

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

MEMBERS PRESENT

Reid Cummings, Chairman
William Guess
Sanford Davis
Vernon Coleman
*supernumerary member

MEMBERS ABSENT

Mack Graham
Russell Riley*
J. Tyler Turner*

STAFF PRESENT

Frank Palombo, Planner II
Caldwell Whistler, Planner I
Tiffany Green, Secretary I

OTHERS PRESENT

John Lawler, City Attorney
Butch Ladner, Traffic Engineering
David Daughenbaugh, Urban Forestry

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 and called the meeting to order.

HOLDOVERS:

#5524

(Case #ZON2009-00018)

51 South Conception Street, LLC

51 South Conception Street

Southeast corner of South Conception Street and Conti Street

Parking Maneuvering Variance to allow vehicular maneuvering (backing) into the public right-of-way from an on-site parking area in a B-4, General Business District; the Zoning Ordinance requires vehicular entrances and exits to be provided in such a manner to prevent vehicular backing from a parking area into the public right-of-way in a B-4, General 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.

Harvey Gandler, architect, 256 Wacker Lane, Mobile, AL, spoke on behalf of the applicant. He made the following points in favor of the matter:

- A. the owner is trying to build a garage on site which involved backing out onto Conception Street;

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- B. backing out onto Conception Street is necessary as they live in an apartment above the first floor of the commercial establishment;
- C. the owner wanted to preserve as much of the site as possible for landscaped area and potentially a swimming pool on the site; and,
- D. have planned a nice elevated garage area with a stucco façade that would match the present building.

The Chair asked if there were any questions from the Board for the applicant. Hearing none, he asked if there were any present who wished to speak either for or against the matter.

Mr. Palombo reminded the Board that the staff had not received the required labels to mail the necessary notifications to the area residents, therefore the staff now recommended that the matter be held over to assure proper notification of the neighbors.

The Chair asked the applicant's representative if there were some problem preventing the applicant from getting the required labels to the staff.

Mr. Gandler stated he had no knowledge regarding that matter as the owner had taken that part of the process as their responsibility.

The Chair responded that because there had not been proper notification to the neighbors regarding the matter, the Board could not rule on it that day.

Hearing no opposition or further discussion, a motion was made by Mr. Coleman, with second by Mr. Davis, to hold this application over until the April 6, 2009, meeting, due to the applicant failing to submit the appropriate labels. As a result of this, the property owners within 300 feet of the subject site had not been notified.

The motion carried unanimously.

PUBLIC HEARINGS:

#5525

(Case #ZON2009-00283)

Cowart Hospitality Services, LLC (J. Michael Cowart, Agent)

62 South Royal Street

Southwest corner of South Royal Street and Conti Street

Sign Variance to allow three wall signs for a tenant on a multi-tenant site in a B-4, General Business District; the Zoning Ordinance allows one wall sign per tenant on a multi-tenant site in a B-4, General 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 Chair stated that the applicant was in agreement with the staff recommendations and asked if anyone wished to speak on the matter to do so at this time.

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Mike Cowart, Cowart Hospitality Services, spoke on behalf of the company and made the following points in favor of the variance:

- A. when creating the project, the retail space associated with the site was overlooked; therefore a sign request was never made for it; and,
- B. upon completion of the building, it was noted that the retail space needed signage, however, a standard sign could not be used, so the owners chose to use an awning, not knowing it, too, would be considered a sign.

The Chair asked if there were any questions for the applicant from the Board. Hearing none, he stated that if there were those present in favor or opposition to the matter, to please speak at that time. Hearing none, the Chair called for a motion.

Hearing no opposition or further discussion, a motion was made by Mr. Guess, with a second by Mr. Graham, to approve the request for **Sign Variance to allow three wall signs for a tenant on a multi-tenant site in a B-4, General Business District; the Zoning Ordinance allows one wall sign per tenant on a multi-tenant site in a B-4, General Business District.**

The motion carried unanimously.

#5526/5484/5160

(Case #ZON2009-00382)

Krewe of Marry Mates (Paul Tidwell, Agent)

East side of South Washington Avenue, extending from Tennessee Street (unopened public right-of-way) and the Illinois Central Gulf Railroad right-of-way, to Kentucky Street

Use Variance to allow the construction of two 200' x 90' float barns in a B-3, Community Business District; float barns are allowed with Planning Approval in a B-4, General Business District and allowed by right in an I-1, Light 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.

Bobby McBryde, Rowe Surveying and Engineering Company, Inc., spoke on behalf of the applicant stating they were in agreement with the recommendations.

The Chair asked if there were any questions for the applicant from the Board. Hearing none, he asked if there were any present in favor or opposition to the matter, to please speak at that time. Hearing none, the Chair called for a motion.

Hearing no opposition or further discussion, a motion was made by, with second by, to approve the request for **Use Variance to allow the construction of two 200' x 90' float barns in a B-3, Community Business District; float barns are allowed with Planning Approval in a B-4, General Business District and allowed by right in an I-1, Light Industry District,** subject to the following conditions:

- 1) **revision of the site plan to eliminate the driveway onto Kentucky Street;**
- 2) **denial of access for this development to Kentucky Street;**

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- 3) **revision of the site plan for land disturbance and construction permitting to indicate full compliance with the landscaping and tree planting requirements of the Zoning Ordinance, including any tree credits and/or canopy credits;**
- 4) **inclusion of the Alabama Power Company easement along the Northern portion of the site with adjusted tree plantings within along Washington Avenue;**
- 5) **location of tree plantings in the vicinity of the Washington Avenue and Kentucky Street drives to allow for float clearance as trees mature; and,**
- 6) **preservation status is to be given to the 44" Live Oak located on the south side of the site. Any work on or under this tree is to be permitted and coordinated with Urban Forestry; removal to be permitted only in the case of disease or impending danger.**

The motion carried unanimously.

#5527

(Case #ZON2009-00383)

The American Red Cross, Alabama Gulf Coast Chapter

35 North Sage Avenue

Southwest corner of North Sage Avenue and Dauphin Square Connector

Height and Setback Variances to allow the construction of a 100' tall telecommunications tower setback 87' from a property line in a B-3, Community Business District; the Zoning Ordinance allows a maximum height of 45' and requires a property line setback equal to the height of the tower (100') for a telecommunications tower in a B-3, Community Business District.

The Chair announced the matter, advising that the staff had recommended the matter be held over until the April 6, 2009, meeting, with requested revisions due to the staff by March 11, 2009. He advised that the applicant should address the Board regarding the subject at that time.

The following people spoke on behalf of the requested variance:

- Larry Smith, South East Civil, civil engineers for the project; and,
- Leisle Mims, Executive Director, Alabama Gulf Coast Chapter, Red Cross.

They made the following points regarding the matter:

- A. the tower height had been changed from the original 140 feet to 100 feet tall to assure that it had full coverage with regards to signal;
- B. the location of the tower was based upon its critical need to be located near the radio DIT room, currently located to the tower's immediate north;
- C. regarding the tower's height, it was reminded that the tower is a radio tower, not a cell tower;

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- D. it was noted it was not tied in any way to the County's EMA, but was specifically for communications with HAM radio operators at disaster shelters and emergency response vehicles.

Mr. Palombo responded by saying if the applicant would provide the staff with a letter regarding the why's and where fore's of the tower, including the fact that the tower is not a cell tower, but a "line of sight" radio tower.

Mr. Guess asked if the tower were part of the County's EMA system and was advised it was not.

Mr. Palombo stated the staff would like to add the condition of the removal of the old tower prior to the construction of the new tower or at some time after the new tower's construction.

Ms. Mims stated the organization had plans to sell the building and was not sure how to tie that condition in to a potential sale, but was willing to leave it open for consideration.

The Chair asked if there were any more questions for the applicant from the Board. Hearing none, he asked if there were any present in favor or opposition to the matter, to please speak at that time. Hearing none, the Chair called for a motion.

Hearing no opposition or further discussion, a motion was made by, with second by, to approve the request for **Height and Setback Variances to allow the construction of a 100' tall telecommunications tower setback 87' from a property line in a B-3, Community Business District; the Zoning Ordinance allows a maximum height of 45' and requires a property line setback equal to the height of the tower (100') for a telecommunications tower in a B-3, Community Business District**, subject to the following conditions:

- 1) **submission of evidence for the setback variance to satisfy Section 64-4.J.18.b(2)(a) of the Zoning Ordinance which states that the applicant must demonstrate that the area of the parcel of land upon which the tower is proposed to be located makes compliance with subsection J.5 impossible, and the only alternative for the person is to locate the tower at another site which poses a greater threat to the public health, safety or welfare or is closer in proximity to a residentially zoned land;**
- 2) **submission of evidence for the tower height variance to satisfy Section 64-4.J.18.b(2)(b) of the Zoning Ordinance which states that the applicant must demonstrate that modification is necessary to (i) facilitate collocation of telecommunications facilities in order to avoid construction of a new tower; or (ii) meet the coverage requirements of the applicant's wireless communications system, which requirements must be documented with written, technical evidence from an electrical engineer; and,**
- 3) **the provision that the existing radio communications tower will be disconnected following the construction of the new radio communications tower.**

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The motion carried unanimously.

#5528/5087

Case #ZON2009-00385)

Wrico Signs, Inc.

6341 Airport Boulevard

South side of Airport Boulevard, 740'± East of Hillcrest Road

Sign Variances to allow a second freestanding pylon sign projecting 3-1/2" into the public right-of-way and two wall signs at a business on a multi-tenant site in a B-3, Community Business District; the Zoning Ordinance allows one freestanding pylon sign with a 1'-6" property line setback and one wall sign per tenant on a multi-tenant site in a B-3, Community Business District.

The Chair announced the matter, advising that the second wall sign had been recommended for approval, however, the freestanding pylon sign had been denied, and that the applicant should address the Board regarding the subject at that time.

Wade Wright, Wrico Signs, spoke on behalf of Buffalo Wild Wings and made the following points for the variance:

- A. the only portion of the freestanding pylon sign that encroaches on the public right-of-way is in the air, therefore not interfering with ingress or egress from the site nor does it create any unsafe situation; and,
- B. Applebee's to the east had a similar set up and it was hoped that the same could be granted Buffalo Wild Wings.

Mr. Coleman asked if the applicant was being asked to move the sign that was currently in place.

Mr. Palombo said that was one option, however, the sign size could be reduced as well to accomplish getting it out of the right-of-way. He also stated it was his belief that the signage at Applebee's occurred prior to the date of the Sign Ordinance.

The Chair noted that Piccadilly Square had a pylon sign on the site, but that this sign was a brand new sign.

Mr. Wright stated that it was his understanding that the Piccadilly Square sign had "maxed out" and now enjoyed a variance for its square footage, which would make using sign space there impossible.

The Chair referenced the previous occupant and queried regarding the size and placement of their sign.

Mr. Palombo stated the issue was not with size but with placement of the sign in the right-of-way.

Mr. Coleman noted the sign was already set in concrete and that the distance into the right-of-way was approximately two inches.

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Mr. Whistler clarified that the leading edge of the sign should be 18 inches back from the right-of-way line and that this sign projected 3.5 inches over the right-of-way line and 21.5 inches too far out from where it should have stopped.

The Chair stated if the variance were approved, it would be subject to removal should that part of the right-of-way be needed by area utilities.

Mr. Palombo also stated approval would also be subject to a non-utilities use agreement. He added that the applicant would have to seek the Committee's approval on said agreement.

Mr. Palombo advised the Board that there needed to be some compliance on the site with the city's tree and landscaping ordinance as well.

Hearing no opposition or further discussion, a motion was made by Mr. Coleman, with second by Mr. Davis, to approve the request for **Sign Variances to allow a second freestanding pylon sign projecting 3-1/2" into the public right-of-way and two wall signs at a business on a multi-tenant site in a B-3, Community Business District; the Zoning Ordinance allows one freestanding pylon sign with a 1'-6" property line setback and one wall sign per tenant on a multi-tenant site in a B-3, Community Business District**, subject to the following conditions:

- 1) **placement of frontage trees; and,**
- 2) **submission and approval of a non-utility right-of-way easement agreement.**

The motion carried unanimously.

OTHER BUSINESS:

Mr. Lawler reported to the Board on the Carmichael case which involved a green house that was located within one of the City's historic districts. He noted the greenhouse seemed to have been built prior to the time the area was formally recognized as a historic district. Mr. Lawler stated that Mr. Carmichael had filed an appeal with the Court regarding the Board's decision and had then contacted Mr. Lawler. Mr. Lawler stated he told Mr. Carmichael that it was his recollection that the dissent regarding the greenhouse was its unsightliness and that if it were made to look more like a greenhouse; it was felt the matter would be seen in a favorable light.

Mr. Lawler then added that two of the neighboring ladies came by his office to voice their absolute opposition to the structure in any form. Due to that conversation, Mr. Lawler stated he contacted Mr. Carmichael to advise him of this, as well as advise him that he should take counsel with him as opposed to represent himself in the matter. Mr. Lawler said it was his understanding that a letter regarding the matter had been written to the Board members by Councilperson William Carroll and queried about the letter's content.

The Chair stated he had read the letter but was unsure of its applicability to the matter.

Mr. Coleman refreshed everyone's memory regarding the case from his recollection noting that it began as a dispute over irrigation between the two adjacent neighbors and when that matter could not be resolved, the adjacent neighbor took pictures from her upstairs window of the

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greenhouse and filed a complaint regarding the same. He reminded the Board that it was their recommendation that the building be made opaque so it was not unsightly.

There being no further business, the meeting was adjourned.

APPROVED: April 5, 2010

Chairman of the Board

/jsl