

BOARD OF ZONING ADJUSTMENT MINUTES
MEETING OF JANUARY 7, 2008 - 2:00 P.M.
MOBILE GOVERNMENT PLAZA, MULTI-PURPOSE ROOM

MEMBERS PRESENT

Reid Cummings, Chairman
William Guess
Martha Collier*
Vernon Coleman
Mack Graham
*supernumerary member

MEMBERS ABSENT

Sanford Davis
J. Tyler Turner*

STAFF PRESENT

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

OTHERS PRESENT

John Lawler, city attorney
David Roberts, Traffic Engineering
David Daughenbaugh, Urban Forestry

Chairman Cummings noted the number of members present constituted a quorum and called the meeting to order.

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

PUBLIC HEARINGS:

#5454/4379/2665

(Case #ZON2007-02731)

Adams Construction Company, LLC

255 Church Street

(Block bounded by Church Street, Jackson Street, and Joachim Street)

Adam Topolnicki, 8156 Pecan Court, Daphne, AL, spoke on behalf of the property owner, regarding the inappropriate sign that had been installed on the Ramada Inn, Church Street. He stated that the installer never pulled a sign permit and that the signage went beyond what is allowed by ordinance. He stated that the sign is already in place.

Mr. Cummings asked if this was a new sign or a sign to replace a previously existing sign.

Mr. Topolnicki said he did not know. He stated that the bricks in that area had come down after Hurricane Katrina. Those bricks were replaced and the sign put back on those bricks. He added the area looked like “something” should be there, otherwise, it was just a stark, blank brick wall facing that side of the building.

Mr. Cummings asked how long the sign in question had been in place.

Mr. Topolnicki said approximately eight months.

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Mr. Whistler advised that there was no sign there previously. He also advised the Board that none of the signage at that location was permitted. The previous sign had been approved by the City's ARB, but was installed without a permit. This sign, however, had no approval or permit.

Mr. Coleman asked on which wall the sign was located.

Mr. Whistler said it was located on the southwest wall facing the convention center.

Mr. Topolnicki stated he felt that the property owner did not understand the need for a new sign permit, nor did the sign installer.

Mr. Cummings asked who owned the property and for how long.

Mr. Topolnicki advised that Mr. Win Hong was the current owner and had been for the last 4 years.

Mr. Cummings stated he understood the matter as there being a sign installed improperly without benefit of permit or ARB approval.

Mr. Guess asked if there were two signs added.

Mr. Whistler advised no, only one. They have two free standing monument signs, which had been granted by previous variances, and that only the one, new sign that has been mounted to the face of the building is in violation.

Mr. Guess moved to approve the variance subject to approval by the City's ARB, which failed for lack of second.

Mr. Guess moved to deny the request with second by Ms. Collier.

The Chair asked for further discussion. Hearing none, the vote was called, with Ms. Collier, Mr. Guess, Mr. Cummings, and Mr. Graham voting in favor of denial, and Mr. Coleman voting against denial.

The motion carried 4 to 1 and the variance was denied.

#5455/4686/4646

(Case #ZON2007-02847)

James McAleer

3305 Spring Hill Avenue

(East side of Ingate Street, extending from Spring Hill Avenue to Old Carline Street)

Mr. McAleer presented his own case as Frank Dagley, his representative, was sick and unable to attend.

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The Chair advised Mr. McAleer that the staff had recommended approval for this variance, subject to the applicant's adherence to the conditions placed upon him by the Planning Commission approval.

Ms. Collier asked if there were plans for a new entrance to the building or would customers continue to use the old entrance. She also asked if there was a sidewalk at the front of the building and if the proposed building would only be used for storage..

Mr. McAleer advised the entrance would remain the same, that there was a sidewalk in the front of the building and that the proposed building would only be for storage.

Hearing no opposition or further discussion, a motion was made by Ms. Collier, with second by Mr. Coleman, to approve the **Parking Ratio Variance to allow 32 parking spaces for an 18,084 square-foot retail showroom and 6-employee warehouse** at the above referenced location subject to the following condition:

- 1) the applicant to adhere to all other conditions placed upon Planning Commission approvals.

The motion carried unanimously.

#5456/5088/4882

(Case #ZON2007-02849)

Global Tel Link

27 Alexander Street

(West side of Alexander Street, 200' ± South of Cameron Street)

Mr. Palombo advised the Board that the matter should be summarily denied as it had come before the Planning Commission previously and been denied there.

Mr. John Crane, 25 Alexander Street, spoke to the Board and asked that they address the following with the applicant:

- 1) use aggregate parking for less run off than asphalt;
- 2) not raise the property level as it is already very low lying and boggy in that area;
- 3) protect the very large live oak that is on the property;
- 4) install a privacy fence along the property line; and,
- 5) if there is lighting, that it not shine on his home.

Hearing no other opposition or further discussion, a motion was made by Mr. Guess, with second by Mr. Coleman, to deny the requested variance.

The motion carried unanimously.

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#5457/4570

(Case #ZON2007-02853)

Chartersouth, Inc.

810 Dauphin Island Parkway

(Southwest corner of Dauphin Island Parkway and Halls Mill Road)

Justin Smith with Saad & Vallas Realty Group, 3601 Springhill Business Park, and Mike Kinard with Chartersouth, the general contractors for the project, spoke to the Board regarding the variance. Mr. Smith stated the request for a variance was due to the property listed above being under contract. He added that when they went through the subdivision process it was to create a two lot subdivision as the streets exist in such a manner that Urban Development required a 50 feet from center line dedication for each right-of-way and that effectively cut out approximately 50% of the property's area which resulted in their reducing the building size by approximately 25%. Mr. Smith also stated they have decided to pull all proposed expansion out of the Hall's Mill Road set back, however, as a result of the dedication, the canopy and gasoline pumps are not inside the building setback. He added the applicant did have to dedicate a significant amount of space for potential future right-of-way widening of Dauphin Island Parkway, however, according to the city's major street plan, there is no plan to widen Dauphin Island Parkway. He stated they also reduced the canopy from 8 to 7 gasoline pumps, removed one of the curb cuts onto Hall's Mill Road, after the Planning Commission had already approved a total of 4 curb cuts (i.e. 2 onto Dauphin Island Parkway and 2 onto Hall's Mill Road.) He did let it be known that the applicant still planned on developing the property with 2 curb cuts onto Dauphin Island Parkway.

The Chair then asked if the essential difficulty was the canopy itself to which Mr. Smith responded that was correct, elaborating that the canopy was 16 feet high supported by columns.

Mr. Coleman asked how many columns were there.

Mr. Kinard answered 14.

Mr. Guess asked what was the actual distance from the canopy to the physical road currently.

Mr. Kinard answered 29 feet.

Mr. Smith agreed that the actual distance from the canopy to the road measured 29 feet, however if they had not dedicated, this would be well within the area developable under the zoning ordinance.

The Chair noted the easement was "hurting them."

Mr. Coleman asked if the existing detail building and parts building would be demolished.

Mr. Kinard responded that they planned to demolish everything on the site except for the cell tower.

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Mr. Smith added this was because that area had already been subdivided into a second individual lot to avoid the necessity of obtaining a PUD requirement and the action had been taken after consulting with Urban Development. Mr. Smith went on to note there were currently in the city two similar Texaco stations, one located near the interstate and Moffet Road across from Gulf Distributing and the second located at Wolf Ridge Road, which were very attractive, modern, contemporary facilities.

The Chair asked if there were those present who wished to speak in favor or in opposition to the requested variance. For the record, he stated that he saw no one in the audience. He then asked if there were further questions from the Board.

Ms. Collier asked if, as this was a triangular shaped lot jutting out into two “thru-ways,” if reducing the curb cuts by only one would reduce access by “cut-thru” traffic.

Mr. Coleman spoke saying that no one “cuts thru” using Hall’s Mill Road as they use Victory Drive for access to Dauphin Island Parkway.

Mr. Kinard added his agreement to Mr. Coleman’s statement saying it shouldn’t be a factor as it would be too cumbersome for them to “cut thru” there.

Mr. Smith also added that the existing site was comprised primarily of “roll over” as opposed to actual curb, creating no real physical distinction between the parking lot and Dauphin Island Parkway. It was his opinion that the applicant was actually reducing access between the two streets by because of being required by the current zoning ordinance to put in actual curbing on the site as well as actual curb cuts.

Mr. Kinard stated that there shouldn’t be anyone “cutting thru” based on the placement of the two curb cuts on Dauphin Island Parkway and the one on Hall’s Mill Road.

Mr. Palombo reminded the Board that the property line is 4 feet from the canopy, putting a parking space in the right-of-way, requiring the removal of that parking space. He also stated the curbing would have to go along the property line as well. He stated that if the Board chose to approve this variance request, that the staff would like it done so on the condition of the submittal of a revised site plan that would show the delineation between the actual property, built property, and the right-of-way, showing no parking, etc., in the right-of-way.

Mr. Guess asked the distance from the canopy to the proposed convenience store.

Mr. Kinard stated the industry standard of 68 feet, which is for maneuvering between the convenience store and the center line of the gas dispenser.

Mr. Guess asked how close is permissible.

Mr. Kinard answered 65 feet, which keeps people from backing into each other.

The Chair asked about new curbing along the property.

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Mr. Palombo said the applicant would be “channel-ize-ing” two new curb cuts, one on Dauphin Island Parkway and one on Hall’s Mill Road. He added that Planning would require a curbing to designate private property between right-of-way and no cross maneuvering between the private property and the right-of-way, other than the curb cuts.

The Chair asked if that meant once you entered the property from Dauphin Island Parkway, you couldn’t turn left down inside the right-of-way in order to get to a gas pump.

Mr. Palombo said that was correct.

The Chair asked if it remained as currently proposed, cars would enter towards Hall’s Mill Road and then have to do a U-turn back to get into a gas pump, then go out the same exact way.

Mr. Palombo said that was correct.

Addressing the applicant, the Chair stated regarding the area along the canopy that was parallel to Dauphin Island Parkway, they were not going to be able to head out from there with a car; cars, instead would have to back up into the 68 feet between the canopy and the convenience store doing a 3-point turn.

Mr. Smith asked what will become of the area behind the curbs toward Dauphin Island Parkway.

Mr. Palombo stated that it is right-of-way even though it currently is “roll over.”

The Chair advised that the area was soon be inaccessible on the other side of the canopy due to its being right-of-way.

Mr. Palombo advised that if the Board chose to approve the variance request that one of the conditions of approval would be a right-of-way use agreement approved by the City’s Right-of-Way Committee. He also reminded Mr. Smith that this still didn’t correct the issue created by only having 4 feet between the top of the proposed canopy and the new property line.

The Chair stated that this situation would mean no way to legally get off of the property if facing Dauphin Island Parkway. He stated that if the front of the car were facing that direction, the driver could not pull out, turn left and go to the curbing; that the driver would have to back up towards Hall’s Mill Road, then maneuver the vehicle in such a way to get out through the curb cut.

Mr. Palombo stated that the staff had based their recommendation for denial upon the fact that there is only 4 feet from the canopy at the top of the canopy to the property line, with another 2 feet between the property line and the pump, creating a total of 6 feet from the gas pump to the actual property line and that 6 feet was not enough to maneuver a car.

The Chair stated that it was the Board’s practice to work with applicants, especially in the case of corner properties, to improve those in any way, including trees and landscaping, but that as a consumer the Chair would only do that once, but if realizing when he pulled in to the proposed

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location the next time that he would have to back out of his parking space after filling the car with gas in order to get back, he would never come back, and in as much, after a 6 month period, due to loss of business based upon the level of difficulty accessing the site, the applicant might only have a closed convenience store with pretty trees and landscaping .

Mr. Kinard stated that was not something they wanted.

Mr. Palombo stated that if the applicant wanted to, a right-of-way use agreement might solve the problem, however, he stated that though it was doubtful that Dauphin Island Parkway would be improved over the next two years or even ten years, the right-of-way agreement would stipulate that though the applicant would have right to use the right-of-way as theirs, at the time the City chose to ask for the property, the site would no longer be in compliance and they would be required to move the canopy, the gas tanks, or something, to bring the site back into compliance.

The Chair expressed his view that this was tough site but he felt the applicant would be spending a large sum of money to create something that would be functionally obsolete from the “get go” without the right to maneuver inside of the right-of-way.

Mr. Guess noted the applicant had moved the proposed project closer to Dauphin Island Parkway. He asked if this was in anticipation that the City would widen Hall’s Mill Road in the future.

Mr. Smith noted that the Board could see the proposed convenience store was positioned on the property at an angle, with the proposed retail location further to the north and a little further to the west in such a manner that they were encroaching right on to the new property line of Hall’s Mill Road. This was done as the applicant felt it would be less offensive to put the actual building within the legal requirements and request the variance on the canopy.

The Chair acknowledge that the Board had previously granted relief regarding gasoline pump canopies, however, he also acknowledge that based upon the report from Urban Development, if they chose to move forward with this matter, they would be putting themselves in a position, that even if they got a right-of-way agreement with the City, there would continue to be a potential problem in the future.

Mr. Lawler spoke up at this time, advising the applicant needed to go back before the Planning Commission and ask for a revision of the plan. He added that there needed to be some way found to vacate that right-of-way.

Mr. Palombo stated he did not believe the Final Plat had been signed. He advised the Board that there had been an application submitted by CharterSouth to the Planning Commission and that the Final Plat associated with that application had not been signed.

Mr. Smith and Mr. Kinard agreed it had not yet been signed.

Mr. Lawler again stated that he believe one way to solve the issue would be to carry it back to the Planning Commission and ask for relief from this request for dedication. He noted it was

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standard in the ordinance, however, the ordinance had a provision for a variance in its terms when the property size, the lot size, the topography or something like that created a hardship. In this particular instance, the property does create a hardship as the property really could not be used for anything other than the proposed use. Mr. Lawler added that if it is not used in the proposed manner, he did not think it would be useable at all. He also stated he did not believe that Dauphin Island Parkway would be widened in anyone's life time. Mr. Lawler said he would recommend to the Planning Commission that there be no requirement of dedication the Dauphin Island Parkway side.

Mr. Smith and Mr. Kinard said they thought that plan of action would work.

Mr. Palombo stated the setbacks would still remain an issue.

Mr. Coleman questioned about the Hall's Mill Road side noting there was a steep incline going up to the back with no curb and no drainage. He asked if they planned to put that in.

Mr. Kinard advised it would be done appropriately for a convenience store.

The Chair commented that in all likelihood, if the applicant went back before the Planning Commission and followed the recommendations of Mr. Lawler and the staff and proved successful there, when they came back before the Board asking for a variance for the canopy, it would likely be approved because the Board understood what the applicant was trying to accomplish, but the Board could not approve the current request. He also advised the applicant that as they proceed the right-of-way issue remained and it would be a problem not only from an operational stand point, but the lender might have stall when reviewing the issue before closing.

Mr. Lawler suggested that a 60 day hold over might be in order, providing the applicant time to go back to the Planning Commission.

The Chair asked the applicant their wishes regarding this.

Mr. Kinard requested that it be held over as Mr. Lawler had recommended.

Hearing no opposition or further discussion, a motion was made by Mr. Cummings, with second by Mr. Guess, to hold the matter over for 60 days.

The motion carried unanimously.

#5458/5423

(Case #ZON2007-02856)

Downtowner and Michael Joint Venture

(North side of Michael Boulevard, 180'± West of Downtowner Boulevard, and extending North to Downtowner Boulevard, 176'± North of Michael Boulevard)

Dan Diehl, Mobile Group, 1000 Hillcrest Road, spoke on behalf of the applicant asking to amend an earlier variance that had been granted in July of 2007. He asked that the original variance be

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amended to downsize as they now wanted to build a two-story building on the site, needing only 44 on-site parking spots, keeping the remaining 284 as off-site parking as originally granted in July of 2007.

The Chair asked if the applicant had seen and understood the staff's recommendations.

Mr. Diehl said they had and did.

Mr. Guess said he did not remember any discussion of a building on-site with the original variance.

Mr. Diehl said the original site plan showed a future building of 3000 square feet.

Mr. Guess commented that having passed by the property, he was of the understanding that there would be a higher density of frontage trees, but it appeared everything had been cleared.

Mr. Diehl said no trees had been cleared in the front setback and the applicant would be going in with twice as many frontage trees than recommended.

Hearing no opposition or further discussion, a motion was made by Mr. Coleman, with second by Mr. Graham, to approve the **Off-Site Parking Variance to amend a previously approved variance to allow 284 off-site (paved) parking spaces on an office building site in a B-2, Neighborhood Business District for post-disaster agent overflow parking for a near-by insurance company office** with no change in the tree requirements stipulated in the previously approved variance.

The motion carried unanimously.

OTHER BUSINESS:

Hearing no further business, the Chair adjourned the meeting in regular fashion.

APPROVED: January 5, 2009

Chairman of the Board

/jl