left at 1pm when the club closed.

Mr. Guess asked if the parking lot was secured after the club closed.

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Mr. McCovery responded that it was open to the public after the club closed.

Mr. Davis voted to deny the application.

Mr. Guess seconded the vote.

Mr. Metcalfe voted to support the vote.

Mr. Tyler did not support the vote.

The motion failed because there were 3 votes for it and it needed to have 4 affirmative votes.

Mr. Palombo asked if the Board would make a new motion to hold the application over for 30 days in order to have a possible quorum for either a full denial or approval. He also suggested that the applicant and the adjacent property owners be asked to monitor the situation for the next month and get some results either by police records or neighbor signatures.

Mr. Tyler stated that he felt that the variance that they were being asked to vote on was more of a moral subject and that it was better suited to the Planning Commission.

Mr. Palombo stated that it was a hardship issue.

Mr. Guess remembered that in previous meetings that there had been concern that the variances would not support the concerns of the residents nor provide the buffer and the protection for their properties that they wanted. They too had wrestled with the issue at that time as well. He noted that he was not looking at it from an emotional standpoint but that they had certain conditions they expected at the time that the initial variances were approved.

Mr. Tyler stated that both he and another like minded Board member, Mr. Metcalfe, had both made decisions to move very close to Airport Boulevard knowing that it was going to be loud and that the noise was not going to go away. Ms. Jackson has had a similar experience as she was the closest residence to a B-2 business. He noted that Mr. McCovery was within his zoning rights to operate a business of this type in the City of Mobile under the present zoning codes.

After discussion, the Board of Zoning Adjustment voted to Holdover the application until the April 4, 2011, meeting to allow for further public input and to allow more Board members to be present to hear the case.

#5663

(Case #ZON2010-00318)

Kathryn M. Kearley

355 Government Street

(Southeast corner of Government Street and South Franklin Street).

Sign Variance to allow a 10' high freestanding sign at a single-tenant commercial site in an R-B, Residential-Business District and in a Historic District; the Zoning Ordinance allows a maximum height of 8' for a freestanding sign in an R-B, Residential-Business District and Historic District.

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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.

Kathryn Kearley, 355 Government St., Mobile, AL, spoke on behalf of the application, Kathryn Kearley.

Mr. Guess asked Ms. Kearley if she had seen the staff's recommendations.

Ms. Kearley replied that she had not.

Mr. Guess stated that it was recommended for approval subject to the following condition: the obtaining of a sign permit for the sign.

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 a 10' high freestanding sign at a single-tenant commercial site in an R-B, Residential-Business District and in a Historic District, with the following condition:**

- 1) the obtaining of a sign permit for the sign.**

The motion carried unanimously.

#5664

(Case #ZON2011-00323)

Lily Baptist Church

358 Kennedy Street

(Northwest corner of Basil Street and Harrison Street, extending to the East side of Kennedy Street, 90'± South of Lyons Street).

Front Yard Setback and Parking Ratio Variance to allow an addition 15' from the front property line to a 250-seat church with 39 on-site parking spaces in an R-1, Single-Family Residential District; the Zoning Ordinance requires a minimum front yard setback of 25 feet and 63 on-site parking spaces in an R-2, Two-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 following people spoke on behalf of the application:

- Richard Davis, 2301 Ringold Drive East, Mobile, AL, on behalf of the applicant;
- Councilman William Carroll, City of Mobile, 205 Government St., Mobile, AL;
- Carlos Gantt, Architect, Rowe Engineering, 3755 Cottage Hill Rd., Mobile, AL; and,
- Carceal Brown, 1334 Adams St., Mobile, AL .

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

- A. Noted that Lily Baptist Church was established 113 years ago in 1897. It had been located at its' present site, 358 Kennedy St., for 105 years. The present

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- building was constructed and dedicated in 1962. Hence, the present church has been on the site for 49 years;
- B. Noted that the proposed site would best address the restroom needs of the congregation and its visitors. The present restroom was located at the rear of the church and a disturbance was created when there was a need for one to go to the restroom during church activities or church services. However, if one should go out of the front of the church they would then have to confront the weather elements;
 - C. Noted that the committee was attempting to address the needs of the senior members, visitors and meet the current ADA guidelines;
 - D. Noted that when the houses and commercial buildings were first built, they were done in accordance with the ordinance which at that time allowed for zero lot lines;
 - E. Noted that the existing structures should be able to grow and expand to accommodate the members of the churches;
 - F. Noted that this was the only location that the addition could be done without having to travel through the church;
 - G. Noted that they wanted to open up an office through to the lobby so one could get to the new ADA restrooms; and,
 - H. Noted that the new location did not impede on the existing parking and that no parking spaces would be lost.

The Chair then stated that if there were those in attendance who wished to speak in opposition, to please do so at that time.

Barbara Smith, 360 Gaston St., Mobile, AL, spoke in opposition to the matter and made the following points:

- A. Stated she was responding to the public hearing letter and objected to the church cutting the grass at her house so they could add on to their property.

Mr. Guess stated that the letter was to let her know that the church was asking for a variance request and that everyone who had adjacent property or lived within 300 feet proximity had gotten this letter. He further stated that it gave everyone the opportunity to come down and voice a concern or opposition to the application.

Mr. Davis noted that the letter had to do with the existing church building and that they were moving due to expansions.

Hearing no opposition or further discussion, a motion was made by Mr. Metcalfe, with second by Mr. Davis, to approve the **Front Yard Setback and Parking Ratio Variance to allow an addition 15' from the front property line to a 250-seat church with 39 on-site parking spaces in an R-1, Single-Family Residential District, with the following condition:**

- 1) provision of tree plantings to be coordinated with Urban Forestry.**

The motion carried unanimously.

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#5665

(Case#ZON2011-00324)

Robert F. Lee

2404 Staples Road

(North side of Staples Road, 561'± East of Alba Club Road).

Use, Maneuvering, Surfacing, and Frontage Tree Planting Variances to allow a cabinet shop, substandard drive aisles, some aggregate maneuvering area, and no frontage tree plantings in an R-1, Single-Family Residential District, the Zoning Ordinance requires a minimum of a B-3, Community Business District, minimum drive aisle width of 24 feet for two way traffic, all accessways and parking to be concrete or asphalt, and frontage tree planting of one overstory heritage tree per 30 linear feet of street frontage.

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.

Jerry Byrd, Byrd Surveying, 2609 Halls Mill Rd., Mobile, AL, spoke on behalf of the application, Robert F. Lee and made the following points in favor of the matter:

- A. Noted that Mr. Lee currently operated the cabinet shop on Staples Rd. and his father-in-law operated there prior to him;
- B. Noted they had a nonconforming use that was grandfathered in;
- C. Noted Mr. Lee had a concrete slab and wanted to extend the shop area out onto the slab so that it would be big enough to accommodate the large size of the doors which were 6 ft wide and between 10 or 20 feet tall; and,
- D. Noted no additional employees would be added. Mr. Lee drove out to his client's house to take the measurements. He did not have drive-in trade and with the existing parking he would have an extra 4 spaces that would accommodate current business.

Mr. Metcalfe asked if there was an existing slab that was already there and if they were going to extend the shop onto the slab.

Mr. Byrd stated that was correct.

Mr. Metcalfe asked if they were covering up any additional site area.

Mr. Byrd replied no.

Mr. Byrd stated that it was in compliance with City Codes and would not increase the run-off.

Mr. Metcalfe asked if they were going to install any machinery that would be more of a nuisance noise than what they had now.

Mr. Lee replied no.

Mr. Daughenbaugh noted the staff comments had mentioned that the applicant was against planting frontage trees and wondered if there was any reason for the opposition to plant them.

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Mr. Byrd stated that he was surprised when he saw that comment because while the site plan only showed trees 24 inches and larger, there were actually many other trees on the site. However, if a site plan or landscape plan was necessary he would be happy to provide one.

Mr. Guess asked how the materials would be delivered to the site.

Mr. Lee stated that they were either delivered to the house or he went to pick them up.

Mr. Guess asked if they were delivered in a large truck.

Mr. Lee stated yes.

Mr. Guess asked if he lived at the residence.

Mr. Lee replied yes.

Mr. Byrd noted that the hours of operation were from 7am-5pm, 5 days a week. Occasionally, Mr. Lee worked half a day on Saturday to clean-up.

Mr. Guess asked if they had any helpers and if so where did they park.

Mr. Lee replied that he had two people in the field and two people in the shop plus himself. He noted that the property had plenty of parking in the back and 5-6 parking spaces in the front.

Mr. Guess asked if they ever had customers who came to the shop.

Mr. Lee stated that from time to time they would come in at the planning stage to approve the drawing.

Hearing no further questions for the applicant, the Chair then stated that if there were those in attendance who wished to speak in favor or opposition, to please do so at that time.

Ronnie Johnson, 3933 Alba Club, Mobile, AL;
Vertie Hicks, 2404 Staples Rd. Mobile, AL; and,
May Merren, 2450 Staples Rd., Mobile, AL, spoke in opposition to the matter and made the following points:

- A. Noted that there were heavy trucks coming in and out not only during the weekday but on weekends as well;
- B. Noted that burning of garbage happened frequently in the back of the business and the fumes came across the neighbors backyards;
- C. Stated that she regularly had to see her Doctor regarding the breathing problems she has had from the glue and scraps that were burned in her neighbors' yard;
- D. Stated that a lot of noise occurred since big trucks go in and out all the time; and,
- E. Stated that the burning was done at night and in the morning the smell would take your breath away.

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Mr. Guess asked Mr. Johnson to describe the heavy equipment.

Mr. Johnson replied that they were front end loaders and back hoes.

Mr. Palombo asked how they were burning in the City of Mobile when it was a violation.

Mr. Metcalfe noted that both the Police and the Fire Department worked at night as well.

Mr. Tyler wondered if the business had been there since 1961, why there were not any complaints on record where they had been burning.

Mr. Guess asked how long each person had lived there.

Mr. Johnson stated that he had lived there for 15 years.

Mrs. Merren stated she had lived there for 16 years.

Mrs. Hicks stated that she been living there for 47 years.

Mr. Tyler asked what they did with all the sawdust.

Mr. Lee stated that they were burning a lot of the small wood. The bigger pieces were put onto a dump trailer and taken to a pit where another company took it to a landfill. He also stated that he did not know that it was creating a problem but that he would not burn anything else.

Mr. Lee noted that the back hoe was used only for wood scraps and shavings that were then put in the dump trailer. He further explained that the building was soundproofed.

Mr. Lee stated that he wanted to get along with everybody and if he was creating a problem to let him know what it was and he would be glad to correct it.

Mr. Johnson noted that because of the raw wood that was utilized on the planers that a lot of dust and noise was created.

Mr. Guess asked how wide the drive was and how the large trucks were maneuvering in it.

Mr. Lee replied that it was 12-14 feet. He also noted that they either backed in or drove in to the back and turned around.

Mr. Guess asked if the width of the truck was the width of the drive and how they turned a vehicle of that nature around.

Mr. Tyler noted that there was a turn-around in the back.

Hearing no opposition or further discussion, a motion was made by Mr. Metcalfe, with second by Mr. Davis, to approve **Use, Maneuvering, Surfacing, and Frontage Tree Planting Variances to allow a cabinet shop, substandard drive aisles, some aggregate maneuvering area, and no frontage tree plantings in an R-1, Single-Family Residential District**

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The motion carried unanimously.

#5666

(Case #ZON2011-00227)

O'Charley's, Inc./Store No. 402

3649 Airport Boulevard

(Southeast corner of West I-65 Service Road South and Western America Drive).

Tree Planting Variance to allow 0 overstory and 12 understory trees for an existing commercial site in a B-3, Community Business District; the Zoning Ordinance requires a total of 25 overstory trees (18 frontage and 7 perimeter) and 13 understory trees (7 perimeter and 6 parking) for an existing commercial site 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.

David Neutze, Neu Lawn Inc., 54710 Rabon Rd., Bay Minnette, AL, spoke on behalf of the application, O'Charley's and made the following points in favor of the matter:

- A. Stated that they have been taking care of the landscaping on the property; and,
- B. Noted that O'Charley's was in violation of the tree ordinance. Communication difficulties from the corporate offices were contributing factors to the violation. However, they had turned in a proposal to Mr. Palombo concerning the trees showing that they were willing to comply.

Hearing no further questions for the applicant, the Chair then stated that if there were those in attendance who wished to speak in favor or opposition, to do so at that time.

Thomas McGhee, Chairman of the Tree Commission for the City of Mobile, 205 Government St., Mobile, AL; and,

Ron Jackson, Deputy Director of Urban Forestry for the City of Mobile, 3351 Wilmer Rd., Wilmer, AL, spoke in opposition to the matter and made the following points:

- A. Stated that the Tree Commission was a 50 year old organization. Noted that they were very opposed to properties not staying in compliance with the tree and landscaping ordinance;
- B. Noted that the trees at O'Charley's had originally been in compliance but over the years had either been damaged by storms or had been hit by cars;
- C. Noted the Tree Commission wanted the trees on the property brought back into compliance as they had been when they the building had been first built;
- D. Stated that in 1990, the community was displeased with the way in which the City was being developed and so new ordinances were written. Since the regulations were put into effect, roughly 60,000 trees were planted on private property and 1,950 properties have adhered to this ordinance;
- E. Noted that there were zero expenses to the City for those regulations except for the inspectors to go out to make sure that the trees were there and the staff for their time in making sure that the drawings actually met those requirements;

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- F. Stated that they never like to see any variances ever given. In the 19 years that the ordinance had been in effect, there had been zero variances given;
- G. Noted that this portion of the zoning ordinance has had the biggest impact on the difference in the way that the City has looked since 1985; and,
- H. In 1996, O'Charley's had a drawing approved that met all the requirements except for 2 trees. In the last 2 years, they had been in violation due to trees being blown down and ones that had been removed illegally. The City wrote them a citation. O'Charley's then got into court and decided that they needed a variance to get around landscaping the property. The drawing was submitted at 1PM this afternoon. Urban Forestry had not seen it yet. The requirement of overstory trees in the front could not be waived. We wanted all the understory trees that were required on the site. However, as to the 2 trees that were waived, in their place money was donated to the Tree Commission for trees to be planted in the future.

Mr. Palombo stated that he had looked at the plan Mr. Neutze had brought him at 1PM. The site required 38 trees and O'Charley's would provide the full 40.

Mr. Jackson asked if that counted the overstories in the front as well.

Mr. Palombo replied that it did include the overstories.

Mr. Guess questioned if they even needed to have a vote on the application.

Mr. Palombo stated that they would not need to vote if it met compliance. He noted that they wanted 2 extra trees and to make it site specific. They got 40 trees instead of 38 and that it met full compliance.

Hearing no opposition or further discussion, a motion was made by Mr. Metcalfe, with second by Mr. Turner, to deny the **Tree Planting Variance to allow 0 overstory and 12 understory trees for an existing commercial site in a B-3, Community Business District. However, the Board voted to accept the tree planting plan submitted to Staff before the meeting which illustrated the planting of 40 total trees instead of the required 38.**

The motion carried unanimously.

OTHER BUSINESS:

Mr. Palombo stated that they were supposed to vote for officers.

Mr. Metcalfe noted that they were going to wait till they had a full complement.

Mr. Guess stated that he was fine with holding it over till they had a full complement.

APPROVED:

Chairman of the Board

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/sg