

**BOARD OF ZONING ADJUSTMENT MINUTES**  
**MEETING OF FEBRUARY 3, 2003 - 2:00 P.M.**  
**MOBILE GOVERNMENT PLAZA, MULTI-PURPOSE ROOM**

**MEMBERS PRESENT**

John Peebles, Chairman  
Reid Cummings  
Richard Collier  
Rev. Clarence Cooke  
H. Lamar Lee  
Edley Hubbard (S)

**MEMBERS ABSENT**

Rev. P. H. Lewis

**STAFF PRESENT**

Margaret Pappas, Planner II  
Richard Olsen, Planner II  
Rose Murphy, Secretary II

**OTHERS PRESENT**

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

Chairman Peebles 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 by Mr. Collier and seconded by Mr. Cummings to approve the minutes of the meeting of January 6, 2003, as submitted. The motion carried unanimously.

**HOLDOVER:**

**#5156**

**(Case #ZON2002-02631)**

**Judith D. Wells (Dianne D. Sanford, Owner)**

**3413 Broadway Drive**

(South side of Broadway Drive, 115' ± East of Wacker Lane)

**Administrative Appeal to determine the decision of the Land Use staff concerning a “non-conforming” structure.**

Mr. M. Don Williams, Williams Engineering, Inc., represented the applicant and stated that she was his next-door neighbor. He understood that the subject structure was constructed in the rear of the subject property approximately 13 years ago. A fence shown in photographs was constructed approximately 3' to 4' farther into Ms. Sanford's property line. The subject structure was approximately 5' from the

**February 3, 2003**

property line. He was unable to determine if a building permit was obtained to construct the subject structure. Mr. Williams described wiring for a light fixture he felt was not installed in accordance with the Electrical Code. He went on to say the applicant did not feel there was a hardship with the property when the subject structure was built. He stated that the applicant requested that the owner of the structure be required to remove it. He went on to say that the structure was not attached to the ground and could be moved 3' to 4' farther from the property line. Mr. Williams stated the applicant did not register a complaint at the time of construction because she thought it was properly permitted and placed.

Mr. Cummings asked how the structure became a problem after 13 or 14 years.

Mr. Williams stated that research of City records from 1985 were not available to confirm that a building permit was issued.

Mr. Cummings asked why the applicant chose this time to look for records.

Mr. Williams said that the house had been placed on the market, and the applicant wanted the structure removed prior to a new owner moving in. Since the application was filed, the house had been taken off the market.

There was a brief discussion about the party benefiting from the current placement of the fence. It was determined that the applicant benefited, and that she was willing to lose that as well as a larger Magnolia Tree.

Ms. Diane Sanford, owner, stated that she was unaware there was a problem with the subject structure. A contractor who was now out of business built the structure in 1985. He no longer had any files and advised her to contact the City for a copy of the record. She was advised that computer data only went back five years, but that she could go to the Archives for research. Research at the Archives revealed that no files were available for 1985. Ms. Sanford said she was unaware of today's meeting until contacted by Mr. Williams. She was stunned by this action because the structure had been in place for 18 years. She described it as a two-sided structure next to her pool that had been used and enjoyed by her family and others in the neighborhood, including the applicant. When they bought the property they were aware that the fence was 4' within the property line. She felt this was more a personal than a construction issue. She had placed the house on the market in reaction to the death of her husband in 2002, but had since taken it off the market. Ms. Sanford was willing to move the fence if necessary. She felt the structure had a non-conforming status because it had been in place for 18 years without complaints. She was willing to move the structure forward 2' feet to comply with setback requirements. She presented photographs of the property with the structure.

Ms. Judy Wells, the applicant disagreed with the date of construction. She asked her former husband about the structure and he did not recall it at all. They were divorced in 1988. She stated that the Sanfords bought their house in March of 1985. The fence was replaced 2 to 3 years after that. Ms. Wells stated that Mr. Sanford asked her her opinion of the structure. She would not give him her honest opinion because she did not want to cause friction with them. She went on to say that she

**February 3, 2003**

remained silent about the structure until she thought Ms. Sanford had decided to move. It was at that point that she felt the structure should be removed.

Mr. Williams reiterated that they felt the structure did not have non-conforming status because it was constructed after 1967. They felt it could easily be moved because it was not attached to the ground and the wiring should be made to conform to the electrical requirements of the City.

Mr. Collier questioned the placement of the fence.

Mr. Williams said the fence was 4 feet inside Ms. Sanford's property line.

A motion was made by Mr. Collier and seconded by Mr. Hubbard to deny the Administrative Appeal concerning the decision of the Land Use staff concerning a "non-conforming" structure.

The motion carried unanimously.

**PUBLIC HEARINGS:**

**#5157/4782**

**(Case #ZON2002-02755)**

**Gulf Coast Sign Company**

**1739 East I-65 Service Road South**

(East side of East I-65 Service Road South, 750' ± North of Government Boulevard)

**Sign Variance to allow four free-standing signs on a multi-tenant site with only 727' of street frontage; only two free-standing signs are allowed on a multi-tenant site with 601'-1200' of street frontage.**

Mr. William Terry of Gulf Coast Sign Company represented the applicant and stated that they were seeking a variance to allow a 44 sq. ft. free-standing sign for a new Volvo dealership. He said that this would be the only identification of the new dealership on the property.

The question was raised about the three existing free-standing signs on the property.

Mr. Terry explained that one was for Robinson Brothers, one for new Lincoln-Mercury cars, and the third for used cars. Two of the signs were approved by variance two years ago.

Mr. Peebles asked the total square footage of signage with the requested sign.

That information was not available.

Mr. Collier asked if the Volvo sign could be attached to the existing Lincoln-Mercury sign.

Mr. Terry explained that each brand sign was constructed to its own specifications and the signs were not adaptable. Each carmaker required its own sign under the dealership contract.

**February 3, 2003**

There was no one present in opposition.

In discussion, Ms. Pappas noted that the request exceeded the number of free-standing signs allowed by the Sign Ordinance, but would not exceed the aggregate square footage.

Mr. Jackson asked the Board to consider requiring frontage trees at the site.

A motion was made by Mr. Cummings and seconded by Mr. Hubbard to approve the request for a Sign Variance to allow four free-standing signs on a multi-tenant site with only 727' of street frontage subject to the following condition:

1. provision of frontage trees along East I-65 Service Road South.

The motion carried unanimously.

**#5158/3153**

**(Case #ZON2003-000024)**

**Dale Halladay**

**1570 Dauphin Street**

(North side of Dauphin Street, 333'± East of North Monterey Street)

**Use Variance to allow the expansion of a single-family dwelling unit (three units total on-site) in an R-1, Single-Family Residential District; only one dwelling unit is allowed in an R-1, Single-Family Residential District.**

Mr. Dale Halladay of 1570 Dauphin Street stated he bought the subject property in 1990. He stated that he wanted to add a game room and a couple of bedrooms with closets and bathrooms. He proposed to have two wings on each side of the existing dwelling with a courtyard in the rear.

Mr. Peebles asked if Mr. Halladay lived on the property.

Mr. Halladay said yes.

Mr. Peebles asked if there were any rental units on the property.

Mr. Halladay said there were two rooming units in the rear that were built in the 1960's.

Mr. Cummings asked if there were two separate lots of record.

Mr. Halladay said yes and that he paid two separate tax bills on the properties.

Mr. Cummings said it appeared that the two structures in the rear encroached the property line between the two lots.

**February 3, 2003**

Mr. Halladay said his interpretation was that one lot included the house, and the other lot started at the apartments. The apartments were built for family members of the previous owner in the 1960's. Mr. Halladay had a pool and pool house built on the rear of the property.

Mr. Peebles asked the staff how many lots of record were involved in this case.

Ms. Pappas said the legal description indicated the property was a metes and bounds parcel. The line drawn on the vicinity map was from tax assessor parcel data. There were two parcels for tax purposes.

Mr. Peebles asked if there were two metes and bounds lots.

Mr. Olsen said the original legal description was a single metes and bounds description. For tax purposes, the tax assessor inserted a parcel line giving homestead exemption to the front parcel.

Mr. Peebles asked if the proposed expansion was for rental purposes.

Mr. Halladay said no. He wanted to add onto his existing dwelling. He wanted to update the dwelling to have the addition look like original dwelling in the front and make it more energy efficient.

Ms. Pappas stated that Circuit Court granted a variance for the two units in the rear for use by family members in 1976. Mr. Halladay submitted a conceptual plan for the addition to the Historic Development Commission. At that time it was noted that the plan included two apartments and the Historic Development Commission referred him to Urban Development for a variance. The site plan before the Board did not indicate kitchens, but were labeled Apartment "A" and "B".

Mr. Peebles asked for an explanation from Mr. Halladay.

Mr. Halladay stated that the original plans submitted indicated a kitchen in one of the additions. The reason for that was that he intended to remodel the existing kitchen.

Mr. Peebles asked how many additional kitchens were planned.

Mr. Halladay said one or two. He intended to employ a nanny for his children and have that space for her living quarters. Those plans did not materialize and he did not have kitchens in any of the additions.

Ms. Marian Titlestad owner of property on Fernway, directly behind the subject property, expressed concern that the addition would be used as apartments. She felt property values would be adversely affected. She would not be opposed to an addition to a dwelling, but was opposed to additional apartments.

Mr. Cummings asked if the 1976 court approval for the two structures to be used by family members applied only to the property owners at that time.

Ms. Pappas said that the approval was attached to the property and therefore transferred to a new owner and their family.

**February 3, 2003**

Mr. Collier felt the primary staff concern was that the new addition would be used as apartments.

Discussion centered on methods to allow the addition to the existing dwelling and limit use of the two existing apartments for family-member use only. It was suggested that a condition of approval reiterating that the two existing residences to the rear be used for family members only, and a condition requiring removal of the outside staircase proposed to go to the second floor of the proposed eastern wing might be appropriate.

It was noted the applicant submitted plans to the Architectural Review Board staff which were not accepted by that staff because they indicated apartments and did not meet ARB technical requirements.

Further discussion concluded that this application was reopening an existing variance and insufficient evidence was presented to conclude that the applicant was abiding by the previous variance approval. It was also felt that the intent of the original plan submitted was for the addition to be used as apartment(s).

A motion was made by Mr. Collier and seconded by Mr. Hubbard to deny the request for a Use Variance to allow the expansion of a single-family dwelling unit (three units total on-site) in an R-1, Single-Family Residential District.

The motion carried unanimously.

**#5159**

**(Case #ZON2003-00041)**

**Robert M. Tarabella**

**Administrative Appeal to determine the decision of the Land Use staff concerning an interpretation of the sign regulations.**

Mr. Robert Stankoski, attorney, represented the applicant and stated they were appearing without admitting to violation of any ordinance or the Sign Regulations. They were seeking clarification of violations his client was charged with. There was a lawsuit pending in the matter to determine if a franchise agreement with the City of Mobile was necessary. Today they were seeking to resolve the issue of zoning violations. Mr. Tarabella operates a business that utilizes a moving vehicle that carries advertisements. It utilizes a tri-vision technology, which holds up to 12 signs. There were 3 signs on each side that flip every 8 seconds, as the truck moves about the streets. Mr. Tarabella was under contract to provide advertisement in Baldwin and Mobile Counties, as far west as Mississippi, and as far east as the panhandle of Florida. In the Fall of 2002 the applicant received a letter from a Zoning Enforcement officer advising that the truck did not meet the existing Sign Ordinance and to cease operation immediately or further sanctions would be taken. Mr. Tarabella was never cited and not advised how he was in violation of the Sign Ordinance. They had reviewed the Sign Ordinance and were unable to determine that Mr. Tarabella's operation was covered by any category referred to in the Ordinance. The Ordinance referred to fixed structures or portable moving signs. He felt it would be arbitrary to order Mr. Tarabella stop operation under the existing Sign Ordinance. He presented photographs of vehicles with advertising and asked for a variance.

**February 3, 2003**

Mr. Peebles explained that the applicant was not seeking a variance, but an interpretation of the Administrative decision indicating that a variance was needed.

Mr. Collier asked if the violation was for the tri-vision rather than single sided ads.

Ms. Pappas said there were three issues involved. First, the advertising was located in the right-of-way. The Sign Ordinance prohibits signs in the right-of-way. The second issue was whether the vehicle was considered a structure or not. The Sign Ordinance prohibits signs that are not affixed to a substantial structure. The staff's contention was that the truck was not a structure as defined in the Zoning Ordinance. If the truck was considered a structure, then there was a violation of the off-premise provision of the Sign Ordinance.

Mr. Cummings asked how vehicles advertising real estate companies and pet shops differ from this case.

Ms. Cochran stated that this business was located outside the City of Mobile and in business for the sole purpose of advertising. This was in contrast to local businesses using city streets for making deliveries or other vehicles with advertising passing through town. The issue today was not one of right-of-way, but whether this particular method of advertising was a violation of the Sign Ordinance.

A brief discussion centered on whether a real estate company and a pet shop, as well as other businesses were required to have permits and comply with the Sign Ordinance for signs on their vehicles. It was determined that the Sign Ordinance allowed advertising on vehicles incidental to the task of that vehicle.

Mr. Stankoski noted that there were no exceptions in the Sign Ordinance to fit his client's situation.

Ms. Cochran stated that this Board had no enforcement authority. Its responsibility was to interpret the Zoning Ordinance. This was a unique situation not covered by the Zoning Ordinance.

Mr. Peebles expressed displeasure that the Zoning Ordinance was being "twisted" to cover this situation. He felt it was inappropriate to use the Zoning Ordinance to enforce an issue not specifically covered.

In discussion, it was decided that the Sign Ordinance did not encompass self-propelled motor vehicle advertising.

A motion was made by Mr. Collier and seconded by Mr. Lee to uphold the Administrative Appeal because such advertising is not covered by the existing sign regulations contained in Chapter 64, Mobile City Zoning Code.

The motion carried unanimously.

**#5160**

February 3, 2003

(Case #ZON2003-00050)

**Malbis Realty Company, Incorporated**

(Area bounded on the West by South Washington Avenue, on the South by Kentucky Street, on the East by South Scott Street, and the North by Tennessee Street [unopen] and Illinois Central Gulf Railroad right-of-way).

**Use Variance to allow the construction of three 200' x 90' float barns in a B-3, Community Business District and a R-2, Two-Family Residential District; float barns are allowed with Planning Approval in a B-4, General Business District and allowed by right in an I-1, Light Industrial District.**

Mr. Jerry Curran represented the applicant and stated they were requesting a variance to allow a Mardi Gras organization to build float barns on the subject property. He had personally contacted neighboring residents and businesses to explain the situation and found no opposition. He described the surrounding area and felt that this proposal would not be a detriment to the neighborhood. Mr. Curran noted that other Mardi Gras organizations had float barns in residential areas.

Mr. Collier noted that the proposal included three float barns and asked if they could be built completely within the B-3 area. He also asked if the applicant had considered requesting rezoning of the entire parcel.

Mr. Curran stated that he had conferred with staff and was advised to seek a variance rather than rezoning to B-4.

Mr. Don Rowe of Rowe Surveying stated that the three barns could be constructed completely in the B-3 area.

There was no one present in opposition.

A brief discussion centered on possible Subdivision or Planned Unit Development (PUD) approval by the Planning Commission. It was decided that subdivision approval might be required. If this Board granted a variance, a PUD would not be necessary.

A motion was made by Mr. Cummings and seconded by Rev. Cooke to approve the request for a Use Variance to allow the construction of three 200' x 90' float barns in a B-3, Community Business District and a R-2, Two-Family Residential District subject to the following conditions:

1. full compliance with landscaping and tree requirements of the Zoning Ordinance; and
2. protection of trees with 24" or larger diameter to be coordinated with Urban Forestry (may require building relocation).

The motion carried unanimously.

**#5161/4932/4866/3018**

(Case #ZON2003-00051)

**Kimberly S. Garris**



February 3, 2003

**2910 Pleasant Valley Road**

(North side of Pleasant Valley Road, 110' ± East of Lundy Lane)

**Use and Parking Variances to re-open an existing variance to allow the expansion of an existing daycare in an R-1, Single-Family Residential District, to allow an aggregate surface parking lot, and substandard driveways; a daycare is allowed with Planning Approval in a B-1, Buffer Business District and by right in a B-2, Neighborhood Business District, the Zoning Ordinance requires all parking to be asphalt, concrete or an approved alternative paving surface, and a 12' wide drive is required for one way access.**

Ms. Kimberly Garris, the applicant, stated that the purpose of this application was to allow the expansion of an existing daycare. She was granted a variance previously, but was not able to implement the planned expansion, and the variance expired. She requested approval of the application.

Mr. Collier asked if Ms. Garris had seen the staff recommendations.

Ms. Garris had not seen the recommendations for this application. She was provided a copy and concurred.

There was no one present in opposition.

A motion was made by Mr. Collier and seconded by Mr. Hubbard to approve the request for Use and Parking Variances to re-open an existing variance to allow the expansion of an existing daycare in an R-1, Single-Family Residential District, to allow an aggregate surface parking lot, and substandard driveways at the above referenced location subject to the following conditions:

1. compliance with the City's Flood Plain Land Use Ordinance;
2. full compliance with the landscaping and tree planting requirements of the ordinance; and
3. the provision of a buffer around the West, North and East property lines.

The motion carried unanimously.

**#5162**

**(Case #ZON2003-00063)**

**Oakleigh Joint Venture Revolving Fund**

**960 Church Street**

(North side of Church Street, 150' ± East of Charles Street)

**Front Yard Setback Variance to allow a new dwelling unit to be constructed 10' from the front property line in an R-1, Single-Family Residential District; a minimum front yard setback of 25' is required in an R-1, Single-Family Residential District.**

Mr. Palmer Hamilton, President of the Oakleigh Joint Venture Revolving Fund, asked that this and the following application be considered simultaneously. Both applications were projects of the Oakleigh Joint Venture Revolving Fund, which was created through the Fannie Mae Foundation to restore moderate and low-income housing in Oakleigh. Five houses were restored in the area and now they wanted to construct two houses on property on Church Street. Both parcels require a reduced Front

**February 3, 2003**

Yard Setback Variance in order to construct the houses near the front property line. He felt that this would be in keeping with the character of the neighborhood because many others in the area had reduced setbacks. Mr. Hamilton presented a petition in support of the project from neighbors along the block of the proposed construction.

There was no one present in opposition.

A motion was made by Mr. Hubbard and seconded by Mr. Cummings to approve the request for a Front Yard Setback Variance to allow a new dwelling unit to be constructed 10' from the front property line in an R-1, Single-Family Residential District at the above referenced location subject to the following conditions:

1. the approval of the Architectural Review Board prior to the issuance of any permits.

The motion carried unanimously.

**#5163**

**(Case #ZON2003-00064)**

**Oakleigh Joint Venture Revolving Fund**

**964 Church Street**

(North side of Church Street, 100' ± East of Charles Street)

**Front Yard Setback Variance to allow a new dwelling unit to be constructed 5' from the front property line in an R-1, Single-Family Residential District; a minimum front yard setback of 25' is required in an R-1, Single-Family Residential District.**

**See #5162 for public hearing comments.**

There was no one present in opposition.

A motion was made by Mr. Hubbard and seconded by Mr. Cummings to approve the request for a Front Yard Setback Variance to allow a new dwelling unit to be constructed 5' from the front property line in an R-1, Single-Family Residential District at the above referenced location subject to the following condition:

1. the approval of the Architectural Review Board prior to the issuance of any permits.

The motion carried unanimously.

**#5164**

**(Case #ZON2003-00108)**

**Talmay Owen Vickers, Jr.**

**61 Marston Lane**

(West side of Marston Lane, 201' ± South of Bexley Lane, extending through to Ridgelawn Drive East)

**February 3, 2003**

**Fence Height Variance to allow the construction of an 8' high stucco wall 1' from the front property line; a 25' front yard setback is required from the front property line in an R-1, Single-Family Residential District.**

Mr. Tal Vickers, the applicant, explained that there were two lots on the subject property and they wanted to construct a solid stucco fence around the entire parcel. He went on to say that they wanted to amend the plan submitted to reflect changes made after a meeting with Traffic Engineering regarding line-of-sight. They proposed to construct the stucco fence 3' high at the 25' setback line with 5' of wrought iron to maintain the 8' height. He submitted a picture of the proposed fence.

There was a brief discussion about the need for a 25' front yard setback variance if the stucco portion of the fence was to be 3'. It was determined that the variance was necessary because the total fence height would be 8'.

Mr. Gilbert Dukes, owner of the lot to the north of the subject property, asked that shrubbery proposed for inside the fence not exceed the height of the 3' stucco portion of the fence.

The question was raised if the Board had authority to limit the height of shrubbery inside the fence. It was determined that if shrubbery posed a visibility problem, the Board could address the issue.

Mr. Vickers stated that there were Oak Trees on City property from his property line to the street. He did not feel shrubbery inside the fence would hinder visibility any more than currently existed.

Mr. Peebles stated that the Board was charged with more than regulating traffic sight lines. They also had to consider maintaining a consistent streetscape.

Mr. Vickers said they wanted to build the fence for the security and privacy of their children. He pointed out that there were other fences in the area that similar in design to his proposal. He felt that his proposal would enhance property values for the neighborhood.

In discussion, it was noted that the staff had not reviewed the proposed change to construct the stucco portion of the fence 3' high with 5' of wrought iron on top within the 25' setback line prior to this meeting. Mr. Roberts stated this change resulted from a consultation he had with the applicant.

There was also discussion as to whether this type fence was consistent with the streetscape of the neighborhood and if a hardship to the property existed. It was concluded that this type fencing did not exist in the immediate area, and that there was no apparent hardship to the property to prevent the fence from being constructed in compliance with required setbacks.

A motion was made by Mr. Collier and seconded by Mr. Hubbard to deny the request for a Fence Height Variance to allow the construction of an 8' high stucco wall 1' from the front property line in an R-1, Single-Family Residential District.

The motion carried unanimously.

**February 3, 2003**

**OTHER BUSINESS:**

Mr. Olsen drew attention to information concerning the Certified Alabama Planning and Zoning Officials program. He encouraged all to attend.

Mr. Olsen announced that this was Mr. Peebles last meeting. He thanked Mr. Peebles for his 23 years of service to the Board.

Mr. Olsen also announced that Rev. Lewis was stepping down as well.

**APPROVED:** April 7, 2003

/s/ Chairman of the Board

/rm