

BOARD OF ZONING ADJUSTMENT MINUTES
MEETING OF MARCH 4, 2002 - 2:00 P.M.
MOBILE GOVERNMENT PLAZA, MULTI-PURPOSE ROOM

MEMBERS PRESENT

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

MEMBERS ABSENT

Rev. Clarence Cooke
Rev. P. H. Lewis

STAFF PRESENT

Frank Palombo, Planner I
Timothy Ashley, Planner I
Rose Murphy, Secretary II

OTHERS PRESENT

David Roberts, Traffic Engineering
John Lawler, 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 exception of the Chairman who does not participate in voting unless otherwise noted.

APPROVAL OF MINUTES:

A motion was made by Mr. Cummings and seconded by Mr. Hubbard to approve the minutes of the meeting of February 4, 2002, as submitted. The motion carried unanimously.

PUBLIC HEARINGS:

#5097

(Case #ZON2002-00257)

Johnnie & Birdie M. Irby, Jr.

5512 Topanga Drive

(North side of Topanga Drive, 230' ± East of Andover Boulevard)

Side Yard Setback Variance to allow the construction of a 14.5' x 27.6' carport on the west side property line; an 8' side yard setback is required in a R-1, Single-Family Residential District.

Mr. Johnny Irby, Jr., the applicant, stated that a variance was requested because he had constructed a carport too close to the property line.

Mr. Peebles asked if Mr. Irby had secured a building permit prior to beginning construction.

Mr. Irby said he did.

Mr. Ashley stated that the building permit indicated that the construction met the required setbacks.

Mr. Peebles asked if Mr. Irby indicated on the permit application that he would build the carport to the property line.

Mr. Irby said yes. He was not aware of the proper measurement for setbacks. He thought the setback was from the side of his neighbor's house.

Mr. Peebles asked if the carport was completed.

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Mr. Irby said yes.

Discussion centered on whether a site plan was required for this type of construction. It was explained that site plans were not required, that the applicant sketches the building with the setbacks on the application form. Many times setback violations were not identified until an inspection was made. In this case, the applicant measured from the neighbor's house rather than the property line.

Mr. Peebles noted that this was unlike other requests presented to the Board in that it was a nicely completed construction and asked if there were any complaints from the neighbors.

Mr. Palombo said no.

Mr. Peebles asked if there was a punitive alternative to denying the request and ordering the structure demolished, such as a fine.

Mr. Lawler said that the Zoning Ordinance contained penalty clauses for violation of City Ordinance. He went on to say that approval of a variance must be associated with a hardship to the subject property. He cited a court case involving construction of a storage shed on the property line on Fernway Drive. In that case, ultimately the Supreme Court required removal of the shed.

Mr. Collier said that frequently applicants sought forgiveness from this Board after construction, rather than approval prior to construction. He felt that this applicant was sincere in saying he was unaware he used the wrong setback measurement for construction.

A motion was made by Mr. Hubbard and seconded by Mr. Cummings to approve the request for a Side Yard Setback Variance to allow the construction of a 14.5' x 27.6' carport on the west side property line subject to the following condition:

1. provision of gutters and downspouts.

The motion carried unanimously.

#5098

(Case #ZON2002-00265)

SPWLLC (Charles Slaughter, Owner)

311 Ari Court

(West side of Ari Court, 100' ± North of Spring Hill Avenue, extending to the West, North, and East sides of the North terminus of Ari Court, and extending North to the Illinois Central Gulf Railroad right-of-way)

Front Setback, Parking Surface, Off Street Maneuvering Area, Circulation and Landscaping Variances to allow the construction of an 18,345 square foot building within seven (7) feet of the front property line, gravel parking, truck maneuvering onto right-of-way and 2,438 square feet of landscaping in front of the building; 25' front yard setback, asphalt or concrete are required parking surfaces, truck maneuvering must be contained on the site, improper circulation within the site and 2723 square feet of landscaping in front of building is required in an I-1, Light Industrial District.

Mr. Walter Scott of McCrory & Williams Engineers represented the applicant and stated Nudraulix wanted to replace multiple buildings that currently occupied the property with one structure. He went on to say that one of the buildings to be removed encroached the setback. They were requesting a front setback variance for the new structure. Mr. Scott concurred with the staff recommendations.

Mr. Ashley noted that the applicant had received Planning Commission approval for a Planned Unit Development and Subdivision based on the same plan submitted to this Board.

A motion was made by Mr. Cummings and seconded by Mr. Hubbard to approve the request for Front Setback, Parking Surface, Off Street Maneuvering Area, Circulation and Landscaping Variances to allow the construction of an 18,345 square foot building within seven (7) feet of the front property line,

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gravel parking, truck maneuvering onto right-of-way and 2,438 square feet of landscaping in front of the building at the above referenced location subject to the following conditions:

1. full compliance, to the greatest degree possible with the plan subject to approval with the Land Use Staff, with the landscaping requirements of the Ordinance;
2. provision of frontage trees to be coordinated with and approved by the Urban Forester;
3. provision of paved (asphalt, concrete, or asphaltic concrete) parking, access and maneuvering areas;
4. provision of a sidewalk along Ari Court; and
5. full compliance with all municipal codes and ordinances.

The motion carried unanimously.

#5099/4945

(Case #ZON2002-00267)

Mr. & Mrs. Kelly Grady

201 Tuthill Lane

(Northeast corner of Tuthill Lane and The Cedars)

Side Yard Setback and Site Coverage Variances to allow the construction of a garage addition to within 5' of a side street property line; a minimum side yard setback of 20' is required on a corner lot when the lot to the rear fronts the side street; and to allow site coverage to exceed 35% in an R-1 District.

Mr. Kelly Grady, the applicant, stated that this request was identical to previously approved and expired variances. He said approvals from other agencies, preparation of architectural plans, and family illness prevented them from completing the project in the allotted time frame.

Ms. Margaret McLaughlin of 317 Tuthill Lane referred to letters of opposition, which were placed in the file and the Board's packets. She stated that she lived at that location for 29 years and her driveway was on The Cedars, directly across from the proposed site. Ms. McLaughlin said she and her husband used the entrance a minimum of four times per day and noted that there were traffic issues at the intersection of The Cedars and Tuthill Lane. She expressed concern for safety of pedestrians, bikers, and others at the point where the applicant would back from the driveway onto The Cedars. She went on to say that an existing picket fence and power pole were line-of-sight impediments at the intersection. In addition, the applicants often parked vehicles on Tuthill Lane on the right-of-way, near the corner, also posing line-of-sight problems. Ms. McLaughlin noted that three schools in the area increased traffic flow. She felt that approval of this request would only serve to increase the existing line-of-sight problems. She requested denial of the request.

A brief discussion centered on the possibility of locating the new garage farther north. It was noted that this would necessitate destruction of the concrete pad around a swimming pool

Mr. Grady disputed Ms. McLaughlin's claim that she resided directly across the street from his property. He indicated that Dr. Randy Bentley resided there, and there were several houses between Dr. Bentley and the McLaughlins. He stated that there was a public road behind the houses on The Cedars that those residents used as access to their homes. Mr. Grady said that the reason for constructing the garage was to eliminate the on-street parking referred to by Ms. McLaughlin.

Mr. Peebles asked if the applicant had seen the staff recommendations.

Mr. Grady said no.

Mr. Peebles read the recommendations and noted that they were the same as with the previous approval.

Mr. Grady agreed.

Mr. Ashley noted that the wording was changed to read "City Council" approval of the fence in the right-of-way rather than a "Right-of-Way Agreement" through the Engineering Department.

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Mr. Grady noted that he had obtained a "Right-of-Way Approval" in accordance with the previous approval. He maintained the right-of-way and had indemnified the City should anyone be injured.

In discussion, it was noted that the only impact of the proposal was on the driveway behind the five parcels to the south of the subject property.

A motion was made by Mr. Collier and seconded by Mr. Hubbard to approve the request for Side Yard Setback and Site Coverage Variances to allow the construction of a garage addition to within 5' of a side street property line at the above referenced location subject to the following conditions:

1. the moving of the existing privacy fence to within the property line should the City Council deny a request to allow it to remain in the right-of-way; and
2. that no permits be issued until fence is either move within the property line or City Council grants approval of the fence in the right-of-way.

The motion carried unanimously.

#5100

(Case #ZON2002-00308)

James & Margaret Dixon

1554 Forrest Avenue

(North side of Forrest Avenue, 65' ± East of Stewart Avenue)

Front Yard and Side Yard Variances to allow a 18.2' x 20.1' carport within 2.3' of a front property line and within 1.4' from a side property line; a minimum 25' front yard setback and 5.7' side yard setback are required on a 40' wide lot in an R-1, Single-Family Residential District.

Mr. Jerry Byrd of Byrd Surveying Company represented the applicant, and stated that the applicants were in the process of constructing a carport when a City inspector determined the carport was not in the proper setback. Construction was stopped and a variance application was submitted. Mr. Byrd noted that other structures in the immediate area had porches located closer than 25' to the street right-of-way line.

Mr. Peebles asked if the applicants had obtained a building permit prior to beginning construction of the carport.

Mr. Byrd said it was his understanding that they had obtained a permit, but he had not seen it.

Discussion centered on whether this project was completed and whether there was sufficient space to relocate the carport to the rear of the property. It was noted that only the posts were erected and there was ample room at the rear of the residence.

A motion was made by Mr. Cummings and seconded by Mr. Hubbard to deny the request for Front Yard and Side Yard Variances to allow a 18.2' x 20.1' carport within 2.3' of a front property line and within 1.4' from a side property line.

The motion carried unanimously.

#5101

(Case #ZON2002-00352)

Dr. Jean Sansaricq

2358 Wagner Street

(Northeast corner of Stanton Street and Wagner Street)

Use Variance to allow off-site (paved) parking in an R-1, Single-Family Residential District for an adjacent commercially zoned property; a minimum of B-1, Buffer Business District is required.

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Mr. Leonard C. Wyatt represented the applicant and stated that the purpose of this application was to allow off-site parking for a medical office. He said that the doctor's practice had grown so that the number of available on-site parking spaces was equal to the number of employees. He referred to photographs which showed parking on the front lawn of the subject site. Mr. Wyatt said that a survey of neighbors indicated that they favored use of the parking lot as opposed to parking in front of the building. He went on to say that the proposed parking lot was vacant for the 40 years he lived in the area. He felt approval of the application would serve to improve the area, and correct drainage problems with the vacant lot. Mr. Wyatt referred to the staff report, which indicated there were 33 parking spaces, rather than the 23 actual spaces. He also noted that a parking lot across Stanton Road referred to in the staff report was owned by the Mobile Mental Health Department and not the University of South Alabama. He felt the Mobile Mental Health Department would not agree to a lease of part of the parking lot. Mr. Wyatt felt that approval of this application would be an improvement to the neighborhood and provide parking relief for Dr. Sansaricq's practice.

Mr. Peebles asked if the site would be in full compliance with all municipal codes and ordinances.

Mr. Jerry Byrd of Byrd Surveying said yes.

The question was raised as to whether the Mobile Mental Health Department had been contacted with regard to a possible lease of parking area. Mr. Wyatt said they had not been contacted. He felt it would not be feasible to have patients crossing Stanton Road.

A motion was made by Mr. Cummings and seconded by Mr. Collier to hold over the application until the April 1, 2002, meeting to allow the applicant time to negotiate an agreement with the Mobile Mental Health Association for use of its parking lot at their site on Stanton Road.

The motion carried unanimously.

#5102

(Case #ZON2002-00353)

Frank E. Mosley

1906 Myrtle Avenue

(North side of Myrtle Avenue, 150' + East of Topic Street)

Use, Maneuvering Area/Aisle Width and Parking Surface Variances to allow an off-site (gravel) parking facility containing 6 spaces in an R-1, Single-Family Residential District for a florist business located across the street; a minimum of B-2, Neighborhood Business District is required, 24' driveway width and asphalt or concrete are required parking surfaces in all commercial districts.

Mr. Ty Irby of Ty Irby Realty and Development represented the applicant and stated that the subject property originally had a concrete dwelling on it. Mr. Mosley purchased the property after the death of the owner. The house was in disrepair, and Mr. Mosley wanted to renovate it. This was not feasible so he had the house demolished until he was financially able to construct a new home. In the meantime, neighbors approached Mr. Mosley about using the lot for parking to alleviate on-street parking. Mr. Mosley owned the florist and a residence across the street from the subject property. His business did not require the proposed site for additional parking. Mr. Mosley received a citation for using the property for a parking lot. Mr. Irby noted that a petition, signed by 34 neighborhood residents endorsing the application, was submitted for the file. He stated some neighbors were in the audience today. Mr. Irby concluded by saying that Mr. Mosley requested approval of the application in order to use the subject property for parking for employees during the day and by area residents at night and on weekends. He stated that Mr. Mosley would comply with any conditions imposed with approval.

Mr. Cummings asked if the applicant intended to construct a new residence on the property.

Mr. Irby said Mr. Mosley did not want to rule out the possibility of future residential construction.

Mr. Peebles asked if Mr. Mosley had a specific plan to improve the site for parking.

Mr. Irby said Mr. Mosley would comply with any conditions associated with approval.

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Mr. Peebles asked those in the audience in support of the application to signify by raising hands. There were five.

Mr. George Phillips stated that he owned the property directly east of the subject property. He stated that the area was residential.

Mr. Peebles asked if Mr. Phillips resided on the property he referred to.

Mr. Phillips said no, it was rental property. He felt that the use of the property as a parking lot was an encroachment on the residential nature of the neighborhood. Mr. Phillips expressed concern for future use of the subject property should Mr. Mosley cease to operate the florist business.

Mr. Peebles explained that a Use Variance was specifically tied to approval. Only another florist would be able to use the property for parking purposes.

Mr. Phillips felt a parking lot was detrimental to the value of his property next to it and requested denial of the application.

Mr. Irby noted that Mr. Phillips' building was a fourplex and not a single-family residence.

Discussion centered on whether the applicant intended to construct a new residence on the subject property. It was determined that a demolition permit was issued in March of 2001, and a building permit was issued for a residence four days later. The residence was not constructed, and the subject property began to be used as a parking lot.

Mr. Lawler noted that there was no evidence of hardship on the property presented in this case.

It was noted that the applicant stated in the application that the parking area was not needed for his florist business.

A motion was made by Mr. Collier and seconded by Mr. Hubbard to deny the request for Use, Maneuvering Area/Aisle Width and Parking Surface Variances to allow an off-site (gravel) parking facility containing 6 spaces in an R-1, Single-Family Residential District for a florist business located across the street.

The motion carried unanimously.

#5103

(Case #ZON2002-00354)

Hillcrest Doughnut Co., LLC (Marl Cummings III, Owner)

741-B Hillcrest Road

(East side of Hillcrest Road, 300' ± South of Airport Boulevard)

Sign Variance request to allow the addition of a third freestanding 25' OAH double faced sign with 302 square feet of signage; a maximum of two freestanding signs are allowed on a multi-tenant site with less than 1200' of road frontage.

Mr. Joe Shell, franchise owner of Krispy Kreme Doughnut Company, stated that they were requesting a variance to construct a pylon sign in front of their new location at Hillcrest Road and Airport Boulevard. The sign would have a "Hot Now" light, which he felt was essential to the success of their business nationwide. He requested approval of the application.

Mr. Peebles asked if the "Hot" light signs were not in the windows of other stores.

Mr. Shell said yes, but it would be more effective to have the light at this location on a pylon sign.

Mr. Marl Cummings of Cummings and White-Spinner represented the property owner and stated that they supported the application. Mr. Cummings took exception to the staff report about the amount of street frontage for the site. He said there were 1274 front feet on the two abutting roads, while the staff

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report indicated 1200. Mr. Cummings felt this situation was the same as the Dauphin Square Shopping Center with leased out-parcels. He said that each of those out-parcels were permitted a freestanding sign. He presented photographs of the Dauphin Square Shopping Center with signs and an "as-built" survey of Hillcrest Plaza to clarify the street frontage issue. Mr. Cummings requested approval of the application.

There was a brief discussion and review of the differences between the site plan submitted with the application and the "as-built" survey presented by Mr. Cummings today.

Mr. Reggie Copeland, City Council District 5 Representative, stated that he represented Council Member Connie Hudson in this matter. He said she had given her support of this application. Mr. Copeland was familiar with the importance of signage for businesses and felt that signs helped prevent traffic accidents. He requested approval of the application.

Discussion centered on the discrepancies in street frontage with regard to allowed signage area, and the difference between this site and the Dauphin Square Shopping Center. It was noted that the site plan presented by the applicant today was not the same as submitted with the application. The parcels at the Dauphin Square Shopping Center were subdivided and therefore each was allowed a freestanding sign. This site was a land lease, not a subdivided parcel.

Mr. Palombo explained that there was a vacant spot on the existing freestanding Hillcrest Plaza sign on Airport Boulevard that would accommodate this sign in lieu of placing a freestanding sign on Hillcrest Road. There was no existing space available on the Hillcrest Plaza sign on Hillcrest Road.

A motion was made by Mr. Collier and seconded by Mr. Cummings to approve the request for a Sign Variance request to allow the addition of a third freestanding 25' OAH double faced sign with 302 square feet of signage at the above referenced location subject to the following condition:

1. size of the sign be limited to a maximum of 136 square feet.

The motion carried. Mr. Lee voted nay. Mr. Collier, Mr. Hubbard, Mr. Cummings, and Mr. Peebles voted aye.

#5104

(Case #ZON2002-00356)

Munn Enterprises, Inc. (Wal-Mart Stores, Inc. Owner)

101 South Beltline Highway

(North side of Imogene Street bounded by South Beltline Hwy and Springdale Boulevard)

Sign Variance to allow eight (8) wall signs with 1,717 square feet of signage on a multi-tenant building; the Sign Ordinance allows 1 wall sign per tenant with a maximum of 350 square feet per tenant sign in a multi-tenant building in a B-3, General Business District.

Mr. Howard Munn of Munn Enterprises, Inc. stated that the 350 sq. ft. of signage allowed would be insufficient to allow visibility from the street. The Wal-Mart sign alone was greater than 350 sq. ft. and most of the other signs requested were informational signs.

A brief discussion centered on the number of signs requested vs. square footage allowed, whether the signs were informational, and how the signs compared to signs approved for another large chain store in the area.

A motion was made by Mr. Cummings and seconded by Mr. Lee to deny the request for a Sign Variance to allow eight (8) wall signs with 1,717 square feet of signage on a multi-tenant building.

The motion carried unanimously.

#5105

(Case #ZON2002-00358)

Heron Lakes Country Club, Inc. (Alabama Department of Transportation, Owner)

3851 Government Boulevard

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(South side of Government Boulevard, 1400 ± East of Skywood Drive)

Sign Variance to allow four monument signs, 30 square feet each, to be located off-site on state right-of-way; one monument sign with a maximum of 200 square feet is allowed on a single-tenant site in an R-1, Single-Family Residential District.

Ms. Chris Marr, President of Heron Lakes Country, represented the applicant and stated the purpose of the variance request was to allow them to erect four monument signs on the State right-of-way. She said that the current signage was located about 100' off Highway 90 and not easily visible to oncoming traffic, which resulted in a traffic hazard. Heron Lakes Country Club approached the Alabama Department of Transportation (ALDOT) with their safety concerns. ALDOT concurred with the safety concerns and entered into the variance request as owner of the property the Country Club proposed to utilize for new signage. Ms. Marr went on to say that she had invited City Council members to the Country Club to review their proposal. She presented a letter from ALDOT in support of the request. In addition to rectifying the safety issues, Ms. Marr felt they would beautify the area as well.

Mr Ben Brooks, District 4 Council Representative, stated he had visited the site and felt that special conditions existed, which should be considered in making a decision on the application. He referred to the staff report, which addressed the legal standard of hardship or special conditions. Mr. Brooks felt that safety was a major issue to be considered. He stated that the signs were currently down a hill and difficult to notice by drivers going the speed limit, thereby creating a safety issue. He requested approval of the variance.

Mr. Reggie Copeland, District 5 Council Representative, stated that this site bordered his district. He noted that the applicant requested a variance to allow four signs in order to alleviate safety concerns. He went on the say that he had used the Country Club on many occasions and felt that drivers approaching from any direction had difficulty locating access to the property. Mr. Copeland said that ALDOT supported the request, and he felt the Board should approve the request in order to alleviate the traffic concerns.

Ms. Marr stated that the Country Club was a non-profit private club, but hosted outside events, which drew people who were non-members. She requested approval of the application.

In discussion, it was noted that the applicant had shown a hardship on the property.

A motion was made by Mr. Collier and seconded by Mr. Lee to approve the request for a Sign Variance to allow four monument signs, 30 square feet each, to be located off-site on state right-of-way.

The motion carried unanimously.

#2789/3039/3458/4179/5106

(Case #ZON2002-00364)

Natalie Drennen, LLC

4068 Old Shell Road

(North side of Old Shell Road, 89' ± East of Dilston Street)

Use and Parking Surface Variances to allow the addition of cosmetic sales and skin care to an existing variance, and to allow gravel parking to remain, in a B-2, Neighborhood Business use, in an R-1, Single-Family Residential District; asphalt or concrete parking surfaces are required.

Mr. Palombo explained that the applicant was requesting approval to allow the addition of cosmetic sales and skin care to a previously approved Use Variance and to allow gravel parking to remain. He went on to say the additional services would use approximately 200 sq. ft. of existing space.

Mr. Jerry Byrd of Byrd Surveying stated that the proposed area to be used was previously used by a voice instructor. The owner agreed to lease the space for the proposed use and in the business license application process it was learned that a separate Use Variance was required.

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A motion was made by Mr. Collier and seconded by Mr. Lee to approve the request for Use and Parking Surface Variances to allow the addition of cosmetic sales and skin care to an existing variance, and to allow gravel parking to remain, in a B-2, Neighborhood Business use, in an R-1, Single-Family Residential District at the above referenced location subject to the following conditions:

1. provision of landscaping and tree planting requirements in compliance of Section IV.E.3.a. of the Zoning Ordinance;
2. full compliance with all municipal codes and ordinances;
3. the provision of wheel stops to delineate for proper parking alignment.

The motion carried unanimously.

#5107

(Case #ZON2002-00397)

The Christian Bible Teachings Church (James & Essie Crawford, Owners)

1809 Duncan Street

(Southeast corner of Duncan Street and Lesesne Street)

Off-Site Parking, Access/Maneuvering and Parking Surface Variances to allow an off-site (gravel) parking facility for an adjacent church containing 18 spaces with substandard aisle width in an B-2, Neighborhood Business District; all parking must be on site, a minimum aisle width of 24' is required and asphalt or concrete are required parking surfaces in a B-2, Neighborhood Business District.

This application was withdrawn prior to the meeting.

OTHER BUSINESS:

Mr. Peebles welcomed Mr. H. Lamar Lee to the Board. Mr. Lee filled the position previously held by Mr. Ronald Blake, whose term had expired.

Mr. Hubbard nominated Mr. Cummings to fill the vacated position of Vice-chair. Mr. Collier seconded the nomination. The nomination was approved by acclamation.

Appeals

Mr. Lawler reported that there was a court hearing on the Hillcrest Road sign approval. The case had not reached conclusion. The Mobile Infirmary sign case was continued.

There being no further business, the meeting was adjourned.

APPROVED: April 1, 2002

/s/ Chairman of the Board

/rm