

BOARD OF ZONING ADJUSTMENT MINUTES
MEETING OF SEPTEMBER 13, 2010 - 2:00 P.M.
MOBILE GOVERNMENT PLAZA, MULTI-PURPOSE ROOM

MEMBERS PRESENT

Reid Cummings, Chairman
William Guess
Vernon Coleman
Sanford Davis
Adam Metcalf
Russell Riley*
*supernumerary member

MEMBERS ABSENT

J. Tyler Turner*

STAFF PRESENT

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

OTHERS PRESENT

David Daughenbaugh, Urban Forestry
Gerard McCants, Urban Forestry
David Roberts, Traffic Engineering

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

CALL TO ORDER:

Chairman Cummings advised all in attendance as to the policies and procedures of the Board of Zoning Adjustment. He noted the number of members present constituted a quorum with the supernumerary member voting if necessary and called the meeting to order.

APPROVAL OF MINUTES:

A motion was made by Mr. Cummings, with second by Mr. Coleman, to approve the minutes from the following Board of Zoning Adjustment meetings:

- August 3, 2009
- September 14, 2009
- October 3, 2009
- May 3, 2010

The motion carried unanimously.

HOLDOVERS:

#5622 / 4677

(Case #ZON2010-01471)

Rich's Car Wash

1066 Hillcrest Road

Northwest corner of Hillcrest Road and Johnston Lane.

Front Yard Setback Variance to allow a structure 11' from a front property line in a B-2, Neighborhood Business District; the Ordinance requires a minimum 25' from front property lines 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.

Mr. Guess recused himself from discussion and voting on the matter, leaving Mr. Riley to participate in the discussion and decision.

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

- A. Noted that the matter was recently submitted to and approved by the Planning Commission to resolve the split zoning issue that existed on the site;
- B. Noted that the activities on the site primarily took place at the corner of Johnston Road and Hillcrest Road;
- C. During the Planning Commission process, it became apparent that a portable shed had been placed on the property without benefit of permit and it was agreed at that time to remove the shed;
- D. During the Planning Commission process, it also became apparent that a canopy had been installed without benefit of permit and that canopy's metal roof encroached upon the setback line at 11 feet on Johnston Road;
- E. Noted that Johnston Road had very little traffic, being gravel and servicing only a few residents who lived to the left of the applicant's business;
- F. Noted that there is very little property developed on Johnston Road, including an area zoned as R-1;
- G. Noted the neighbor who attended the last meeting regarding this matter had spoken with his attorney and determined that the applicant's request would have no negative impact on his property and so had no objections to it;
- H. Noted the canopy was part of the detailing services now done by the car wash in an effort to make the business more profitable; and,
- I. Noted the canopy did not cause any visibility issues.

The Chair asked if there were any more questions from the Board. Hearing none, he asked if there were those present in opposition to the matter and opened the floor to their comments. Hearing none, he opened the matter for a motion.

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Mr. Palombo asked that the Board add the following conditions to any approval they might be considering:

- A. double fee for permitting of the canopy; and,
- B. provision of a solid, 3 feet high, hedgerow along Johnston Road or a 3 feet high solid, wooden fence to be maintained the entire length of the property along Johnston Road.

Hearing no opposition or further discussion, a motion was made by Mr. Coleman, with second by Mr. Davis, to approve the Front Yard Setback Variance to allow a structure 11' from a front property line in a B-2, Neighborhood Business District with the following conditions:

- 1) that the applicant pay a double fee at the time of permitting for the canopy;**
- 2) the provision of a solid 3-foot high continuous hedgerow or 3-foot high solid wall or fence along the Johnston Lane frontage; and,**
- 3) full compliance with all municipal codes and ordinances.**

The motion carried unanimously.

EXTENSIONS:

#5599

(Case #ZON2010-00027)

Charles Boggan

175 2nd Avenue

Northwest corner of 2nd Avenue and Avenue C.

Use Variance to allow a mobile home in an R-1, Single-Family Residential District; the Zoning Ordinance allows mobile homes in an R-1, Single-Family Residential District with Planning Approval. Request for a six-month extension of the previous approval.

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 matter:

- A. Dina Williams 175 2nd Avenue, Mobile, AL, spoke on her own behalf as the owner of the trailer; and,
- B. Charlotte O'Connor, daughter of the property owner, Charles Boggan.

They made the following points in favor of another 6 month extension for the trailer:

- A. noted that she had gotten the wiring and plumbing for the trailer up to code as required by the Board;
- B. noted that she had had the land surveyed as required by the Board;

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- C. spent all of her off time searching the county for a place to put her trailer; and,
- D. reminded the Board that she at best worked 30 hours a week at Morrison's at minimum wage and the previously mentioned work had severely set her back financially and now she needed the time to put back more money to be able to find a lot where she could move the trailer as no trailer parks would take her trailer as it was a Level 1 trailer.

Mr. Palombo noted that he had seen no permits for plumbing or sewage and had only found a permit for a temporary power pole.

The Chair reminded everyone of the extremely difficult time the Board had had making its previous decision. He reminded everyone that the Board, though recognizing the extremely difficult place the applicant found herself, was still held responsible by the City for upholding its ordinances. He noted that as the property in question was now within the city limits of Mobile and that the Zoning Ordinance did not allow for trailers within the City limits, the Board had been very generous in allowing the applicant to keep the trailer on the site for the previous 6 months. He reminded the applicant that he had very carefully told her at the time that the matter needed to be resolved within the 6 months given as an extension of that time would be most unlikely.

Mr. Davis expressed his concern over what would become of the family if the extension was not granted, most specifically what would be the time frame for removing the trailer.

Mr. Palombo stated the Board had the liberty of stating how long the applicant had with regards to vacating the property.

Mr. Metcalf noted he was not comfortable approving the matter for another 6 months, however, he was also not in favor of sending the applicant from the meeting having to move the next day.

Hearing no opposition or further discussion, a motion was made by Mr. Metcalf, with second by Mr. Davis, to deny the request for a six-month extension for Use Variance to allow a mobile home in an R-1, Single-Family Residential District but approved allowing the applicant 60-days to remove the mobile home from the site.

The motion carried unanimously.

PUBLIC HEARINGS:

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#5626

(Case #ZON2010-01880)

Breland Homes (Grande Development LLC)

Northeast and Southeast corners of Hillcrest Road and Oakleigh Way.

Fence Height Variance to allow a 6' high masonry wall within the 25' recorded building setback on two subdivision entrance lots in an R-1, Single-Family Residential District; the Zoning Ordinance requires structures 3' high or higher to meet a 25' front setback in an R-1, Single-Family Residential District.

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

Don Williams, Williams Engineering, 6300 Piccadilly Square Drive, Mobile, AL, spoke on behalf of his client and stated their agreement with the recommendations.

Hearing no opposition or further discussion, a motion was made by Mr. Coleman, with second by Mr. Davis, to approve the Fence Height Variance to allow a 6' high masonry wall within the 25' recorded building setback on two subdivision entrance lots in an R-1, Single-Family Residential District.

The motion carried unanimously.

#5627/3332

(Case #ZON2010-01971)

Vincent Boothe

1512/1514 South Broad Street

West side of South Broad Street, 200'± South of Sutton Street, extending to Lucille Street (unopened right-of-way).

Frontage Landscaping and Access/Maneuvering Variances to allow 6,396 square feet of total frontage landscaping and to allow a portion of the front parking access/maneuvering area to be located within a dedicated right-of-way; the Zoning Ordinance requires 10,858 square feet of total frontage landscaping, and requires all parking access/maneuvering areas to be located on-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.

Frank Dagley, Frank A. Dagley and Associates, 717 Executive Park Drive, Mobile, AL, spoke on behalf of the applicant and made the following points in favor of approving the matter:

- A. the building in question had been vacant for almost 2 years;
- B. the applicant had contracted with the Pardon and Parole Board to lease only a portion of the building for their offices and the rest of the building will remain vacant;
- C. when the applicant re-subdivided the property, the City required a large portion from the front of the property be dedicated as right-of-way;

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- D. expressed the opinion that by requiring that dedication, with a building already in place, it created the hardship with regards to having enough frontage area to plant the required amount of landscaping as well as it has reduced the amount of space available for parking in the front; and,
- E. noted that though there is parking available on the northern side of the building, that parking needed to be reserved for the potential business that would lease the portion of the building not currently under lease to the Pardon and Parole Board.

The Chair noted that from reviewing the application, Mr. Booth had taken approximately 9 to 10 oddly shaped parcels, which included a building that straddled 4 separate lots and had re-subdivided them into 2 lots, thereby cleaning up what appeared to be a large land use problem. He also expressed that he understood the applicant's ascertainment that the hardship was not self imposed but one that had been imposed upon them by the Ordinance.

Mr. Dagley noted that the staff had pointed out that there were no windows in the front of the building and that the staff had wished that the Pardon and Parole Board could have more visibility with regards to their clients. He added that it was hoped to add windows to the lobby in an effort to address such.

The Chair asked if there were any more questions from the Board. Hearing none, he asked if there were those present in opposition to the matter and opened the floor to their comments. Hearing none, he opened the matter for a motion.

Hearing no opposition or further discussion, a motion was made by Mr. Metcalf, with second by Mr. Guess, to approve the Frontage Landscaping and Access/Maneuvering Variances to allow 6,396 square feet of total frontage landscaping and to allow a portion of the front parking access/maneuvering area to be located within a dedicated right-of-way.

The motion carried unanimously.

#5628

(Case #ZON2010-01974)

Alabama Power Company

505 Hillcrest Road

East side of Hillcrest Road, 370'± North of Airport Boulevard, extending to the North side of Airport Boulevard, 235'± East of Hillcrest Road.

Height, Setback, and Buffer Separation Variances to allow a 197' high telecommunications tower, setback 65.27' from a side property line and 158.24' from a front property line, with a 220.25' residential buffer separation in a B-2, Neighborhood Business District; the Zoning Ordinance allows a 45' maximum height limit, requires a 197' (tower height) setback from property lines, and requires a 295.5' (150% of tower height) buffer separation from residentially zoned properties in a B-2, Neighborhood 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.

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Christopher Baker, Hutchinson, Moore and Rauch, LLC, 2039 Main Street, Daphne, AL, spoke on behalf of the applicant and noted their agreement with the conditions.

Mr. Guess asked if the tower requested would be used strictly and solely for Alabama Power communication needs or if Alabama Power intended to use it for rental space.

Mr. Baker stated it was a non-commercial venture for Alabama Power's internal communication needs as well as such public users as the School Board and the Sheriff's Department.

The Chair asked if there were any more questions from the Board. Hearing none, he asked if there were those present in opposition to the matter and opened the floor to their comments. Hearing none, he opened the matter for a motion.

Hearing no opposition or further discussion, a motion was made by Mr. Coleman, with second by Mr. Metcalf, to approve the Height, Setback, and Buffer Separation Variances to allow a 197' high telecommunications tower, setback 65.27' from a side property line and 158.24' from a front property line, with a 220.25' residential buffer separation in a B-2, Neighborhood Business District, subject to the following conditions:

- 1) **provision of additional tree plantings along the site's East side adjacent to residential properties, to be coordinated with Urban Forestry, and to be depicted on any plans submitted for land disturbance permits; and,**
- 2) **full compliance with all other municipal codes and ordinances.**

The motion carried unanimously.

#5629

(Case #ZON2010-01981)

Jean H. and Phillip Austin

112 South McGregor Avenue

Southeast corner of McGregor Avenue and Vickers Place.

Front Yard Setback Variance to allow a 22' x 30' carport/storage room within 8' of the front property line in an R-1, Single-Family Residential District; the Zoning Ordinance requires a 25' minimum building setback from the front property line in an R-1, Single-Family Residential District.

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

Crosby Latham, E.C. Latham and Company, 3651 Old Shell Road, Mobile, AL, spoke on behalf of the applicants and made the following points:

- A. noted the subdivision the property was located in was built in the 1970's with all of the houses facing on to the back alleyway, which

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- meant that the property's back yard accessed the public street creating the need for the variance;
- B. noted the applicants wanted to have a workshop, carport and breezeway in that portion of their property which called for them to be within eight feet of the standard front property line;
 - C. noted that the applicants had a sunken patio which was 18 inches below the grade with a perimeter brick wall, which created additional issues with meeting the setback regulations;
 - D. noted the roof line of the breezeway and the carport had the potential to create drainage issues; and,
 - E. in 1999, a neighbor to the south of the applicant had been granted a variance for something very similar due to the similar physical hardships associated with this property.

Mr. Guess asked if the driveway shown was currently in existence.

Mr. Latham said that it was and that the applicants would like to center the carport on it which was one of the note issues with the proposed developments.

The Chair asked staff for some type of clarification regarding how they saw the lot.

Mr. Palombo stated the site basically had two front yards and that any modifications had the really possibility of making situation on the property worse with regards to drainage and road safety. He also advised that the applicants should be aware that there would be Engineering requirements as well as those heard that day.

Mr. Latham noted that and explained that the applicant had all the necessary documentation regarding the lot conforming to those requirements.

The Chair asked if there were any more questions from the Board. Hearing none, he asked if there were those present in opposition to the matter and opened the floor to their comments. Hearing none, he opened the matter for a motion.

Hearing no opposition or further discussion, a motion was made by Mr. Guess, with second by Mr. Coleman, to approve the Front Yard Setback Variance to allow a 22' x 30' carport/storage room within 8' of the front property line 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.

#5630

(Case #ZON2010-01993)

Ben Cummings

3704 Dauphin Street

North side of Dauphin Street, 150'± West of Du Rhu Drive.

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Sign Variance to allow four wall signs on an ATM kiosk and one building wall sign (five total wall signs) for a tenant on a multi-tenant commercial site in a B-2, Neighborhood Business District; the Zoning Ordinance allows one wall sign per tenant on a multi-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.

Ben Cummings, Cummings Architecture, 1 Houston Street, Mobile, AL, spoke on his own behalf on the matter and offered the following points:

- A. passed out photographs as backup for his argument for approval;
- B. noted that the ATM in question was separate from the building;
- C. noted that the main building was a multi-tenant site;
- D. as the main building was a multi-tenant site, felt it was important to distinguish the ATM structure as belonging to the bank;
- E. note the ATM structure was only partially visible from the street and was nestled in between two Live Oak trees;
- F. noted that the Live Oaks were protected and evergreen so they would conceal the ATM structure year round;
- G. as the sign ordinance was in place to eliminate sign clutter and as the Live Oak provided such a fine screen of the sight, it was felt that utilizing the ATM structure for the placement of signage other than the original owner, Coastal Bank and Trust, was not in opposition to the City's sign ordinance; and,
- H. drew an analogy between the ATM and a gasoline fuel pump, noting that most gas pumps had additional signage on them and that just like a gas pump dispensed gasoline, the ATM dispensed money.

Mr. Palombo noted that Mr. Cummings had made many good points, however, the staff felt the following:

- A. the Ordinance did not view ATMs in the same category as fuel pumps as evidenced by the many ATMs located around the city that did not appear as the applicant would like theirs to appear; and,
- B. noted that the applicant chose to put their ATM kiosk in between the two trees which were already in existence so any hardship associated with the trees was self-imposed.

The Chair expressed his feeling that much of the argument had to do with branding and that the Board had seen similar issues when gasoline stations came before the Board wanting their canopies to include specific color schemes, decals, striping, and lettering in addition to the signage located on their fuel pumps. He noted that the Board had approved those requests.

Michael Holland, 6317 Charlestown Drive, Mobile, AL, spoke as an officer for Coastal Bank and Trust. He noted they were solely owned by Sonova Financial Corporation, which was

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headquartered in Columbus, GA. He noted that Sonova was in five different states throughout the Southeast. He noted in Alabama, Sonova was doing business as Sterling Bank in Montgomery, First Commercial Bank in Birmingham, and Coastal Bank and Trust in Mobile. He noted that customers of banks in those other markets and states needed the ability to see their bank's name and their affiliates on the signage.

Mr. Metcalf expressed his opinion that Coastal Bank and Trust had done a good job on the property, creating a type of retro fit. He also noted that it had some signage challenges as such. He stated that the drive-up section of the bank was located on the opposite side of the branch location, so the site was confusing. He expressed that he could support the matter as proposed, but that to put another Sonova sign on the face of the building would be, in his opinion, overkill.

The Chair asked if there were any more questions from the Board. Hearing none, he asked if there were those present in opposition to the matter and opened the floor to their comments. Hearing none, he opened the matter for a motion.

Mr. Metcalf moved, with second by Mr. Davis, to approve the Sign Variance to allow four wall signs on an ATM kiosk and one building wall sign (five total wall signs) for a tenant on a multi-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.**

Mr. Guess asked that the motion be amended to decrease the number of some of the signs as he felt that some of the signage was redundant.

Mr. Metcalf noted that his motion stood as stated.

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

The motion carried with only Mr. Guess voting against it.

#5631

(Case #ZON2010-02001)

Thompson Properties

3950 Hamilton Boulevard

North side of Hamilton Boulevard, 4/10± mile West of Rangeline Road.

Parking Surface and Enclosure Variances to allow an aggregate parking surface and an open equipment wash pad in an I-1, Light Industry District; the Zoning Ordinance requires all parking surfaces to be asphalt, concrete, or an approved alternative paving

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surface, and equipment wash pads to be within an enclosed structure in an I-1, Light Industry District.

Frank Dagley, Frank A. Dagley and Associates, 717 Executive Park Drive, Mobile, AL, spoke on behalf of the applicant and made the following points in favor of approving the matter:

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.

Mr. Dagley expressed some concern regarding Condition 5 and asked if it would cancel out the variance.

Mr. Palombo stated it only dealt with building code issues.

Upon hearing that, Mr. Dagley stated the applicant was in agreement with the recommendations.

Hearing no opposition or further discussion, a motion was made by Mr. Guess, with second by Mr. Coleman, to approve the Parking Surface and Enclosure Variances to allow an aggregate parking surface and an open equipment wash pad in an I-1, Light Industry District, subject to the following conditions:

- 1) revision of the site plan to depict 4 frontage trees for Lot 2 only;**
- 2) revision of the site plan to reflect frontage landscaping area for Lot 2 only;**
- 3) revision of the site plan to depict a sidewalk in front of Lot 2 only;**
- 4) obtain a separate permit for any new fencing on the site, clearly indicating if the new fence will have barbed-wire, razor-wire, or similar hazardous materials; and,**
- 5) full compliance with all municipal codes and ordinances.**

The motion carried unanimously.

#5632

(Case #ZON2010-02106)

Mobile Area Chamber of Commerce

451 Government Street

Block bounded by Governments Street, South Hamilton Street, Church Street, and South Lawrence Street.

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Sign Variance to allow two 25' x 10' wall banners, three 5' x 5' wall banners (with a total of 575 square feet of banners), and four 3' x 2' lamp post signs from October 1, 2010, until January 31, 2012, (sixteen months) on a single tenant commercial site in a B-4, General Business District; the Zoning Ordinance allows three banner permits per year with a maximum allowance of 32 square feet per banner, each valid for thirty days, with at least a thirty-day break between permits, and does not allow lamp post signage on a single tenant commercial site in a B-4, General 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.

Shayla Beaco, Mobile Chamber of Commerce, 451 Government Street, Mobile, AL spoke on behalf of her organization. She noted that the Chamber was celebrating its 175 anniversary and that the signage was necessary to promote all of the events planned by the organization. She understood that the staff had recommended that the matter be approved with the condition of ARB approval. She stated that the time necessary to gain that approval would delay their timeline and asked if the Board could remove that condition.

The Chair noted that the Board was not able to remove that condition. He then queried as to why the celebration of a specific year required 16 months and wondered if the signage would last as long as their plans.

Mr. Guess noted that the Board had approved variance requests of this type in the past.

Hearing no opposition or discussion, a motion was made by Mr. Guess, with second by Mr. Coleman, to approve the Sign Variance to allow two 25' x 10' wall banners, three 5' x 5' wall banners (with a total of 575 square feet of banners), and four 3' x 2' lamp post signs from October 1, 2010, until January 31, 2012, (sixteen months) on a single tenant commercial site in a B-4, General Business District, subject to the following conditions:

- 1) obtaining any necessary approvals from the Architectural Review Board for the banner and sign designs; and,**
- 2) the banners and signs are limited to the time span of October 1, 2010, to January 31, 2012.**

The motion carried unanimously.

OTHER BUSINESS:

Mr. Palombo advised the Board that the staff was re-doing their format for writing reports and that it was more in depth. He noted that the staff was requesting comments on the variances from the Traffic and the Engineering departments, and that they were considering doing the same with the Fire Department on commercial applications. He asked if they would like to comment on what input might be helpful to include in the reports.

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The Chair expressed that he felt the other departments would have little input with regards to the decision making process, especially Engineering and Fire.

The Board members noted their appreciation to the staff for trying to make reports uniformed.

Mr. Palombo noted that the staff would not seek comments from those departments if the Board felt strongly along those lines.

There being no further business, the meeting was adjourned.

APPROVED: April 4, 2011

Chairman of the Board

/sg