

BOARD OF ZONING ADJUSTMENT MINUTES
MEETING OF MARCH 5, 2007 - 2:00 P.M.
AUDITORIUM - MOBILE GOVERNMENT PLAZA

MEMBERS PRESENT

Reid Cummings, Chairman
Stephen J. Davitt, Jr.
William Guess
Vernon Coleman
Sanford Davis

MEMBERS ABSENT

Martha Collier
J. Tyler Turner

STAFF PRESENT

Bert Hoffman, Planner II
Caldwell Whistler, Planner I
Mae Sciple, Secretary II

OTHERS PRESENT

John Lawler, Assistant City Attorney
David Roberts, Traffic Engineering

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.

APPROVAL OF MINUTES:

A motion was made, seconded and so ordered to approve the minutes of the meeting of January 8, 2007, as submitted. The motion carried unanimously.

PUBLIC HEARINGS:

#5408

(Case #ZON2007-00240)

Randy Hallford

1861 Duval Street

South side of Duval Street, 200' ± East of the South terminus of Murray Hill Court (private street).

Use and Access/Maneuvering Variances to allow an appliance salvage yard in a B-3, Community Business District with head-in, back-out parking; the Zoning Ordinance requires a minimum of an I-1, Light Industry District and all access/maneuvering must be on-site.

The site plan illustrates the existing buildings, surfaces, and fencing.

Frank F. Morton stated that he was present to speak on behalf of the applicant, Randy Hallford, who was out of town.

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Helen Hallford, mother of Randy Hallford, was also present to speak on her son's behalf. Mrs. Hallford said she operated a business at 1861 Duval Street. The property had been leased out for some time, but then she took it over in November of 2006, and was notified that they would have to get a variance to rezone the property.

Mr. Cummings explained that this Board does not rezone property. The application was for a variance of the current zoning. Mr. Cummings asked the staff to explain why a variance was necessary for the existing use of this property.

Mr. Whistler explained that this site had been used off and on through the years as an appliance sales and repair business, and recently the owner started using it as a scrap sales business also. He noted that the zoning certifications issued for the site were for a B-2 type use for the appliance sales and repair, but the increased usage of the site for scrap sales constitutes an I-1 type use. When this came to light the owner was put on notice and started cleaning up some of the appliance carcasses and what not, but then decided to seek a variance that would allow them to continue to operate the appliance salvage yard, an I-1 use. An access/maneuvering variance was also being requested specifically to retain the nose-in, back-out parking along Duval Street in front of the property.

Mr. Cummings asked Mrs. Hallford at what point they decided to offer the services of a salvage type yard.

Mrs. Hallford said it was in November of 2006. She was not aware at that time that the Zoning Ordinance does not allow a salvage type operation in a B-2 zoning district.

Referring to a map of the area, Mr. Cummings pointed out that the light blue area in the very top right hand corner of the map was the closest I-1 industrial type use in the area. There was no other I-1 type use in the immediate vicinity. Generally speaking, Mr. Cummings explained that a variance for a piece of property where one use is perhaps heavier than the existing zoning would allow was one thing, but she was seeking to take the subject property, which was zoned B-2, and which was in the heart of a lot of property that was zoned B-2, and jump not just to B-3 by variance request, but also to I-1, and that was the problem. Mr. Cummings asked Mrs. Hallford what type of business the previous tenant operated.

Mrs. Hallford said the previous tenant, Howard Morton, operated the same type of business. He bought old machinery such as washers and dryers and took the parts off that were still good. Then someone would come and pick up the salvage and take it to the junk yard. Mr. Morton operated at this location for about a year or possibly longer.

Mr. Cummings asked if there was anyone present who wished to speak either in favor or against this application. There was no response.

Mr. Cummings asked Mr. Morton if he had anything to add.

Mr. Morton said that Mrs. Hallford had covered everything in her presentation. He said they understood that they would be allowed to use the property for an industrial type use.

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Mr. Cummings asked who "they" were that he referred to.

Mr. Morton said he was referring to Randy Hallford.

Mr. Cummings said the property was not currently zoned for an I-1 use. It was zoned for a B-2 use.

Mr. Morton said his paperwork indicated the property was currently zoned B-3.

Mr. Cummings said nevertheless, I-1 was required for a salvage type operation. He asked if anyone had any further questions.

Mr. Coleman pointed out that Duval Street was very busy and he felt it would be hazardous to allow trucks to back out of this site into Duval Street. Looking at the site plan, it appeared to him that there was enough room for trucks to turn around on the property and head out into Duval Street.

Mrs. Hallford said she felt the property was big enough that trucks could drive in and turn around without having to back out into Duval Street.

Mr. Morton stated that Mrs. Hallford planned to purchase the adjoining property to the west, and that currently trucks were able to turn around on that property.

Mr. Whistler stated that the subject property does not have the adequate maneuvering area to have two-way traffic between the buildings that come in there. He estimated there was approximately 14 feet at the most where it narrows between the buildings, and the requirement for two-way traffic was 24 feet. Mr. Whistler also noted that the site plan submitted showed no proposed parking on the interior of the site, and it showed no off-site parking associated next door. It was his understanding that they do park next door, but that was not part of their site plan submitted.

Mr. Cummings asked if he understood correctly that the approximate distance between what was labeled "existing shed" in the middle of the property and the building labeled as "existing shed" on the east side of the property, was approximately 14 feet.

Mr. Whistler said that was correct, but it was substandard access. Currently the access was just for the junk trucks.

David Roberts, representing Traffic Engineering, said he did an on-site review of this site and he concurred with Mr. Whistler's findings that there was not enough maneuvering area for the proposed variance.

Mrs. Hallford said the former property owner next door, Mrs. Jordon, had just passed away, but she said she had an understanding with her before she died that she, or her son, would have the first option to purchase that property. Mrs. Jordan's daughter had also agreed to give them first option. They had nothing in writing. It was just an oral agreement. Mrs. Hallford said they had been using the property for over a year, and cut the grass and maintained it.

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There was further discussion about the other buildings adjoining the site, including a vacant L-shaped building to the west of the subject property owned by Mr. Morton. It was also pointed out that the L-shaped building straddled the property line between Mrs. Hallford's property and the property now owned by Mrs. Jordan's daughter. Mr. Hoffman pointed out, however, that it was possible that the boundary lines on the map were not quite accurate.

Mr. Cummings asked Mr. Morton if he had any plans to lease his building in the future, or to change the use of it.

Mr. Morton said he did not.

Mrs. Hallford said that Mr. Morton told her that she could buy that property from him. If she did that, she would then have three pieces of property.

Mr. Cummings said that if Mrs. Hallford could acquire the property now owned by Mrs. Jordan's daughter, and/or Mr. Morton's property, she would have every right to come to the Planning Commission and apply for a subdivision of those three parcels into one. That would not, however, satisfy the difficulty she had now with running an I-1 type of operation on a B-3 zoned property. Mr. Cummings said there were two issues here. One was that there was not, in accordance with staff's recommendations as well as Traffic Engineering's, sufficient room on the site to maneuver, irrespective of Mrs. Hallford's ability to move onto Mrs. Jordan's property. The second issue was that she was seeking to get a variance to permit an I-1 type use in the heart of a B-3 cluster of properties.

Mr. Morton pointed out that Mrs. Hallford had six people working for her in this business, in addition to the people that bring the appliances to this site. That was their business.

Mr. Cummings said that this Board was not trying to dictate how Mrs. Hallford runs her business. She was free to buy used equipment off the street and tear it apart and re-sell various parts of it and throw the rest away. She was also free to employ one or six people. The problem was that she had chosen to do so on a piece of property that does not have the proper zoning. This type of operation was not allowed by the Zoning Ordinance in a B-3 zoning district.

Mrs. Hallford asked if she disposed of the machinery that was on the back of the property, could she continue to operate the parts and repair business.

Mr. Cummings said that if Mrs. Hallford wished to continue to operate her business on this parcel, and if this variance was not granted, then the answer to her question would be "yes".

Mr. Davitt asked when the notice of violation was issued.

Mr. Whistler said the citizen complaint was received in late October, so the notice would have been given in late October or early November. The notice of violation was not for the stripping the parts and repairing appliances, but for the outside storage. He further clarified that the salvage use, as an **accessory** to the appliance sales and repairs, would be allowed in the B-3 district if the stripping of the parts was done inside. The **primary** business activity

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would have to be the appliance repair and/or sales. They would not be allowed to do any outside work such as they were doing now. If they were to take the appliances apart inside of a building, and that was an **accessory use** to the appliance sales and/or repair, that would be allowed. As far as the off-site parking, Mr. Whistler said that never entered into this. There was no indication given on the site plans that the applicant was asking for a variance for off-site parking. If the Board chose to approve this variance, the site next door could not be considered because it was never part of the site plan. Also, since that would be coming into first-time business use, because apparently that site has always been residential, that would drag it into full compliance with the Ordinance, unless they sought variances on certain aspects of the site compliance.

Mr. Cummings asked how long ago the photographs were taken.

Mr. Whistler said they were taken by the inspector around the time the notice of violation was issued.

Referring to the photographs, Mr. Cummings asked Mrs. Hallford how long it took to accumulate all the appliance carcasses that were on the site.

Mrs. Hallford said sometimes people would bring in five or ten appliances at one time. They would move them to the back until somebody came in and wanted a certain part. After they removed the parts they needed, they would send the appliances to salvage.

Mr. Davitt asked Mrs. Hallford how much of their business was from sales of parts that were salvaged off the carcasses, and how much might be just from regular repairs.

Mrs. Hallford said she had not been in the business that long, but in the past month it had been increasing. The first two months after they received the notice of violation, business dropped off. Last month they did about \$1300-\$1500 worth of business just on repairs.

Mr. Coleman asked if he understood that if all the work was done inside the building, then it would be in compliance with B-3.

Mr. Whistler said no. If the scrap salvage were an **accessory** to the appliance repairs and sales, that would be allowable inside. But if the **majority** of the business activity was salvage, that would not be allowed, whether it was inside or outside, in the B-3 district.

Mr. Coleman said he understood that Mrs. Hallford was using parts to repair machines as opposed to just selling the parts.

Mr. Whistler said that was allowed inside.

Mr. Guess asked if there was any way Mrs. Hallford could take the usable parts from the appliances as they came, store them, and then use the parts for repair when needed. That way she would not be stockpiling 50-100 units outside anymore.

Mrs. Hallford said they would strip the machines as they came in.

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Mr. Cummings asked Mrs. Hallford if she had anything else to add.

Mrs. Hallford said no, other than if they put her out of business she would just have to close her shop.

Mr. Cummings emphasized that it was not the job of this Board to convene each month and put people out of business. A request had been made for a variance to operate a business that requires another zoning classification right slap in the middle of a group of surrounding properties that do not carry the type of classification Mrs. Hallford needed. It was not the job of this Board, nor was it the City's intent, to put anyone out of business. It was the City's intent to create ordinances that provide for the good of the people, which was the reason they had ordinances.

With regard to backing out into Duval Street, Mrs. Hallford asked why trucks from other businesses up and down Duval Street in the immediate vicinity were allowed to back out into the street and block traffic and they were not allowed to do that from her business.

Mr. Cummings said he was not even addressing the backing in and out of the site. He was talking about the use itself.

Mr. Davitt asked Mrs. Hallford if her son would be available to come back next month to address some of the issues raised.

Mrs. Hallford said she was not sure because right now he was working in North Carolina.

Regarding the parking, Mr. Morton asked if Mrs. Hallford acquired the lot next door, would she be able to use that for turnaround parking.

Mr. Davitt said he could not speak for the other members of the Board, but he felt they might be in favor of granting the variance if they could address the issue of the carcasses. They would still, however, have to address the issue of parking for employees, as well as the trucks. There was also the question of whether Mrs. Hallford would purchase the property next door, and if so, when, and would there be a long-term lease.

After discussion a motion was made by Mr. Davitt and seconded by Mr. Coleman to holdover this application to the meeting of April 2, 2007, in order for the applicant to address the issues of how they were going to dispose of the salvage, as well as the parking situation and the trucks.

After further discussion Mr. Cummings stated that the applicant would be required to provide the following information:

- (1) written documentation to show that she had made an agreement with Ms. Jordan's daughter to use the adjoining property, at least on a lease basis, for an indefinite period of time until such time as she decides to buy the property or not, so as to provide sufficient maneuvering room for vehicles to move from her property to the property that she would lease, as well as to provide for the number of parking

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- spaces required for this use;
- (2) a revised site plan to show the adjoining property, which will have to be brought into full compliance with all aspects of the Zoning Ordinance, or those will be additional requests for any deficiencies on that site plan, i.e. unpaved parking, unstriped parking, landscaping, etc.; and
 - (3) submittal of a request for an off-site parking variance.

There being no further discussion, Mr. Cummings called for the vote. The motion carried unanimously.

#5409

(Case #ZON2007-00374)

Star Vision Centers, Inc.

3901 Airport Boulevard Service Road

Southwest corner of Airport Boulevard Service Road and Downtowner Loop West.

Sign Variance to allow a second wall sign (11.7 square feet) for one-tenant (business) on a multi-tenant site; only one wall sign per business is allowed on a multi-tenant site.

Patrick Williamson, CFO for Star Vision Center, was present on behalf of the applicant. Mr. Williamson explained that they currently occupied a space in the same building with a Starbucks store on Airport Boulevard. They operated an eyeglass store. They had a doctor on site who performed eye exams, and they also had a dispensary for eyeglasses as well as contact lenses. He said that Starbucks occupied the larger part of the building and there was a large sign on the front of the building identifying the Starbucks. Mr. Williamson said their space was significantly smaller than Starbucks and they were having a problem in that their patients were having a hard time finding their store because they did not have a sign on the front of the building. There was a pylon sign in front of the building with Star Vision Center on it under a Starbucks sign. The Starbucks sign on the building extended a little bit over the door to Star Vision, and when people drive by the building they see the Starbucks sign and don't see them next door. They actually go looking around the corner and end up at Chuck-E-Cheese. Mr. Williamson said they do have a sign on the side of the building that describes the services they provide, but they would like a small sign on the front of the building stating just their name – Star Vision. He noted that previously there was a small, family-owned vision center in the space they now occupied, but apparently they couldn't make it. Star Vision began operating at this location last April. Looking at their numbers since that time, he said they had been doing rather poorly, and they blamed a big part of that on the fact that it was hard to find their building next to Starbucks. They felt that a sign on the front of the building next to Starbucks sign would make them more visible to their customers and make sure that they survived as a business in Mobile.

Mr. Cummings asked if there was anyone else present who wished to speak in favor or in opposition to this request. There being no one, Mr. Cummings asked if the members of the Board had any questions or comments.

Mr. Davitt commented that he was a happy customer of Star Vision. He asked why Starbucks was allowed to have a sign on the east side and also one facing Airport Boulevard.

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Mr. Whistler explained that this was a multi-tenant site, and the corner site is allowed two wall signs. They can have one on each street frontage. The other units in that building are permitted one wall sign. Star Vision is allowed to have one sign on either wall, but they cannot have one on each wall. Currently they have a sign on the west side.

Mr. Guess asked if Starbucks already occupied the building when Star Vision moved there.

Mr. Williams said yes.

Mr. Cummings asked if it was known if Pearl Vision, the former occupant of the subject site, had a sign on the front, one on the side, and the pylon sign as well.

Mr. Whistler said he thought they just had one sign.

Mr. Davitt asked if there was enough space available to put a Star Vision sign next to the Starbucks sign on the front of the building.

Mr. Williamson said there was not a lot of space, but even a small sign would help. He said they currently had a banner hanging there, which was the reason they were given a warning in the first place.

Mr. Cummings asked how long the banner had been there.

Mr. Williamson said he was not sure how long it had been there, but it may have been as long as six months.

Mr. Cummings asked Mr. Williamson if they had seen any positive impact on their business since the banner was put up.

Mr. Williamson said absolutely. Their revenue had increased since the banner had been up.

Mr. Coleman asked if a sign on the front of the building wouldn't do the same thing as the banner.

Mr. Williamson it would basically do the same thing. It would just have their name on it. He noted that a drawing of the proposed sign had been submitted with their application.

Mr. Cummings said it would be better positioned, as it would be up on a parapet roof as opposed to a banner hanging underneath the eave.

Mr. Guess said he wondered whether they were getting much benefit from the sign on the pylon, and whether a sign on the building would be more beneficial. He asked if they would be in compliance if they removed the sign on the pylon, and actually had a sign on the front of the building.

Mr. Whistler said no. They would then have two wall signs. If they had no free-standing sign, they would still be limited to one wall sign since they were not the main unit.

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Mr. Williamson pointed out that the pylon was situated a little bit off the side of the building. It did attract people that drove by, but when they looked at the building they only saw the Starbucks sign. He felt that replacing one for the other would not solve the problem, because then their sign on the building would be so small that you could barely see it from the road.

Referring to the photograph, Mr. Cummings asked if the reader board on the front of the building, which stated "open 10 to 6", was Star Vision's.

Mr. Williamson said that was their sign.

Mr. Cummings said that, technically, if this variance were approved, that sign could not be there, and was not supposed to be there anyway.

Mr. Whistler said technically it was not supposed to be there, but if it does not have the graphics or logo on it, they would consider that information.

Mr. Williamson said he understood that the law allowed such signs giving information such as opening and closing times. That was not considered a sign.

Mr. Whistler said that was correct.

Mr. Davitt commented that the reason he stopped at Star Vision was because he saw the sign on the pylon. That, and Starbucks.

After discussion a motion was made by Mr. Cummings and seconded by Mr. Coleman to approve this request for a Sign Variance to allow a second wall sign (11.7 square feet) for one tenant (business) on a multi-tenant site at the above referenced location.

The motion carried unanimously.

OTHER BUSINESS:

Election of Officers

A motion was made by Mr. Guess and seconded by Mr. Davis that Mr. Cummings be appointed as Chairman for another year.

The motion unanimously carried.

A motion was made by Mr. Cummings and seconded by Mr. Coleman that Mr. Davitt be appointed as Vice-Chairman for another year.

The motion unanimously carried.

Appeals

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Mr. Lawler stated that the appeal on the Cathy Humber-Barfield case had been withdrawn.

Mr. Lawler said the only other case pending was for the sign for Blue Rabbits. That hearing had been set for June.

There being no further business, the meeting was adjourned.

APPROVED: April 2, 2007

Reid Cummings, Chairman

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