

**BOARD OF ZONING ADJUSTMENT MINUTES**  
**MEETING OF FEBRUARY 11, 2008 - 2:00 P.M.**  
**MOBILE GOVERNMENT PLAZA, MULTI-PURPOSE ROOM**

**MEMBERS PRESENT**

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

**MEMBERS ABSENT**

J. Tyler Turner\*

**STAFF PRESENT**

Frank Palombo, Planner II  
Caldwell Whistler, Planner I  
Joanie Love, Secretary II

**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:**

**# 5459**

**(Case #ZON2008-00046)**

**Tara Cox**

**9 Upham Street**

West side of Upham Street, 125' ± North of Dauphin Street

Chris Cox, husband of the applicant and co-owner of the business involved in the variance request, spoke on their behalf.

The Chair asked if they had seen the staff's recommendation which was for denial. The Chair then asked Mr. Cox to present his case.

Mr. Cox said they were in the real estate business, but in a conventional way. He said they did a lot of foreclosure properties where they strictly used e-mails, computer type ways of corresponding with companies. In as much they did not need much office space, which is why they chose this particular piece of property to purchase. He expressed his believe that all of Upham Street was comprised of building being used for commercial businesses, and that this particular property was the only one residential.

The Chair asked if when they originally purchased the property they knew it was zoned R-1.

**Board of Zoning Adjustment**  
**February 11, 2008**

Mr. Cox stated they did know that, but they had researched to find that in 2000 the residents had applied for a home occupation business license.

The Chair asked if the Coxes were living in the home at this time.

Mr. Cox stated they were not.

The Chair advised that was the difference. He also said he did not disagree with the argument that the portion of Upham Street referenced had taken on a commercial tone recently and asked what was in the building right next door to the south of the property in question.

Mr. Cox said that house was actually a residence. He went on to say he had spoken with the homeowner who was quite happy with the improvements the Coxes were making to the property.

Ms. Collier noted that the staff report indicated that the property to the east was also residential.

The Chair noted that not only was the properties to the east and south residential, but there was also residential property located to the west.

Mr. Cox advised the Board that though there were residential properties in the area, Sonitrol home security was directly next door to the property and that there was a strip mall there that went all the way to Old Shell Road on the same side of the street, and that as far as he could find, their property was the only residential property located on that block of the street.

The Chair noted the site had what appeared to be 2 or 3 parking spaces and asked if that would be sufficient.

Mr. Cox stated it would be.

Mr. Guess asked what had been the use of this property, had it always been residential.

Mr. Cox responded that as far as they knew it had been residential in the past with a business license applied for the past 10 years as a home business.

The Chair asked how the matter had come to the City's attention.

Mr. Cox stated that he had pulled a permit previously. He had the carpenter at the house that was simply cutting in the HVAC boxes in addition to other renovation carpentry work. A city inspector came by and noted that preparation work for the HVAC installation was being done, and let Mr. Cox know that additional permits would need to be pulled for any electrical, mechanical, and or plumbing work to be done in the house.

The Chair asked if the mortgage lender was aware that the applicant was going to use the property as an office and not as a house.

## **Board of Zoning Adjustment**

**February 11, 2008**

Mr. Cox stated that he did not know, as his wife took care of establishing the mortgage with the company.

The Chair also asked who held the mortgage.

Mr. Cox stated he was not sure.

The Chair asked Mr. Palombo if the other businesses operating in the area did so by virtue of variance or non-conformation.

Mr. Palombo responded that was indeed the case.

The Chair asked if the City had looked at this site specifically with regard to rezoning it commercial.

Mr. Palombo said that would be up to the property owners to decide whether or not to submit an application to the Planning Commission, but it was his opinion that such an application would not be denied.

The Chair remembered a recent case located on Dauphin Street where the Board had stretched but could not find a claim of hardship. He recalled the neighbors themselves spoke against the variance because they felt this particular variance would be putting a more official stamp on converting the neighborhood into more of a business/office type area. He noted that there were no neighbors here in opposition to this change however.

Mr. Palombo and Mr. Whistler both let the Board know that that the office to the north, Delish Desserts, and Sonitrol had received variances to operate in the area.

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

Mr. Cox asked if he might speak again. The Chair advised he could not, then went on to explain an alternative approach for the applicant could be joining with the property owner to the north and making application to the Planning Commission to rezone the area. He added that given the nature and history of the area, a reasonable argument for rezoning could be made. He went on to say that the Board had power to grant variances based upon hardship. With regards to the property in question, the only hardship displayed was that nobody had wanted to purchase the property for over 2 years. That constituted a hardship for the property owner, not the property, because the property could continue to be used for its original intent, even though no one had apparently wanted to use it as such.

Ms. Collier spoke on behalf of the home owners in the area saying they felt very strongly about preserving the residential nature of the area and that the law backed them in that regard.

At this point, the Chair called the vote to deny the variance request. Mr. Graham, Mr. Cummings, and Mr. Guess voted to deny the variance, with Mr. Coleman and Mr. Davis voting against

**Board of Zoning Adjustment**

**February 11, 2008**

denying the variance. The motion did not carry as it did not have the required 4 affirmative votes.

Mr. Lawler stated he though the Board should make the motion in the affirmative as it does require 4 “yes” votes to pass a variance, but a denial required no particular number.

Upon hearing this, the Chair moved, with second by Mr. Guess, to approve the variance and called the vote.

Mr. Graham, Mr. Cummings, and Mr. Guess voted to deny the variance. Mr. Coleman and Mr. Davis voted to approve the variance. With only 2 votes to affirm, the motion did not carry and the variance was denied.

Mr. Cummings again advised the applicant that the Board did not determine zoning, the Planning Commission did. In asking the Board for a variance, Mr. Cummings said the applicant had been unable to prove actual hardship on the property and again advised him to consider seeking relief via the Planning Commission.

**# 5460/5373**

**(Case #ZON2008-00047)**

**Greater Macedonia Baptist Church**

**1350 Chinquapin Street**

East side of Peach Street, extending from Chinquapin Street to Spruce Street

The applicant was not present, however, Mr. Palombo addressed the Board and advised this request was basically a re-do from a request from approximately a year and a half before, except this time they have moved some parking and added a stoop on the front of the building.

The Chair asked if they had not been before the Board on this twice before.

Mr. Palombo said that was correct. He added they have also been before the Planning Commission for zoning approval, which was granted pending the Board’s approval of these variance requests.

The Chair stated that traditionally, if an applicant did not appear, the Board denied the request, but as it has been before them previously on at least two occasions with little to no opposition, as well as having the support of at least on City Council person, the Board might want to consider approval in this instance.

Ms. Collier, upon looking at the map, asked why they couldn’t use the small extension onto Peach Street.

Mr. Palombo explained that was not an option as the church did not own that piece of property.

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

**Board of Zoning Adjustment**

**February 11, 2008**

The motion carried unanimously and the variance was granted.

**# 5461**

**(Case #ZON2008-00075)**

**CVS Pharmacy (Brad Hentschel, Agent)**

**4406 Old Shell Road**

North side of Old Shell Road, 145'± East of North McGregor Avenue

Ken Ksiaskiewicz spoke to the Board advising that he was there representing Brad Hentschel, the agent in the matter.

The Chair noted the variance was to have 18 wall signs for a single tenant on a multi-tenant site, and that these signs were supposed to be across the front of the store.

Mr. Ksiaskiewicz stated this was part of a CVS Corporate marketing “face lift” across the country. He added that these would have been done from the inside; however, permanent fixtures on the interior prevent them from doing so.

Mr. Cummings clarified that if there were no fixtures along the wall, they could put all of it on the inside of the glass without any problems. He also asked if there were documents with details on the pictures.

Mr. Palombo and Mr. Whistler advised that information should be located in the file and in the packet.

Mr. Cummings noted that all of this was simply part of the new CVS branding across the country. He also asked if this had been shown to the members of the Village of Springhill.

Linda St. John, president of the Village of Springhill, said her organization had spent the last 3 years creating a plan to re-vitalize the Springhill area, and that plan had been completed in November 2007. That plan was submitted to the Planning Commission for approval and is now scheduled to go to the City Council for approval. She reminded the Board that three week prior, the City Council had voted unanimously to impose a 5-month moratorium on new commercial construction in the Springhill area to allow time to get the plan and the coding to implement the plan through the approval process of the City. Currently, Urban Development is reviewing the final draft for the coding portion and upon their approval of it the Village of Springhill will file that plan immediately. She added the proposed code does address signage and what CVS Corporate is proposing for this site doesn't even come close as 18 signs is extremely excessive, even without regarding the proposed plan by the Village of Springhill. She went on to say all of the windows on site are approximately 2x4, which is small. There are 19 of those, with 6 covered at 100% with that type of signage and an additional 4 windows are covered at 50%. She agreed the site needs a face lift, but didn't feel that the type of signage they were proposing would constitute such. She asked that the Board wait on approving any type changes in signage, coding, zoning, or construction until the Village of Springhill was able to get their entire,

comprehensive plan through the planning process, which will then dictated the outcome on such issues.

**Board of Zoning Adjustment**  
**February 11, 2008**

Mr. Coleman asked Ms. St. John if the committee she referred to included merchants and vendors of the area.

Ms. St. John said that during the planning process, hundreds of Springhill residents, including all the landowners, all the merchants, the entire city staff, and the mayor were included. She added that they have worked very closely with CVS Corporate, the Mitchell Company, and Tom Carwie, the present owner of the property in question, so that all affected knew what was being proposed and taking place.

The Chairman asked Mr. Lawler if the moratorium currently in place effect ed applications that were made prior to its issuance.

Mr. Lawler said the answer could be yes or no, depending upon the perspective. It was a point to consider in making a decision, however, if permits had already been pulled, there were vested rights that would prevent stopping a project at this point.

Mr. Guess asked if there was an actual case of hardship as it related to the property.

Mr. Ksiaskiewicz said yes, which was the point of their argument as the interior fixtures prevent them from applying the signage without disrupting business.

The Chair addressed the applicant, acknowledging he knew nothing about owning a drug store, however, he know that everybody who shopped at that particular CVS knew it existed. He also said he knew that 18 additional signs, with 9 pictures of happy people satisfied with extra service, extra value, extra beauty, etc., would not increase those shopping at this particular CVS to do so more frequently. He also stated that 18 signs is a direct violation of the City's sign ordinance. He added the reason he brought up the moratorium is that this is a very sensitive issue for all involved. He praised the Village of Springhill for their efforts and said he felt the end product would be something the City would be very proud of. He cautioned the applicant that it might not be in CVS' best interest to do something of this magnitude that "flew in the face" of what the residents were trying to do with regards to the proposed overlay. He also suggested that based upon the information presented, there was no hardship to the property.

Mr. Ksiaskiewicz asked if they had the right to apply the signs from the inside.

Both Mr. Palombo and the Chair replied that was so if the ordinance allowed it. The Chair elaborated by saying that if the application of the signage was done from the interior, that if it was felt that it was appealing and a necessary part of their corporate "branding," then yes, they were certainly with in their rights. The Chair went on to say, however, that just because they could do a thing, it didn't automatically make it in their best interest, especially in this case and in this location. He said, excusing his bluntness, that the people who shop at that store do not come from across the city, but live in Springhill and support the Village of Springhill's efforts in

re-vitalizing the neighborhood and in as much CVS might risk angering their customer base at this location.

**Board of Zoning Adjustment**

**February 11, 2008**

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

The motion carried unanimously and the variance was denied.

**OTHER BUSINESS:**

Mr. Palombo introduced Mr. Derek Peterson, Planner I, to the Board, saying he had joined the staff approximately 5 months prior. He then introduced Ms. Megan Williams, Planner I, to the Board, saying she had joined the staff in January of 2008, and finally introduced Ms. Joanie Love, secretary II. Mr. Palombo was pleased to announce that they were now fully staffed. All were greeted warmly.

There being no further business, the meeting was adjourned.

**APPROVED:**            January 5, 2009

---

Chairman of the Board

/jl