

BOARD OF ZONING ADJUSTMENT MINUTES
MEETING OF AUGUST 4, 2008 - 2:00 P.M.
MOBILE GOVERNMENT PLAZA, MULTI-PURPOSE ROOM

MEMBERS PRESENT

Reid Cummings, Chairman
Vernon Coleman
Sanford Davis
Mack Graham
Russell Riley*
J. Tyler Turner*
*supernumerary member

MEMBERS ABSENT

William Guess

STAFF PRESENT

Richard Olsen, Deputy Director, Planning
Caldwell Whistler, Planner I
Joanie Stiff-Love, Secretary II

OTHERS PRESENT

John Lawler, City Attorney
Bill Metzger, Director, Traffic Engineering
David Roberts, 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 with the supernumerary member voting and called the meeting to order.

APPROVAL OF MINUTES:

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

- August 2007
- September 2007

The motion carried unanimously.

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HOLDOVERS:

#5476

(Case #ZON2008-01385)

Elijah House, Inc. (Michael L. Thomas, Agent)

1867 Duval Street

South side of Duval Street, at the South terminus of Murray Hill Court [private street]

Parking Ratio Variance to allow three parking spaces for a 40-bed outreach housing facility; the Zoning Ordinance requires ten parking spaces for a 40-bed outreach housing facility.

The Chair announced the matter and advised it had been recommended for denial and that the applicant should address the Board regarding the subject at that time. He then stated that if there were those in attendance who wished to speak to please do so at that time. The Chair noted there was no one in attendance for the variance.

Hearing no opposition or discussion, a motion was made by Mr. Coleman, with second by Mr. Cummings, to deny the request for a **Parking Ratio Variance to allow three parking spaces for a 40-bed outreach housing facility** at the above referenced location, due to the lack of representation for the application to address any questions or concerns of the Board of Zoning Adjustment.

The motion carried unanimously.

#5479/3588

(Case #ZON2008-01535)

Howard C. Melech

2704 Old Shell Road

Northwest corner of Old Shell Road and North Mobile Street

Use, Parking Surface, Parking Ratio, and Tree and Landscaping Variances to amend a previously approved Use Variance to allow the expansion of a boat repair shop with aggregate vehicle parking and boat storage areas, undesignated parking area, and no proposed tree plantings and landscaping areas in a B-2, Neighborhood Business District; the Zoning Ordinance requires a minimum B-3, Community Business District with Planning Approval for boat repair, with concrete, asphalt, or an approved alternative paving surface for vehicle parking and boat storage, an appropriate number of designated parking spaces, street frontage landscaping and frontage and perimeter tree plantings in a B-2, Neighborhood Business District.

The Chair announced the matter had been recommended for approval and that the applicant should address the Board regarding the subject.

The following people spoke regarding the matter:

- David Conrad, 1406 Dauphin Street, Mobile, AL, attorney for the applicant; and,
- Howard Melech, 2704 Old Shell Road, Mobile, AL, the applicant.

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They requested the matter be held over until the September 8, 2008, meeting.

Hearing no opposition or further discussion, a motion was made by Mr. Coleman, with second by Mr. Davis, to **hold the matter over at the applicant's request until the September 8, 2008, Board of Zoning Adjustment meeting.**

The motion carried unanimously.

#5484/5160

(Case #ZON2008-01610)

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 and advised it had been recommended for approval and that the applicant should address the Board regarding the subject at that time. He then stated that if there were those in attendance who wished to speak to please do so at that time. The Chair noted there was no one in attendance for the variance.

Hearing no opposition or discussion, a motion was made by Mr. Davis, with second by Mr. Cummings, to deny the request a **Use Variance to allow the construction of two 200' x 90' float barns in a B-3, Community Business District** at the above referenced location due to a lack of representation for the application to address any questions or concerns of the Board of Zoning Adjustment.

The motion carried unanimously.

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#5487

(Case #ZON2008-01614)

The Mitchell Company

4453 and 4459 Old Shell Road, and 5 South McGregor Avenue

Southwest corner of Old Shell Road and South McGregor Avenue

Front Setback, Frontage Landscaping, Vehicle Stacking, and Protection Buffer Variances to allow the construction of a pharmacy within 2.8' of a front property line and a clock tower within 14.5' of a front property line, with less than 60% frontage landscaping, less than three vehicle queuing spaces per drive-through lane clear of drive aisles, and no vegetative planting or fence buffer along residentially zoned properties in a B-2, Neighborhood Business District; the Zoning Ordinance requires a 25' street front setback for all structures, 60% street frontage landscaping, three queuing spaces per drive-through lane clear of drive aisles, and a minimum 6' high wall, fence, or screen planting buffer along residentially zoned properties in a B-2, Neighborhood Business District.

(Also see #5488 (Case #ZON2008-01615) **The Mitchell Company**, 4453 and 4459 Old Shell Road, and 5 South McGregor Avenue, Southwest corner of Old Shell Road and South McGregor Avenue)

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

Doug Anderson, Burr and Foreman Law Firm, for the applicant, the Mitchell Company, made the following points for the variance:

- A. the site plan withdrawn was contingent on the City allowing "on street" parking and as they have not, that application was withdrawn;
- B. the applicant and their representative had met with the Mayor, Laura Clark, Director of Urban Development, Richard Olsen, Deputy Director, Planning Section, Urban Development, The Village of Springhill representatives and representatives from the neighboring property owners, and inasmuch the plan is the best compromise for all parties;
- C. the variances for the setback and the vehicle stacking issues were recommended for approval by the staff, but the variance regarding buffering was not; and,
- D. the applicant's stance regarding buffering is that though Springhill Baptist Church is zoned as R-1 residential, it is not used in a residential fashion at all but really has more of a commercial use and feel due to its offices and daily industry.

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

Linda St. John, 2 North Springback Road, Mobile, AL, president of The Village of Springhill, stated that the City would require a total of 17 trees on the street frontage for the property and that those involved with The Village of Springhill would like to see those trees planted every 30

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feet within the City right-of-way with all work to be coordinated with both Traffic Engineering and Urban Forestry.

The following people spoke in opposition to the matter:

- Janice Bauers, 4514 Old Shell Road, Mobile, AL;
- Jo Tanner, property owner of 4467 Old Shell Road, Mobile, AL;
- Tommy Cain, property owner of 4500 Old Shell Road, Mobile, AL; and,
- Margie Smith, 3705 The Cedars Avenue, Mobile, AL, and property owner of 4400 Old Shell Road, Mobile, AL.

They made the following points against the matter:

- A. supported property owner rights;
- B. the proposed location of the building over the setback line on McGregor Avenue was not in keeping with the existing buildings at that intersection, and noted that the BankTrust Bank Building, Springhill Baptist Church and Compass Bank were all much farther back than the 25 feet setback line;
- C. the lack of adequate green space would only aggravate the drainage problems already in the Springhill area, as earth space/green space was necessary to absorb rainwater and runoff;
- D. concern regarding the safety of people backing out into on-coming traffic along McGregor;
- E. concern that the variance was requested due to self-imposed hardships caused by the developer's desire to put the building too close to the road;
- F. concern that the placement of the property's dumpster would have a negative impact on the adjacent bridal shop's business; and,
- G. concern that a vote in favor of the variance would be setting a precedent by the Board of Zoning Adjustment for voting on future projects with while votes on ordinances were pending.

The Chair responded with the following points:

- A. parking in the City's right-of-way was not something the Board could address or grant a variance for because it was not within their purview;
- B. drainage issues associated with the property would fall under the direction of the City's Engineering Department and the City ordinances required that all drainage be developed and maintained to City standards;
- C. the plan details indicated that the applicant exceeded the amount of green space and landscaping required under the current ordinances, so additional requests for such were unnecessary;
- D. the proposed building was to be built as far away as possible from the property owner with issue regarding the same and the

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- dumpsters associated with the building were to be placed and positioned so they would not be seen from that same property;
- E. permitted parking along McGregor Avenue was not within the purview of the Board of Zoning Adjustment, but rather it fell to the City's Traffic Engineering Department and the City Council;
 - F. the Board of Zoning Adjustment could only deal with issues presented to them and that they could not require that buildings be placed in specific spots on a site; and,
 - G. if anyone, whether it be a private individual or a business who was directly affected by the matter, was unhappy with a Board of Zoning Adjustment decision, they had 15 days to file with Civil Court and have the matter decided there.

Mr. Anderson re-addressed the Board, saying that his client would agree to the trees Mrs. St. John and the Village of Springhill had requested be planted in the right-of-way, however, his client agreed to plant them every 60 feet, not every 30 feet, as they felt the 60 feet would be better for visibility.

In deliberation, the Chair noted that when commercial property abutted residential property, the Board stood by buffering between the two. He noted that the church was zoned residential even if it was not a standard home and that as a compromise on buffering, he would like to see a vegetative hedge in the place of the wooden privacy fence.

Mr. Olsen noted trees would be required for every 30 feet of road frontage but not necessarily placed every 30 feet, but that currently there were no trees located in the City's right-of-way in the area in question.

Mr. Daughenbaugh advised the Board that Urban Forestry would also have to be consulted regarding the selection of type and size of trees to be planted. He also advised that there were existing trees on Old Shell Road and McGregor Avenue that might have to be removed and to do so would require permission of the Mobile Tree Commission.

Mr. Riley asked if there would be room in the City's right-of-way which would include the 10 foot sidewalk for overstory, heritage trees.

Mr. Daughenbaugh stated there would be room with the use of tree wells, and cited the downtown Mobile area as an example of tree wells and the planting of overstory, heritage trees in the City's sidewalks and right-of-ways.

Hearing no further opposition or discussion, a motion was made by Mr. Cummings, with second by Mr. Coleman, to approve the request for variances to **Front Setback, Frontage Landscaping, Vehicle Stacking to allow the construction of a pharmacy within 2.8' of a front property line and a clock tower within 14.5' of a front property line, with less than 60% frontage landscaping, less than three vehicle queuing spaces per drive-through lane clear of drive aisles in a B-2, Neighborhood Business District** at the above referenced location, subject to the following conditions:

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1. **the provision of a 6 ft high vegetative buffer where the site adjoins residential property.**
2. **the submission and approval of an Administrative Planned Unit Development application prior to the issuance of any permits; and,**
3. **full compliance with all municipal codes and ordinances**

The Board did not approve the protection buffer variance as requested, but instead required a 6 ft. vegetative hedge buffer along the property line adjoining residentially zoned properties.

The motion carried with only Mr. Davis voting in opposition.

#5488

(Case #ZON2008-01615)

The Mitchell Company

4453 and 4459 Old Shell Road, and 5 South McGregor Avenue

Southwest corner of Old Shell Road and South McGregor Avenue

Front Setback, Frontage Landscaping, Vehicle Stacking, and Protection Buffer Variances to allow the construction of a pharmacy within 12.4' of a front property line, with less than 60% frontage landscaping, less than three vehicle queuing spaces per drive-through lane clear of drive aisles, and no vegetative planting or fence buffer along residentially zoned properties in a B-2, Neighborhood Business District; the Zoning Ordinance requires a 25' street front setback for all structures, 60% street frontage landscaping, three queuing spaces per drive-through lane clear of drive aisles, and a minimum 6' high wall, fence, or screen planting buffer along residentially zoned properties in a B-2, Neighborhood Business District.

(Also see #5487 (Case #ZON2008-01614) **The Mitchell Company**, 4453 and 4459 Old Shell Road, and 5 South McGregor Avenue, Southwest corner of Old Shell Road and South McGregor Avenue)

Doug Anderson, Burr and Foreman Law Firm, addressed the Board on behalf of the applicant and withdrew the application.

PUBLIC HEARINGS:

5492

(Case #ZON2008-01848)

Laurence R. Carter & Cynthia A. Carter

631 Azalea Road

North side of Azalea Road, 390'± West of Village Green Drive

Use Variance to allow a single-family dwelling on the ground floor in a B-2, Neighborhood Business District; the Zoning Ordinance requires a single-family dwelling to be above the ground floor in B-2, Neighborhood Business Districts.

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

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Cynthia Carter, 631 Azalea Road, Mobile, AL, spoke on her own behalf and made the following points in favor of the matter:

- A. she and her husband were the proprietors of a “doggy daycare,” which helped to socialize dogs;
- B. they had been at their current site in Mobile since May 2007; and,
- C. though they have tried to maintain regular hours, due to issues beyond their control, they are on property 7 days a week from approximately 4:30 a.m. to approximately 11:30 p.m.

The Chair noted that though the hardship did not involve the physical property directly, it was directly related to the nature of the business done at the property. He also noted that as the property was zoned B-2, if the structure on the property had a second floor then they could live on-site without needing a variance, so there was some hardship associated there.

Hearing no opposition or further discussion, a motion was made by Mr. Davis, with second by Mr. Coleman, to approve the request for a **Use Variance to allow a single-family dwelling on the ground floor in a B-2, Neighborhood Business District** at the above referenced location.

The motion carried unanimously.

OTHER BUSINESS:

The Chair advised the Board members that the tentative meeting schedule for the 2008-2009 year was at their respective places. Upon saying that, a motion was made by Mr. Cummings, with second by Mr. Graham, to adopt the aforementioned schedule.

The motion carried unanimously.

There being no further business, the meeting was adjourned.

APPROVED: March 1, 2010

Chairman of the Board

/jsl