

Administration Building
Council Chambers
308 Fountain Circle
December 15, 2015
6:00 p.m.

BOARD OF ZONING ADJUSTMENT

Members Present:

Mr. Martin Sisson – Chairman
Mr. Bert Peake – Vice Chairman
Mr. Fred Coffey
Dr. David Branham
Mr. Harry Garber
Ms. Kimberly Ford – Supernumerary

Others Present:

Mr. Jim McGuffey, City of Huntsville Planning Services
Mr. Travis Cummings, City of Huntsville Zoning Administration
Captain Jeffrey Rice, Huntsville Police Department

The regular meeting of the Board of Zoning Adjustment was called to order by Chairman Sisson at the time and place noted above.

Chairman Sisson explained the procedures of the Board of Zoning Adjustment to those present, advising that any decision made by the Board may be appealed to Circuit Court within 15 days from this date and that any variance or special exception requires four affirmative votes as set by State law. Any variance or special exception granted must be exercised within six months by obtaining the proper permit. Also, if the Board denies a request, the appellant would have to wait six months before reapplying for a variance unless there was a significant change in the appellant's request.

Chairman Sisson stated that the variance request for attached signage at 9020 Bailey Cove Road has been withdrawn. Chairman Sisson also stated that the variance request for the location of a structure at 6500 Hollow Road has been withdrawn. Chairman Sisson further stated that the special exception request to allow alcoholic beverage sales between the hours of midnight and 2:00 a.m. for a Restaurant Liquor Retailer and a special exception to allow live entertainment in a Neighborhood Business C1 Zoning District at 4800 Whitesburg Drive, Suite 14, has been withdrawn.

Chairman Sisson then called the extension items on the agenda.

Case No. 8045-4 **3320 Triana Boulevard**; A special exception to allow a special retailer as an accessory use to banquet halls or cultural venues in a Neighborhood Business C1 Zoning District; Alan Jenkins of Merrimack Academy for the Performing Arts, Inc., appellant. Mr. Coffey stated that he will recuse from this case. Mr. Cummings stated the location of the property and said the request is for a special exception to allow a special retailer as an accessory use to banquet halls or cultural venues in a Neighborhood Business C1 Zoning District.

Ms. Debra Jenkins appeared before the Board. Ms. Jenkins stated that this is the fifth annual special exception request to allow a special retailer as an accessory use to banquet halls or cultural venues. Chairman Sisson asked if any changes have been made to the operation of the business. Ms. Jenkins stated that alcohol will not be available as often as it has been in the past. Ms. Jenkins stated that there is a lesser need for alcohol due to the fact that there will be fewer performances and more activities and classes for people with special needs. Chairman Sisson asked if the City has received any complaints. Mr. McGuffey stated that no complaints have been received.

A motion was made by Dr. Branham and seconded by Mr. Garber to approve a special exception to allow a special retailer as an accessory use to banquet halls or cultural venues in a Neighborhood Business C1 Zoning District at 3320 Triana Boulevard for the licensee only and for one year only. **Approved unanimously.**

Case No. 8309-3 **10300 Bailey Cove Road, Suites 1 and 2**; A special exception to allow live entertainment in a Neighborhood Business C1 Zoning District; Nicholas M. Mikus d/b/a Nick's, appellant. Mr. Cummings stated the location of the property and said the request is for a special exception to allow live entertainment in a Neighborhood Business C1 Zoning District. Mr. Cummings stated that according to Article 92.5.3(36) of the Zoning Ordinance, entertainment is permitted as a special exception in a Neighborhood Business C1 Zoning District.

Mr. Nicholas Mikus appeared before the Board. Mr. Mikus stated that this is his fourth annual special exception request to allow live entertainment in a Neighborhood Business C1 Zoning District. Chairman Sisson asked if there have been any changes in the operation of the business. Mr. Mikus stated that no changes have been made. Chairman Sisson asked if the City has received any complaints. Mr. McGuffey stated that the City has received no complaints.

A motion was made by Mr. Coffey and seconded by Mr. Garber to approve a special exception to allow live entertainment in a Neighborhood Business C1 Zoning District at 10300 Bailey Cove Road, Suites 1 and 2, for the licensee only and for one year only. **Approved unanimously.**

Case No. 8379-1 **10300 Bailey Cove Road, Suite 10**; A special exception to allow live entertainment in a Neighborhood Business C1 Zoning District; Alfredo Ortiz of Ortiz, Inc., appellant. Mr. Cummings stated the location of the property and said the request is for a special exception to allow live entertainment in a Neighborhood Business C1 Zoning District. Mr.

Cummings stated that according to Article 92.5.3(36) of the Zoning Ordinance, entertainment is permitted as a special exception in a Neighborhood Business C1 Zoning District.

Ms. Lisa Archer appeared before the Board. Chairman Sisson asked if there have been any changes in the operation of the appellant's restaurant. Ms. Archer stated that there have been no changes made to the business operations. Chairman Sisson asked if the City has received any complaints. Mr. McGuffey stated that he has a complaint from a nearby resident regarding excessive noise coming from the parking lot behind the business. Ms. Archer stated that the back door to the establishment was previously left open which may be an attributing factor to the noise; however, Mr. Ortiz now enforces that the back door remain closed. Chairman Sisson asked when the City received the complaint. Mr. McGuffey stated that the complaint was received in early December. Ms. Archer stated that employees were told to keep the back door closed approximately a month ago. Vice Chairman Peake stated that is a motion is made, he recommends a shorter time allowance be granted for this special exception. Vice Chairman Peake stated he also recommends that the appellant reach out to surrounding residents and ask that they contact Mr. Ortiz's establishment when there is excessive noise coming from the back parking lot. Vice Chairman Peake stated that Mr. Ortiz would be made aware of the complaint at that time and can enforce accordingly. Vice Chairman Peake stated he believes Mr. Ortiz's proactive response to surrounding residents will lessen the likelihood of receiving future noise complaints if enforced properly. Ms. Archer stated that she will also suggest that Mr. Ortiz installs a sound-proof door at the back of the building. Chairman Sisson stated that if a motion is made, he would propose that the motion be restricted to a 6 month approval.

A motion was made by Vice Chairman Peake and seconded by Mr. Coffey to approve a special exception to allow live entertainment in a Neighborhood Business C1 Zoning District at 10300 Bailey Cove Road, Suite 10, for the licensee only and for 6 months only. **Approved unanimously.**

Chairman Sisson then called the regular agenda items.

Case No. 8625 **4747 Autumn Dusk Drive**; The location of a structure; Duane Mize, appellant. Mr. Cummings stated that the location of the property and said the request is for a 4 foot rear yard variance and a 1 foot side yard variance. Mr. Cummings stated that in a Residence 1B Zoning District, a 35 foot rear yard setback is required and an 8 foot side yard setback is required for structures that are 1 to 1 ½ stories in height.

Mr. Duane Mize appeared before the Board. Mr. Mize stated that he would like to construct an addition to his home and, in doing so, the addition will encroach onto the side and rear property setbacks. Mr. Mize stated that the rear of the property abuts an open field owned by his neighbor, Mr. Pinkerton. Mr. Mize stated that he has spoken with Mr. Pinkerton about his variance request and has received no complaints from Mr. Pinkerton in regards to the construction of the addition. Mr. Mize stated that he also spoke with the adjacent property owners to the north side and they are also unopposed to the request. Mr. Mize further sent out notification letters to all surrounding property owners within 500 feet and has not received any

negative feedback. Chairman Sisson asked if the City had any issues with this request. Mr. McGuffey stated that the City has no issues.

A motion was made by Dr. Branham and seconded by Mr. Coffey to approve a 4 foot rear yard setback variance and a 1 foot north side yard setback variance at 4747 Autumn Dusk Drive. **Approved unanimously.**

Case No. 8626 **807 Candon Circle**; Distance separation between a primary structure and an accessory structure; Janet Bailey, appellant. Mr. Cummings stated the location of the property and said the request is for a 2 foot 10 inch distance separation variance between a primary structure and an accessory structure. Mr. Cummings stated that according to Article 73.8 of the Zoning Ordinance, accessory structures must be at least 10 feet from all other structures on the lot.

Ms. Janet Bailey appeared before the Board. Ms. Bailey stated that she would like to construct a detached structure to the back of her property. Ms. Bailey stated that there is an existing flood plain and sewer easement running along the back property line and was notified by City Engineering to locate the structure a minimum of 10 feet from the easement and floodplain. Ms. Bailey stated that if she adheres to the requirements of the Engineering Department, she is unable to comply with the 10 foot distance separation requirements between the primary structure and accessory structure. Vice Chairman Peake asked if the detached structure will be enclosed. Ms. Bailey stated that a portion of the structure will be enclosed and a portion will be an open-air carport. Chairman Sisson asked if the City has any issues with the appellant's request. Mr. McGuffey stated that the City has no issues with the request.

A motion was made by Mr. Garber and seconded by Mr. Coffey to approve a 2 foot 10 inch distance separation variance between a primary structure and an accessory structure at 807 Candon Circle due to the location of the floodplain and sanitary sewer easement. **Approved unanimously.**

Case No. 8627 **2715 Overton Road**; The location of a structure; Matthew Taylor, appellant. Mr. Cummings stated the location of the property and said the request is for a 4 foot rear yard setback variance. Mr. Cummings stated that in a Residence 1B Zoning District, a 35 foot rear yard setback is required.

Mr. Matthew Taylor appeared before the Board. Mr. Taylor stated that the existing home will be demolished and a new home will be constructed. Mr. Taylor stated that the rear porch is the only encroachment into the rear yard setback. Mr. Taylor stated that all other setbacks and lot coverage will be compliant. Mr. Garber inquired about the square footage of the proposed home. Mr. Taylor stated that the home will be 2,230 square feet. Chairman Sisson asked if the appellant intends to use the exact design as shown to Board members. Mr. Taylor stated that this is the home he fully intends to build. Chairman Sisson recommended that if a motion is made, it be approved as presented. Chairman Sisson inquired about the square footage of other new construction homes or redesigned home in close proximity to the appellant's address. Mr. Taylor

stated that the newly reconstructed home that is adjacent to his address is approximately 2,000 square feet. Mr. Taylor stated that the houses that abut his address on Hastings Road are closer to 3,600 square feet. Chairman Sisson asked if the City has any issues with the variance request. Mr. McGuffey stated that the City has no issues.

A motion was made by Mr. Coffey and seconded by Dr. Branham to approve a 4 foot rear yard setback variance at 2715 Overton Road with the stipulation that the house is to be built as presented. **Approved unanimously.**

Case No. 8628 **1413 Pratt Avenue;** Total lot coverage and rear yard lot coverage; Vince Visone, appellant. Mr. Cummings stated the location of the property and said the request is for a 4% total lot coverage variance and a 15% rear yard lot coverage variance. Mr. Cummings stated that according to Article 73.8 of the Zoning Ordinance, accessory structures shall not cover more than 30% of any required rear yard. Mr. Cummings also stated that in a Residence 1C Zoning District, total lot coverage cannot exceed 40% of the total lot area.

Mr. Vince Visone appeared before the Board. Mr. Visone stated that he was previously denied by the Board in November for a 2 foot distance separation variance between a primary structure and an accessory structure, a 3 foot 1 inch rear yard setback variance for an accessory structure, a 9% total lot coverage variance, and a 27% rear yard lot coverage variance. Mr. Visone stated that he has significantly reduced his request by eliminating the originally proposed back porch and reducing the size of the carport. Mr. Visone stated that the carport will be 24 feet wide and 16 deep. Mr. Visone stated that the carport is located behind the home and will be accessed by the alley. Vice Chairman Peake asked if the carport will be enclosed. Mr. Visone stated that the carport will be an open air structure. Chairman Sisson recommended that if a motion is made, the Board stipulate that there be no further variances granted for lot coverage on the property. Mr. Coffey asked if this request is comparable to other rear yard lot coverage variances granted in this area. Mr. McGuffey stated that his research shows that the Board has approved up to 17% rear yard lot coverage variance.

A motion was made by Vice Chairman Peake and seconded by Mr. Garber to approve a 4% total lot coverage and a 15% rear yard lot coverage for an accessory structure at 1413 Pratt Avenue as presented with the stipulations that the proposed structure shall not be enclosed and that no additional lot coverage variances be granted. The motion did pass as Vice Chairman Peake, Mr. Garber, Chairman Sisson, and Mr. Coffey voted in favor of the motion. Dr. Branham did not vote in favor of the motion.

Case No. 8629 **603 Eustis Avenue;** Total lot coverage; Ronald Poteat, appellant. Mr. Cummings stated the location of the property and said the request is for a 3% total lot coverage variance. Mr. Cummings stated that in a Residence 1A Zoning District, total lot coverage cannot exceed 35% of the total lot area.

Mr. Mark Brubaker and Mr. Ronald Poteat appeared before the Board. Mr. Brubaker stated that the homeowners wish to cover and screen an existing courtyard on their property. Mr. Poteat

stated that the covering and screening would allow him to make better use of the courtyard. Mr. Poteat stated that he has already received approval from the Historic Preservation Commission.

A motion was made by Dr. Branham and seconded by Mr. Coffey to approve a 3% total lot coverage variance at 603 Eustis Avenue. **Approved unanimously.**

Case No. 8630 **2800 Hastings Road**; The location of a structure; Sheryl Guffin, appellant. Mr. Cummings stated the location of the property and said the request is for an 8 foot 2 inch rear yard setback variance. Mr. Cummings stated that in a Residence 1B Zoning District, a 35 foot rear yard is required.

Ms. Sheryl Guffin appeared before the Board. Ms. Guffin stated that she would like to cover the existing patio. Ms. Guffin stated that the patio is not enjoyable as it gets very hot when the sun is out. Ms. Guffin stated that the covering will match the roof of the house. Mr. Coffey asked if the property abuts another home. Ms. Guffin stated that the property abuts another home, but she spoke with the abutting property owner and he is unopposed to the request. Chairman Sisson inquired as to how many letters were mailed to surrounding property owners. Ms. Guffin stated that she mailed approximately 75 letters and has not received any negative feedback. Dr. Branham asked if the addition will be enclosed. Ms. Guffin stated that the addition will not be enclosed.

A motion was made by Mr. Garber and seconded by Dr. Branham to approve an 8 foot 2 inch rear yard setback variance at 2800 Hastings Road with the stipulation that the proposed addition shall not be enclosed. **Approved unanimously.**

Case No. 8633 **5504 Whitesburg Drive**; The location of a structure; Stephen Johnston, Jr., appellant. Mr. Cummings stated the location of the property and said the request is for a 7 foot 10 inch side yard variance and a 7 foot distance separation variance between a primary structure and an accessory structure. Mr. Cummings stated that in a Residence 1A Zoning District, a 10 foot side yard setback is required for structures that are 1 to 1 ½ stories in height is required. Mr. Cummings also stated that according to Article 73.8 of the Zoning Ordinance, accessory structures must be at least 10 feet from all other structures on the lot.

Mr. and Mrs. Johnston appeared before the Board. Mr. Johnston stated the carport has existed for approximately 35 years. Mr. Johnson stated that he and his wife would like to enclose the existing carport. Mr. Johnston stated that the carport is encroaching onto the side yard setback; however, it is considered grandfathered. Mr. Johnston stated that the carport is supported by steel poles and bolted only with screws. Mr. Johnston stated that this is unsafe when they experience heavy winds. Mr. Johnston stated that he would like to extend the roofline 22 inches to the edge of the concrete slab and enclose the carport. Mr. Johnston stated that the proposed extension further increases the existing setback encroachment and has triggered the existing encroachment of distance separation with an existing shed. Chairman Sisson inquired as to how many letters were mailed to surrounding property owners. Mrs. Johnston stated that 55 letters were mailed and they received no negative feedback. Chairman Sisson recommended that the

homeowners discuss this addition with their contractor as he is concerned that the front of the addition will be unstable. Chairman Sisson stated that the Board does not require this, but it is his recommendation. Mr. Johnston stated that he will seek the advice of his contractor. Vice Chairman Peake inquired as to why the appellant wishes to enclose the carport. Mr. Johnston stated that he and his wife have experienced some crime at their property and he would like to feel safer if coming outside at night. Mr. Johnston stated that enclosing the carport will be safer with heavy winds. Mr. Johnston further stated that the garage will be more aesthetically pleasing than a carport. Mr. Coffey stated that he recommends just tearing down the existing carport and rebuilding a new, attached garage. Mr. Garber stated that he agrees with Mr. Coffey. Mr. Garber stated that he is concerned that the appellant will not be satisfied with the finished product as it will still be unstable because the roof and footing and foundation are aged. Chairman Sisson asked if the Board grants the requested variances, could the appellant tear down the existing carport and build a new attached garage addition. Mr. McGuffey stated that as long as the Board does not approve the request as presented, the appellant may be permitted to replace the addition entirely. Dr. Branham stated that previous variance requests have stipulated that structures and additions not be enclosed. Chairman Sisson stated that the previous variance requests were pertaining to lot coverage and because this addition has existed for many years, he is not opposed to its enclosure.

A motion was made by Chairman Sisson and seconded by Mr. Garber to approve a 7 foot 10 inch north side yard setback variance and a 7 foot distance separation variance between a primary structure and an accessory structure at 5504 Whitesburg Drive. **Approved unanimously.**

There being no further business, the meeting adjourned at 7:00 p.m.