

BOARD OF ZONING ADJUSTMENT MINUTES
MEETING OF MAY 5, 2003 - 2:00 P.M.
MOBILE GOVERNMENT PLAZA, MULTI-PURPOSE ROOM

MEMBERS PRESENT

Reid Cummings, Chairman
Richard Collier
H. Lamar Lee
Stephen J. Davitt, Jr.

MEMBERS ABSENT

Rev. Clarence Cooke
Vandlyn Pierre
Edley Hubbard (S)

STAFF PRESENT

Margaret Pappas, Planner II
Frank Palombo, Planner I
Tim Ashley, Planner I
Rose Murphy, Secretary II

OTHERS PRESENT

David Roberts, Traffic Engineering
David Daughenbaugh, Urban Forestry

Chairman Cummings noted the number of members present constituted a quorum and called the meeting to order.

The notation *motion carried unanimously* indicates a consensus, with the Chairman voting.

APPROVAL OF MINUTES:

A motion was made by Mr. Collier and seconded by Mr. Davitt to approve the minutes of the meeting of April 7, 2003, as submitted. The motion carried unanimously.

PUBLIC HEARINGS:

#5176

(Case #ZON2003-00961)

William R. Faircloth

304 McDonald Avenue

(West side of McDonald Avenue, 116'± South of Church Street)

Rear and Side Yard Setback Variances to allow the addition of a boatport and tackle room 1' from the side (South) property line and 1.5' from the rear (West) property line; a minimum rear yard setback of 8' and a minimum side yard setback of 8' is required for a 64.5' wide lot in an R-1, Single-Family Residential District.

Mr. William Faircloth of 304 McDonald Avenue stated that the purpose of the request was to allow the addition of a boatport and tackle room. There was an existing slab in the corner of the yard he wanted

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to cover to protect his boat. He wanted to extend an existing building to within 1.5' of the side and 1' of the rear property lines. He stated he had received Architectural Review Board approval for the proposed addition.

Mr. Cummings asked clarification of the staff report that indicated the applicant wanted to expand an existing non-conforming structure. He asked if that was due to the fact that the existing structure was encroaching into the rear setback.

Mr. Palombo said the existing structure was 1.5' from the rear property line.

Mr. Cummings asked how long the existing structure had been in place.

Mr. Faircloth was unsure, but thought it was 35-50 years old.

Mr. Cummings asked if Mr. Faircloth had begun the building permit process.

Mr. Faircloth said no, but the plan had been approved by the Architectural Review Board.

Mr. Collier asked if Mr. Faircloth would have sufficient room by enclosing the corner of the existing building only.

Mr. Faircloth said the addition allowed for a roof over the existing concrete slab.

Mr. Davitt asked if the existing slab proposed was within 1' of the side property line.

Mr. Faircloth said yes. He said the proposed cover would not be enclosed.

There was no one present in opposition.

In discussion, Mr. Collier noted that the proposed addition to the south appeared to be open and asked if it was considered encroachment.

Mr. Palombo explained that a portion of the addition to the southwest would be enclosed and would be within 1' of the property line. The boatport in front (to the east) would be open with latticework over an existing slab.

A brief discussion centered on the amount of space available to allow construction of the addition without encroaching on the setback.

A motion was made by Mr. Collier and seconded by Mr. Lee to approve a Rear Yard Setback of 1.5' from the rear (West) property line and a 5' Side Yard Setback from the side (South) property line subject to the following conditions:

1. approval of the Architectural Review Board; and
2. provision of gutters and downspouts.

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The motion carried unanimously.

#5177

(Case #ZON2003-00976)

Maxine Ruffin, President (The Mobile City Federation of Women's Clubs, Inc.)

400 North Catherine Street

(East side of North Catherine Street, 120' ± North of Delusser Street)

Use Variance to allow a 40' x 50' (2,000 square feet) addition to an existing women's club in an R-1, Single-Family Residential District; membership clubs are allowed in R-B, Residential-Business and B-1, Buffer Business Districts with Planning Approval and by right in B-2, Neighborhood Business Districts.

Ms. Lynda Burkett, owner of Marshall McLeod Professional Land Surveyors, represented the applicant and stated that the staff recommendation for denial was based on an erroneous parking requirement formula.

Mr. Cummings stated that the error was noted and the parking was suitable.

Ms. Burkett stated that the existing structure was a non-conforming use in an R-1 district. The property was donated to the organization by the City of Mobile and built in 1963. She went on to say that 15 different service clubs used the facility for meetings, but not all at the same time. The membership was aging and declining in numbers. In order to address the changing needs of the membership the facility must be brought into compliance with current building regulations. The existing facility could not be renovated (without expanding the size) to meet the handicap needs of the members and guests. She requested approval of the application.

Ms. Maxine Ruffin, President of the Mobile City Federation of Women's Club 400 North Catherine Street, stated that the organization was 57 years old. The building was nearly 30 years old. There was a need for storage of historical records in addition to providing handicap access to the facilities. She explained some of the functions of the organizations i.e., food services and a voting polling place. She requested approval of the application.

Ms. Julia Lee, Secretary of the organization, gave a brief synopsis of the programs of the organization i.e., scholarships and teaching life-skills to young people.

There was no one present in opposition.

A brief discussion included the condition of the parking area and whether landscaping and trees met current requirements. It was determined that the parking spaces were not delineated and the site was not in compliance with landscape and tree requirements of the Zoning Ordinance.

A motion was made by Mr. Collier and seconded by Mr. Davitt to approve the request for a Use Variance to allow a 40' x 50' (2,000 square feet) addition to an existing women's club in an R-1, Single-Family Residential District to the following conditions:

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1. full compliance with landscaping and tree plantings requirements of the Zoning Ordinance to be coordinated with Urban Forestry; and
2. provision of delineated parking spaces, including pavement striping and bumper stops.

The motion carried unanimously.

#5178

Case #ZON2003-00977)

Patrick Robbins Flynn

(Northeast corner of Old Shell Road and Hyland Avenue)

Use Variance to allow the overnight parking of a moving truck in a B-2, Neighborhood Business District; overnight parking of a moving truck is allowed by right in B-3, Community Business District.

Mr. Douglas Anderson, attorney, represented the applicant and stated the purpose of the application was to allow parking of one moving van, overnight, at the subject site. The site was recently rezoned to B-2 for a mini-storage facility. The subject site was only to be used for parking one vehicle overnight, from 5:30 p.m. to 8:00 a.m., six days a week and located at the northeast corner of the property. There would be a 6' privacy fence and vegetative buffering on the north side of the property to conceal the truck from the residential area. He did not feel the neighborhood would be adversely affected by approval of this application.

Mr. Cummings asked if an alley contiguous to the north property line was opened to Hyland Avenue.

Ms. Pappas said the applicant was denied access to the alley as part of the rezoning process.

Mr. Collier asked where the applicant currently parked the moving van.

Mr. Anderson said on the site.

Mr. Cummings asked the size of the truck.

Mr. Anderson was unsure, but said it was not as large as a tractor-trailer.

Mr. Davitt questioned the maneuverability.

Mr. Anderson said it was straight in and out.

Ms. Pappas said the site was limited to one curb cut to Old Shell Road with a 24' access.

There was no one present in opposition.

Brief discussion centered on concern that the number and size of vehicles to be parked overnight might increase should the business flourish.

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A motion was made by Mr. Davitt and seconded by Mr. Collier to approve the request for a Use Variance to allow the overnight parking of a moving truck in a B-2, Neighborhood Business District subject to the following conditions:

1. parking be restricted to **one (1)** moving truck up to a maximum of 40' in length; and
2. parking be restricted to overnight (5:30 p.m. to 8:00 a.m.) during the work week and all day on the weekend.

The motion carried unanimously.

#5179

(Case #ZON2003-00984)

Marston & Associates, Inc. (Fred J. Pollman, Owner)

750 South Broad Street

(Southwest corner of South Broad Street and Virginia Street)

Front Yard Setback Variance to allow a 16' x 38' (608 square feet) decorating room addition to an existing bakery to within 5' of the front property line along South Broad Street; a minimum front yard setback of 25' is required in a B-2, Neighborhood Business District.

Mr. George Marston, 62 Glenwood Street, represented the applicant and stated the purpose of the application was to allow construction of a decorating room to within 5' of the front property line. The addition would be in line with the existing structure and a wall would be removed to increase the size of the decorating room.

Mr. Cummings asked about access to the property.

Mr. Marston said by a driveway to the south of the building. Mr. Pollman owned the property to the south of the proposed addition that was used for employee parking.

There was no one present in opposition.

A motion was made by Mr. Davitt and seconded by Mr. Lee to approve the request for Front Yard Setback Variance to allow a 16' x 38' (608 square feet) decorating room addition to an existing bakery to within 5' of the front property line along South Broad Street.

The motion carried unanimously.

#5180/5161/4932/4866/3018

(Case #ZON2003-00987)

Kimberly S. Garris

2910 Pleasant Valley Road

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

Use, Parking Surface and Access/Maneuvering Variances to re-open an existing variance to allow the expansion of an existing daycare in an R-1, Single-Family Residential District, to

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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.

Mr. Ben Cummings, 459 St. Michael Street, represented the applicant. He stated that he was related to the chairman, Mr. Cummings.

A brief discussion centered on the legality of proceeding with the application in view of the fact that there were only four Board members present and thus the chairman must vote on each application.

Ms. Garris, the applicant, was in attendance and requested a 30-day holdover of her application.

A motion was made by Mr. Collier and seconded by Mr. Davitt to hold over the application for 30 days.

The motion carried unanimously.

#5181

(Case #ZON2003-00988)

Medicap Pharmacy #314 (Jodi C. Silvio, P. D., Owner)

2550 Emogene Street

(Northwest corner of Emogene Street and South Florida Street)

Parking Ratio Variance to allow a parking facility for a pharmacy with ten (10) on site parking spaces; fifteen (15) on site parking spaces are required for a pharmacy with 4,425 square feet of retail and/or office space.

Mr. Jodi Silvio of 2550 Emogene Street, the applicant, stated that he requested a variance to allow 10 on-site parking spaces rather than the required 15 spaces. He explained that with the original site [floor] plan only 10 parking spaces were required. The upstairs was to be used as warehouse space and the downstairs for the pharmacy operation. He went on to say that once they occupied the building the pharmacy manager determined that the arrangement was not conducive to his productivity and changes were made. A portion of the business was relocated to another facility, some warehouse space was moved downstairs, and office space relocated to the upstairs. Mr. Silvio explained that vehicles used for delivery were parked at another site. He felt that the changes did not affect the number of required parking spaces because they had the same amount of total space. He went on to say that parking was an issue during their 30-day grand opening, but those problems had subsided. He requested approval of the application.

Mr. Cummings explained that parking spaces required for the original site-plan were determined by the amount of space proposed for warehouse area and for office space. Parking requirements for office space were more stringent than that required for warehouse space. He went on to say that the converted use of the space impacted the number of required parking spaces.

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Mr. Silvio felt that the converted space was actually a rearrangement of space and did not impact the number of required parking spaces.

There was a brief discussion on the amount of traffic during the grand opening versus current traffic. Mr. Silvio said the grand opening lasted 30 days and that the flow was presently less.

Mr. Collier asked how many people were employed.

Mr. Silvio said six. He felt that complaints about parking from neighboring businesses had subsided. He said that Councilmember Copeland supported the application and thought that he submitted a letter of support.

Mr. Cummings read aloud the letter from Mr. Copeland, which said, "Please try to help Medicap Pharmacy on their variance."

Mr. Brett Davis of 25 Soldiers Route, attorney representing Medicap Pharmacy, acknowledged that there was a parking issue and asked the Board to consider allowing Mr. Silvio time to resolve the problem without having to close the pharmacy.

Mr. Cummings explained that closing the business was a decision of Mr. Silvio, not a function of the Board.

Mr. Davis understood from a meeting with a staff member that denial of this application would result in a 60-day waiting period before another application could be submitted.

Ms. Pappas explained that this application was for a parking ratio variance and that should this application be denied an application for off-site parking could be requested within the 6-month period.

There was a brief discussion about whether the applicant had pursued off-site parking. Mr. Davis said they were in process at this time, and felt such an arrangement could be made.

Mr. Lee asked if the applicant would consider a 30-day holdover.

Mr. Davis said yes.

Ms. Pappas noted that a revised floor plan reflecting the reallocation of warehouse, retail, and office space would be required.

Mr. Cummings suggested that the stairwell and dumbwaiter not be included in the reallocation of space because it was not usable area.

There was no one present in opposition.

In discussion, consideration was given to the applicant's attempt to resolve problems created by reallocation of space in the facility. It was recommended that the applicant secure new floor plans to

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accurately reflect current allocation of space for warehouse and office use; thus enabling the staff to determine the exact number of parking spaces required. It was further recommended that an application for off-site parking variance be submitted if necessary.

A motion was made by Mr. Collier and seconded by Mr. Lee to hold over the application for Parking Ratio Variance to allow a parking facility for a pharmacy with ten (10) on site parking spaces for 30 days to allow the applicant sufficient time to submit a revised site and floor plan and an application for an Off-site Parking Variance.

The motion carried unanimously.

#5182

(Case #ZON2003-00989)

Mary Jordan Darrington

2160 O'Conner Street

(North side of O'Conner Street, 310'± East of Summerville Street)

Side Yard Setback Variance to allow a 16' x 32' (512 square feet) addition within 2' from the side (East) property line; a minimum side yard setback of 7.8' is required for a 55' wide lot in an R-1, Single-Family Residential District.

Ms. Mary Darrington of 2113 Knollwood Drive, the applicant stated that she was seeking a variance to allow her to retain an addition within 2' from the side (East) property line. She went on to say that she obtained a building permit for the addition. During the process of construction it was noted by a neighbor that the addition was possibly too near the property line. Ms. Darrington obtained a survey and learned that the addition was within 2' of the property line. She understood from a survey provided on purchase of the property that the property line went straight back, but the new survey showed that the property angled. Ms. Darrington said that a City building inspector contacted the main office to determine if the addition was within the prescribed setback and apparently was told yes. He signed off on the inspection. It was not until she began to erect a privacy fence that the neighbors on the east showed concern about the property line.

Mr. Cummings asked if Ms. Darrington submitted a survey when she applied for the building permit.

Ms. Darrington said she submitted all the paperwork, including the original survey, to the clerk issuing the permit. She was not told during the permit process that the addition would be too near the property line. Ms. Darrington said she did not intentionally violate setback regulations and could not afford the cost to remove 10' of the 16' addition. She went on to say that all the structures in the neighborhood were close to the property lines.

Mr. Cummings asked how close the rear (northeast corner) of the original structure was to the property line and how long ago the structure was built.

Ms. Darrington said it was 4.5' from the property line. It was constructed more than 15 years ago.

Mr. Cummings asked where Ms. Darrington was in the construction process.

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Ms. Darrington said they were working on the interior.

Mr. Cummings asked if this was to be used as a residence.

Ms. Darrington said her daughter would live there and after she vacates, the house would be used as rental property. She stated she also owned the property to the west. She said she was now aware of regulations and would not repeat this error in the future. She asked for approval.

Ms. Betty Dixon of 2168 O'Conner Street, owner of the property to the east of the subject property, stated that during the construction process she drew Ms. Darrington's attention to the fact that the addition was too near the property line. They had no objection to the addition; however, a problem arose when Ms. Darrington began to erect a privacy fence. The fence was not constructed, only staked out. If the fence were completed as staked, it would encroach onto Ms. Dixon's property.

Mr. Collier asked if Ms. Dixon's only complaint was the possibility of the fence encroaching on her property.

Ms. Dixon said that she objected to the east side of the fence being constructed if it encroached on her property.

Mr. Cummings explained that the Board could not dictate where Ms. Darrington could erect a fence as long as it was within her own property lines.

Ms. Dixon presented photographs indicating the layout of the proposed fence.

Ms. Darrington stated that there were problems throughout the neighborhood with identifying property lines. She went on to say that the addition to the rear, and the fence were more than 12' from Ms. Dixon's house. Ms. Darrington said the purpose of the fence was to prevent animals from coming into the rear yard.

Mr. Cummings asked if the inspectors had performed more than one inspection.

Ms. Darrington said there were footing, framing, and mechanical inspections.

Mr. Cummings asked the point at which it was determined that the addition encroached the property line.

Ms. Darrington said when the fence was to be constructed.

Mr. Cummings asked how that came to be.

Ms. Darrington said the neighbor complained about where the fence was to be located.

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Mr. Cummings referred to the pictures submitted by Ms. Dixon and asked if the posts encroached Ms. Dixon property.

Ms. Darrington said no, they maintained a one-half foot setback from the property line to ensure there was not an encroachment.

Mr. Collier asked if she proposed to construct the fence to the front property line.

Ms. Darrington said no, it would go just beyond the new addition.

Mr. Collier felt that Ms. Dixon's concern that the fence would encroach her property line in the front.

Ms. Darrington said that when she realized that the fence would be near Ms. Dixon's house, she indicated to the inspector that she intended to either graduate the fence down or use chain link fencing for the front part of the property in order to prevent obstruction of view.

Mr. Davitt asked if Ms. Darrington used a contractor.

Ms. Darrington said no; she subcontracted the work.

In discussion, Mr. Ashley noted that the staff did not see the 1992 survey of the subject property. Staff approval of a building permit was based on the information provided at the time of application, which in this case indicated the addition would be 10' from the side property line. Surveys were not required when applying for a building permit, nor were staff responsible to survey property. It was not until inspectors made a framing inspection that the addition was found to encroach in the setback. It was at this time that the fence was being erected.

Consideration was given as to whether the applicant knowingly constructed the addition within the setback. It was felt that there was no deliberate attempt on the part of the applicant to deceive staff in making application for a building permit.

A motion was made by Mr. Collier and seconded by Mr. Lee to approve the request for a Side Yard Setback Variance to allow a 16' x 32' (512 square feet) addition within 2' from the side (East) property line subject to the following conditions:

1. that no fence may be erected along the east property line between the northeast corner of the proposed addition and O'Conner Street.

The motion carried unanimously.

#5183

(Case #ZON2003-00990)

Andre G. Rathle

253 South Georgia Avenue

(East side of South Georgia Avenue, 55'± South of Elmira Street)

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Side Yard Setback Variance to allow a 13.7' x 18' (247 square feet) family room addition within 3.5' from the side (North) property line; a minimum side yard setback of 7.4' is required for a 52' wide lot in an R-1, Single-Family Residential District.

Mr. Andre Rathle of 253 S. Georgia Avenue stated he was seeking a variance to allow construction of a family room. The addition would be in line with the existing structure.

There was no one present in opposition.

A motion was made by Mr. Lee and seconded by Mr. Davitt to approve the request for a Side Yard Setback Variance to allow a 13.7' x 18' (247 square feet) family room addition within 3.5' from the side (North) property line at the above referenced location subject to the following conditions:

1. approval of the Architectural Review Board; and
2. provision of gutters and downspouts.

The motion carried unanimously.

OTHER BUSINESS:

Mr. Collier noted that the Board had received information regarding a Planning and Land Use Update workshop to be held in Orange Beach, AL in June. Funding for the Board to attend the workshop was discussed. Ms. Pappas stated the due to the current City budget situation, funding for the workshop appeared unlikely.

APPROVED: July 14, 2003

/s/ Chairman of the Board

/rm