

BOARD OF ZONING ADJUSTMENT MINUTES
MEETING OF FEBRUARY 14, 2005, 2:00 P.M.
MOBILE GOVERNMENT PLAZA, MULTI-PURPOSE ROOM

MEMBERS PRESENT

Reid Cummings, Chairman
Stephen J. Davitt, Jr.
William Guess
Martha Collier
H. Lamar Lee
Vernon Coleman

MEMBERS ABSENT

Rev. Clarence Cooke

STAFF PRESENT

Margaret Pappas, Planner II
Frank Palombo, Planner I
Mae Sciple, Secretary II

OTHERS PRESENT

David Roberts, Traffic Engineering
David Daughenbaugh, Urban Forestry
Wanda Cochran, Assistant City Attorney

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 10, 2005, as submitted. The motion carried unanimously.

PUBLIC HEARINGS:

#5290

(Case #ZON2004-02557

M. Don Williams (Enoch Aguilera, Owner)

(North side of Government Street, 425'± West of Hallett Street)

Use and Front Yard Setback Variances to allow a dwelling to be used as a 5 bedroom, Bed & Breakfast facility to be constructed 68' from the front property line in an R-1, Single-Family Residential District within the Historic District Overlay; the Zoning Ordinance requires a minimum of B-1, Buffer Business with Planning Approval, and a maximum front yard setback of 37' is required within the Historic Overlay District in an R-1, Single-Family Residential District.

The site plan illustrates the existing building, parking, drives and landscaping, along with the proposed buildings, parking, drives and landscaping.

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Don Williams, Williams Engineering, was present representing Enoch Aguilera, owner of the subject property, who was also present. Mr. Williams said they were proposing to move the existing Bellingrath garage building, currently located on Ann Street, to this site and convert it to a five bedroom Bed and Breakfast. This is a garage for carriages which dated from the 1900's. The structure was 42' wide. Mr. Williams said the applicant felt this was a good opportunity to rescue a piece of Mobile history. It would be next door to an existing Bed and Breakfast, also owned by the applicant. The applicant proposes to share a driveway with the adjacent Central Park, a single-family townhouse development, which was zoned R-3 due to the density. Parking for eight vehicles would be provided in the rear of the building. To make it look like a garage and to minimize its impact on the streetscape, Mr. Williams said they had worked extensively with the Land Use staff and the Mobile Historic Development Commission. It was agreed that it would be better to shift the building a little further back from the buildings on either side. The existing Bed and Breakfast was set back 37' from the front, and Central Park was going to have a 26' setback. With the Historic District Overlay, the applicant would be required to have a 26'-37' front setback. Mr. Williams said in this case, that kind of works against them because that would mean that the building would look like a single-family house nestled up towards the street. They want it to look like a garage. The character is of a more rustic type of building. Because of this they were requesting a 68' setback on the front, which conflicts with the Historic District Overlay. The Architectural Review Board had approved their plan. They also approved the location of the lot and the parking plan, which is a shared driveway with Central Park. That would eliminate another curb cut on a 57' wide lot. Mr. Williams said they had also received approval for a one-lot subdivision and a PUD by the Planning Commission because of the shared driveway and shared parking access.

Mr. Cummings asked what happens to the PUD for either Central Park or for this bed and breakfast if one or the other of them ever goes away for any reason.

Mr. Williams said there has to be a re-submittal if one or the other no longer participates since PUD approval is site plan specific.

Mr. Cummings asked if Central Park relied on the eight parking spaces shown on the plan.

Ms. Pappas said they did not.

Mr. Williams said everybody would have enough parking on their own lot. It was just a shared driveway entrance between buildings because they had to have it 24' wide for the Fire Department and two-way access. He said Traffic Engineering worked with them on this. They had also worked with David Daughenbaugh from Urban Forestry.

After discussion a motion was made by Mr. Davitt and seconded by Ms. Collier to approve this request for Use and Front Yard Setback Variances to allow a dwelling to be used as a five bedroom, Bed and Breakfast facility to be constructed 68' from the front property line in an R-1, Single-Family Residential District within the Historic District Overlay at the above referenced location subject to the following conditions:

- 1) all necessary historic approvals; and
- 2) full compliance with all codes and ordinances.

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The motion carried unanimously.

#5291

(Case #ZON2004-02669)

NAPMAR, LLC

652 Western Drive

(East side of Western Drive, 60'± North of Cotton Street)

Use, Parking Ratio, Access/Maneuvering Variances to allow a barber shop in a B-1, Buffer Business district with two (2) on-site parking spaces and a 13' wide two-way drive; the Zoning Ordinance requires a minimum of a B-2, Neighborhood Business District, eight (8) on-site parking spaces for a 2,400 square foot building, and a 24' wide drive is required for two-way traffic.

Willie Jackson, leasing agent for the applicant, was present and requested that this application be held over until the next meeting.

A motion was made by Mr. Davitt and seconded by Mr. Guess to holdover this application until the meeting of March 7, 2005.

The motion carried unanimously.

#5292

Case #ZON2005-00013)

Jerry Paul Foy

1363 Brown Street

(South side of Brown Street, 100'± East of Espejo Street)

Use Variance to allow an upholstery repair shop in a 680 square foot, detached, structure in an R-1, Single-Family Residential District; the Zoning Ordinance requires a minimum of a B-3, Community Business district for an upholstery shop.

The plan illustrates the existing structures and drive.

Jerry Foy, applicant, stated that he had requested a variance so that he could continue his upholstery business at this location. He said that he and his partner had opened the upholstery business in 2000. His partner had passed away since then and Mr. Foy understood he just kept all the licenses current and assumed he was legal. There was a dental lab there prior to his business. There had been a business there from 1956 until March 2001. Mr. Foy said his business was not actually ongoing as much as what the dental lab was. He goes to pick up furniture, brings it in and unloads it by himself, so there was no traffic to his house.

Mr. Cummings asked if this came about because Mr. Foy attempted to renew his business license.

Mr. Palombo said that it came about because of a complaint.

Mr. Cummings asked if there was anyone to speak in favor of the application.

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Holly Briskman, a resident of 1408 Brown Street, stated that she grew up on Catherine Street and when she was a child there was always a business in the back yard of 1363 Brown Street. It was a dental lab, but she did not know what was there before that. She said it was a business in a neighborhood, but it was a non-intrusive business. Almost everyone in the neighborhood had used Mr. Foy for upholstery purposes. There was no increased traffic and no UPS truck coming to the house. The neighbors were happy that Mr. Foy was there every day, all day. He kept an eye on the neighborhood. Ms. Briskman said his non-intrusive business was not a hardship on the neighbors, but said it was most wonderful to have it. She felt it would be a terrific hardship for Mr. Foy to have to move his business to West Mobile.

Victoria Childs, a resident of 1361 Brown Street, next door to Mr. Foy, said she bought her property in September of 2003 and at the time did not even know he was an upholsterer. She said she had never heard any noise through an open door, and had never seen any cars in the driveway. Ms. Childs expressed support for small businesses, and said Mr. Foy was an asset to the neighborhood as well as the community and town, and she did not know what they would do without him.

Kelly Baker said she lived around the corner on Bradford Avenue. Ms. Baker said she thought the complaint Mr. Palombo referred to had come about because Mr. Foy's property goes onto Espejo Street and one of the residents was putting their trash on his lot. When Mr. Foy asked the person not to do it any more, it made him mad and he called to complain. She said the immediate neighborhood had no problem with Mr. Foy's business, which was his livelihood. He was always there for them and they all supported him.

Audrey Jean Smith said she lived two doors from Mr. Foy and said he has been quite an asset to the neighborhood. He watches out for the older people and helps them out in many ways. When she goes out of town he watches out for her house and feeds her dog. Ms. Smith said he was an asset to the neighborhood and she would appreciate it if he would be allowed to continue his business there.

Mr. Cummings asked if there was anyone present who wished to speak in opposition to this application. No one responded.

In discussion Mr. Davitt said he understood that Mr. Foy's work basically involved taking material, cutting it and stapling it, and that his clients did not come to the house.

Mr. Foy said he preferred not to bring traffic to the house. He goes to his clients' homes and picks up the furniture.

Mr. Cummings asked Mr. Foy if, when his business partner applied for his license in 2001, there had ever been a problem with the use.

Mr. Foy said his partner handled all that and he did not know anything about it.

Mr. Lee asked if their original license was for an upholstery shop.

Mr. Foy said it was for an upholstery shop.

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Ms. Pappas stated that the license was issued as an office only; some upholsterers would go and do their work on the site.

Ms. Cochran said that technically, if Mr. Foy were operating a dental lab or any other B-1 use, he would not be here today. But it was because it was a non-conforming use. There was no question that there had always been a business in this structure. The only issue was about the type of business. But his point was that the type of upholstery shop he runs was more like a dental lab than like a retail establishment where you have the bolts of cloth in the window. He was more like the dental lab than Cotton Capers. The Ordinance assumes because they require a B-3, that they were all like Cotton Capers. Obviously he had an upholstery shop which wasn't the typical use that was contemplated.

Ms. Pappas said that the bottom line was that the Zoning Ordinance does not take into account scale. It simply classifies use.

It was noted that the building was only 680 square feet, so Mr. Foy would not have too many pieces of furniture there at one time.

Mr. Lee asked if the business license Mr. Foy had before had any description as to upholstery.

Ms. Cochran replied that it was a home occupation.

Mr. Palombo said it was a home occupation, and a note was put on it limiting it to office only. He said if Mr. Foy were doing work in his dwelling, he would not be here today. It was in an outbuilding in the back where he was doing his work.

After discussion a motion was made by Mr. Lee and seconded by Mr. Davitt to approve this request for a Use Variance to allow an upholstery shop in a 680 square foot, detached structure in an R-1, Single-Family Residential District at the above referenced location.

The motion carried unanimously.

#5249/5293

(Case #ZON2005-00019)

Saint Peter Baptist Church

(Southeast corner of New Jersey Street and South Bayou Street)

Sign Variance to allow an 8' x 5' illuminated double-sided off-site sign in an R-1, Single-Family Residential District; the Zoning Ordinance only allows off-site signs if the sign replaces an existing off-site sign.

The plan illustrates the existing parking and proposed sign location.

Rev. Cleveland McFarland, pastor of the Saint Peter Baptist Church, presented their request for a new church sign to be located across the street from the church. Rev. McFarland said it would create a very serious hardship on the church to replace the existing very small sign, on a very small strip of property in front of the church. The church was constructed in 1963 and covered the majority of the site. In 1966, the church purchased additional property across the street in front of the church for a parking lot under the Urban Renewal Program. Rev. McFarland said

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they wanted to erect a larger, lighted sign where they could post notices of the church's activities. They proposed to put it on New Jersey Street directly in front of the church where it could be seen. He said some of the church members were present to address the Board.

Ms. Collier asked Rev. McFarland why they could not put a new sign where the existing sign was located.

Rev. McFarland said they could put a sign there, but not a larger, lighted sign that they could put messages on.

David Roberts, Traffic Engineering, said he did a review of this application back in August when this application was previously submitted. He said if the sign they wanted was put in front of the church it would be a line-of-sight problem, thus necessitates either a smaller sign or locating off-site.

Ms. Collier said that her problem six months ago and her problem today was that this was a nice, residential area with nice homes, children playing and people walking on the sidewalks. She felt the least amount of signage you had in an R-1 zoned area the better. She also said she had looked at the base of the existing sign last week and it appeared to her to be at least five feet. She wondered if they could put some sort of sign there that would comply with Traffic Engineering, and also be larger than what they have, but smaller than what they were requesting.

Rev. McFarland said the base of the sign was much smaller than five feet. He also said that the church members had met and they wanted a nice, larger, lighted sign where they could list their activities. The smaller sign would not meet the purpose of the church.

Jessie Osborn, a member of the church, said that a lighted sign would beautify the community and would help tell the community what they were offering. If they put the sign on the corner, passing cars would go by so fast that they would never see it and it would not serve its purpose.

Glenco Hamilton, also a church member, said one of the main reasons they wanted to move the sign to the other side of the street was so that people coming from all directions could see it and see what was happening at the church. She said they had seen this type of sign in front of other churches in residential neighborhoods throughout the city, and they just wanted to be treated the same. She said they were about building community; making community visible. A church within a community should be visible, beautiful and it should attract not only the members of the church but the people who come around the church. They wanted people to know where Saint Peter was, and what Saint Peter was doing.

Mr. Cummings noted that the staff had recommended approval subject to the removal of the free-standing parking lot sign; the location of the sign, if approved, be coordinated with Traffic Engineering; and full compliance with all municipal codes and ordinances. Landscaping and trees were not involved as this was in an R-1 district.

David Daughenbaugh of Urban Forestry said it was not under the tree requirements of the Ordinance, however, there was room for planting some trees. He said if the church had a requirement of planting some trees and did not want to plant them on their site, there was room on the right-of-way along New Jersey Street where they could allow some Live Oaks to be

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planted, if that was the Board's pleasure. He noted, however, that the church had very limited green space on the church property. It was his understanding that the sign would actually go in the parking lot area. If the sign was approved today, Urban Forestry would request at least one, possibly two, overstory trees to be planted in the green space in the same area as the sign.

After discussion a motion was made by Mr. Davitt and seconded by Mr. Lee to approve this request for a Sign Variance to allow an 8' x 5' illuminated double-sided off-site sign in an R-1, Single-Family Residential District at the above referenced location subject to the following conditions:

- 1) if a freestanding sign is erected on the church building site, the parking lot freestanding sign must be removed;
- 2) the location of the sign to be approved by Traffic Engineering; and
- 3) full compliance with all municipal codes and ordinances.

The motion carried unanimously.

#5268/5294

(Case #ZON2005-00025)

Robert S. Moore

4213 Halls Mill Road

(East side of Halls Mill Road, 410'± North of Alden Drive)

Parking and Access/Maneuvering Surface Variances to allow aggregate parking and access/maneuvering areas in an B-3, Community Business District; parking and access/maneuvering areas must be asphalt, concrete or an approved alternative paving surfaces in B-3, Community Business Districts.

The plan illustrates the existing structures, parking, and drives, along with the proposed structure and shell driveway.

Ben Brooks, Councilperson for District 4, was present to speak on behalf of the applicant who could not attend the meeting due to illness. Mr. Brooks noted that the site was surrounded by an aggregate, shell parking area, which was pretty routine in District 4, which was on the south and west sides of town. A good number of properties were not up to what might be deemed normal for lots in the interior of the City. There were a lot of open ditches and a lot of areas where there were no curbs, gutters and drains. Mr. Brooks asked that the Board take this into consideration. He stated that Mr. Moore had been a tremendous asset to District 4 for many years. He said he had not received a single complaint from any resident in the area about this driveway being put in as proposed. In terms of unnecessary hardship and special conditions, Mr. Brooks pointed out that this building was up on the front of a lot that sloped very rapidly toward the back of the property and a watershed. He felt that having an aggregate surface would actually contribute to reducing the flow of water off of the property into an area that would otherwise have a drainage ditch. Mr. Brooks further pointed out a road right beside the property where the City Council a few months back waived the requirement for curbs, gutters and drains for paving. This was consistent with what could be seen in a lot of these parts of the district on the extreme south and west sides of town. Mr. Brooks asked that the Board consider these circumstances and grant this variance.

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In discussion it was noted that this application originally came before the Board in October, 2004, and was held over to November. In November no one showed up to represent the applicant so it was denied. According to the rules, the applicant must either wait six months before resubmitting the application, or he could resubmit it with changes. Mr. Davitt said evidently there was no change. He was concerned that if the Board reviewed it now and six months had not lapsed, a precedent would be set for everybody to come back the month after, or two months after the Board has denied something with no changes.

Mr. Cummings asked if this was an identical application.

Ms. Pappas stated that it was identical.

Mr. Cummings asked Mr. Brooks if he knew why no one came in November to represent the application.

Mr. Brooks said it was just a scheduling error through no one's fault that resulted in them missing that meeting. He said he understood the six-month rule. He had also understood that they were going to submit it with some minor changes, but apparently they submitted the same application.

Regarding the six-months rule, Mr. Lee felt that the Board should consider that Mr. Moore was medically incapacitated, and his failure to have a representative at the November hearing was a scheduling error. Under those circumstances he moved to waive the six months rule which requires that an application cannot be considered again for six months after it has been denied.

Mr. Cummings asked if there was any further discussion.

Mr. Guess asked that since the applicant was not present at the November meeting, was he sent something in writing that the application was denied.

Ms. Pappas said the applicant was sent a notice of denial.

Mr. Cummings further stated that the Board could ask the applicant to hold this matter over for three months, at which time the six months will have expired and they could resubmit it with the exact same application, or they could request withdrawal and submit it for next month with some changes.

Mr. Brooks stated that there were some hardship situations here and the applicant was trying to move and get this project finished, and time was a bit of a factor for them. He said he would respect whatever the Board said.

Mr. Cummings said he did understand the circumstances and the hardship on Mr. Moore due to his health, but the Board was technically bound by the fact that they had a hearing scheduled for November and no one showed up. Despite the circumstances the Board is not supposed to consider the application again for six months.

Mr. Brooks asked if that was by law or practice.

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Mr. Cummings said that was according to the by-laws of the Board. He encouraged Mr. Brooks, as a representative of the applicant, to withdraw the application at this time, and then make a decision as to whether to resubmit the application or request a holdover.

Ms. Pappas noted that he could hold it over to the March meeting and submit a revised site plan, or the Board could hold it over until the May meeting.

Mr. Davitt asked how many holdovers could one have.

Ms. Pappas said it would be just one holdover because this was a new application the Board was considering today.

Mr. Lee asked about the possibility of waiving the six-month rule.

Ms. Cochran stated that the rule states that an application shall not be heard for six months after it has been denied. If the Board wanted to create an exception to that rule they had to be careful about how they worded the exception because otherwise they would not have a rule. It would create a precedent, but the issue was, what kind of precedent. She asked, do you relax the rule every time someone says they missed a meeting, or made a mistake, or was sick. Then you get into value judgements about which excuses are better than other excuses. Ms. Cochran said the Board did have the power to do that, but if they did want to make an exception to the rule, they should keep in mind that it would have to be applied equally.

Mr. Brooks considered his options and agreed to hold over the application for 30 days.

Mr. Cummings asked Mr. Lee if he wanted to withdraw his motion.

Mr. Lee withdrew his motion.

Mr. Cummings asked if there was a motion to hold over this matter for 30 days.

Mr. Lee so moved, and Ms. Collier seconded the motion.

The motion carried unanimously.

OTHER BUSINESS

Mr. Cummings wanted to make some comments about the Board and the difficulty of their job as Board members. He reminded the Board that at the last meeting, they had denied a request for a tattoo parlor on Government Boulevard at Pinehill Drive. Although he felt the Board had probably upheld their technical responsibilities, he simply wanted to remind the Board that their decision impacted people's livelihoods and the City of Mobile.

Mr. Cummings went on to say that he had recently talked with Mayor Dow and Council Member Copeland about the urgent need for a new Board member. He thanked Mr. Coleman for accepting the position and attending the meeting. Mr. Cummings went on to express his thanks to all the Board members and the staff for their time and hard work.

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Mr. Cummings then inquired if the six-month waiting period for reapplying should be reviewed.

Ms. Pappas stated that reducing or eliminating the time period would not really impact the staff's work load, but pointed out that the six month waiting period was consistent with the Zoning Ordinance as it relates to rezoning applications.

Ms. Cochran stated that the Architectural Review Board also had a six-month waiting period, and Mr. Palombo added that six months was typical for other cities as well.

Mr. Coleman inquired under what circumstances should a Board member recuse from voting.

Ms. Cochran stated that if you have a financial interest in the outcome of the decision, or if a member of your family had an interest. She went on to say that a few years ago she had sent a memo outlining the situations that would require a Board member to recuse on an application. She said she would provide the entire Board with a copy.

There being no further business, the meeting was adjourned.

APPROVED: April 4, 2005

/s/ Chairman of the Board

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