

Administration Building
Council Chambers
308 Fountain Circle
January 19, 2016
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
Mr. Johnny Ozier – Supernumerary

Others Present:

Mr. Jim McGuffey, City of Huntsville Planning Services
Mr. Travis Cummings, City of Huntsville Zoning Administration
Ms. Debra S. Hindman, City of Huntsville Zoning Administration
Mrs. Jon Johnson, Recording Secretary
Captain Jeffrey Rice, Huntsville Police Department

The regular meeting of the Board of Zoning Adjustment was called to order by Vice Chairman Peake at the time and place noted above. Vice Chairman Peake stated that he will chair the meeting until Chairman Sisson arrives.

Vice Chairman Peake 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.

Vice Chairman Peake then called the extensions on the agenda.

Case No. 7656-6 **4800 Whitesburg Drive, Suite 22;** A special exception to allow alcoholic beverage sales between the hours of midnight and 2:00am for a Restaurant Liquor Retailer; Marilyn Vermeer of Ver-Kay Pin Corporations, appellant. Mr. Cummings stated the location of the property and said the request will require a special exception to allow expanded hours of service for on-premises alcohol sales until 2:00 a.m. Mr. Cummings stated that expanded hours

for on-premises retail sale, service, dispensing, or consumption of alcoholic beverages in a Neighborhood Business C1 Zoning District between midnight and 2:00 a.m. are permitted by special exception provided the conditions of Article 92.5.3 (18) have been met.

Ms. Marilyn Vermeer appeared before the Board and stated her request. Vice-Chairman Peake asked if it was a renewal or how many times had she appeared before the Board. Ms. Vermeer stated that she has been before the Board 7 times with this request and nothing has changed. Vice-Chairman Peake asked if it was any complaints and there were none. Mr. Cummings stated that the City has received no complaints with the operation of this business operating during expanded hours.

A motion was made by Mr. Coffey and seconded by Mr. Garber to approve a special exception to allow expanded hours of service for on-premises alcohol sales until 2:00 a.m. at 4800 Whitesburg Drive, Suite 22, for this licensee only and for one year only.

Approved unanimously.

Case No. 8188-3 109 Weatherly Road; A special exception to allow a farmers market in a Residence 1 Zoning District; Jane R. Smith of Latham Memorial Methodist Church, appellant. Mr. Cummings stated the location of the property and said the request will require a special exception to allow a farmers market in a Residence 1 Zoning District. Mr. Cummings stated that according to Article 92.5.3 (38), a special exception is required for farmers markets located in Residence 1 Zoning District. Mr. Cummings stated that although this property has received yearly variances for this request, they are now only required to receive a special exception. Mr. Cummings further stated that there are no required stipulations in the Zoning Ordinance if this special exception is approved.

Mrs. Kim McFadden appeared before the Board. Mrs. McFadden stated this is their fourth year operating. Ms. McFadden stated that the hours of operation are on Tuesdays from 3:00 p.m. to 6:00 p.m. Ms. McFadden stated that the farmers market is occurs on the first Tuesday in May through the last Tuesday in September. Mrs. McFadden also stated that the business operations have not changed from previous years. Ms. Hindman stated that if the case is approved, the Board does not have to restrict the special exception to one year only. Vice-Chairman Peake asked Mr. McGuffey is the City has received any complaints in regards to the operation of the farmers market. Mr. McGuffey stated that no complaints have been received.

Vice Chairman Peake inquired as to why the special exception is not restricted to one year only. Ms. Hindman stated that a time restriction is not listed in the Zoning Ordinance. Ms. Hindman stated that, if approved, the special exception will be permanent unless otherwise stipulated by the Board. Ms. Hindman stated that the Zoning Ordinance was recently amended to allow farmers market as a special exception. Ms. Hindman stated that previously, the request would require a use variance. Ms. Hindman stated that because the request required a use variance, the Board has always stipulated that the farmers market be approved for one year only. Ms. Hindman stated that with the special exception request, this is no longer a requirement. Mr. Coffey inquired as to how the special exception is regulated by the City if the dates and hours of

operation were to change. Mr. McGuffey stated that the City reviews the request on a yearly basis. Mr. McGuffey stated that if the dates and hours of operation were to change, the City would advise the appellant to return to the Board and seek approval for the changes. Mr. Coffey stated that he is not opposed to granting the special exception to operate indefinitely unless the appellant alters the dates and hours of operation.

A motion was made by Mr. Coffey and seconded by Mr. Garber to approve a special exception to allow a farmers market in a Residence 1 Zoning District at 109 Weatherly Road with the stipulation that if the dates and hours of operation were to change in future years, the special exception request must be reheard by the Board. **Approved unanimously.**

Case 8373-2 **4800 Whitesburg Drive, Suite 14;** A special exception to allow live entertainment in a Neighborhood Business C1 Zoning District and a special exception to allow expanded hours for on-premises retail sale, service, dispensing, or consumption of alcoholic beverages between midnight and 2:00 a.m. for a Restaurant Liquor Retailer in a Neighborhood Business C1 Zoning District; Bruce Drake of Drake's Huntsville I, LLC, d/b/a Drake's appellant. Mr. Cummings stated the location of the property and the request will require a special exception to allow live entertainment in a Neighborhood Business C1 Zoning District. Mr. Cummings stated that this request will also require a special exception to allow expanded hours of service for on-premises alcohol sales until 2:00 a.m. 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. Cummings stated that expanded hours for on-premises retail sale, service, dispensing, or consumption of alcoholic beverages in a Neighborhood Business C1 Zoning District between midnight and 2:00 a.m. are permitted by special exception provided the conditions of Article 92.5.3 (18) have been met.

Mr. Brandon True appeared before the Board. Mr. McGuffey stated that the appellant has been approved for the previous special exceptions with required stipulations. Mr. McGuffey stated that the City has received no complaints with the operation of this business operating during expanded hours and providing live entertainment. Mr. True stated they are doing live entertainment, contained within the rear of the restaurant and as of right now, they have only been doing it on particular holidays.

A motion was made by Mr. Coffey and seconded by Mr. Garber to grant a special exception to allow live entertainment in a Neighborhood Business C1 Zoning District and a special exception to allow expanded hours of service for on-premises alcohol sales until 2:00 a.m. at 4800 Whitesburg Drive, Suite 14, for this appellant only and for this current license year only. **Approved unanimously.**

Vice Chairman Peake then called the regular agenda items.

Case No. 8634 **345 Voyager Way;** Additional attached signage; Miranda Bouldin of Vette Properties, appellant. Mr. Cummings stated the location of the property and said the request will require additional attached signage. Mr. Cumming stated that in a Research Park

West Zoning District, only one building mounted sign per firm or complex may be erected per street frontage. Mr. Cummings stated that according to Article 72.4.8(b), the appellant are permitted to have 2 attached signs at the business location.

Mr. Fred Frost and Ms. Miranda Bouldin before the Board. Mr. Frost stated they are building a new headquarters facility at the corner of Voyager Way and Explorer Boulevard. Mr. Frost stated that they have 2 buildings on the campus, a primary building and secondary building, and are joined by a walkway. Mr. Frost stated that because they are joined by a walkway it is considered 1 building. Mr. Frost stated according to the Zoning Ordinance, you can only have 1 sign per street frontage and they are asking to put a sign on the second building that is facing Voyager Way. Mr. Frost stated that there is a sign on the tall building that cannot be seen from Voyager Way. Mr. Frost stated that there is an existing sign on the existing building that facing Explorer Boulevard.

Mr. McGuffey stated this is entirely a new campus under construction which is the southwest corner of the intersection at Explorer Boulevard and Voyager Way. Mr. McGuffey stated that Zoning Ordinance permits one sign per street frontage. Mr. McGuffey stated that the request is for an additional attached sign facing east toward Voyager Way. Ms. Bouldin stated they had already purchased the sign. Mr. McGuffey stated from a size standpoint the Zoning Ordinance allows 10% of the building to be covered with attached signage and the square footage to include the proposed sign does not exceed the maximum square footage.

Mr. Coffey asked one of the existing signs faces a field. Mr. Frost said the sign and its placement was designed by the architect and installed accordingly. Mr. Coffey asked if buildings were going to be occupied by a single tenant. Ms. Bouldin stated that currently the building is occupied by a single tenant; however, they may have multiple tenants in the future.

Dr. Branham asked why an existing sign was installed that faces a field rather than the street. Mr. McGuffey stated the Zoning Ordinance does not regulate where the sign is located so long as the attached signage does not exceed the maximum allowable signage per street frontage. Mr. Garber asked if the existing sign that faces the field can be moved to the proposed location. Mr. Frost stated they had already purchased the third sign. Mr. Cummings said with talking to the Sign Enforcement Officer, the General Manager installed the sign and was unaware of sign permit issues. Mr. Cummings stated that the Sign Enforcement Officer contacted the appellant about the violation and the appellant began pursuing the variance request. Mr. Garber asked if other buildings have been approved for additional attached signage in Research Park. Mr. McGuffey stated that ADTRAN has additional signage. Vice Chairman Peake asked if the sign would be compliant if the building were not connected by a walk-way. Ms. Hindman stated that the two buildings are located on one parcel; therefore, the attached signage is still restricted to one sign per street frontage.

Ms. Bouldin stated that she has spoken to the Cummings Research Park Board about adding the proposed sign and was told that it would not be an issue. Mr. Cummings stated in the past, if the Board approves variance requests for additional signage, the variance is contingent on approval

from the Cummings Research Park Board. Mr. Coffey asked if the property has a monument sign. Ms. Bouldin stated they have a monument sign at the entryway. Ms. Bouldin stated that this is the same monument sign that all businesses in the Research Park West Zoning District. Dr. Branham stated that he is concerned that if the appellant decided to make the building a multi-tenant building, there would be additional requests for more attached signage. Ms. Bouldin stated that if they were to allow multiple tenants, the tenants would only be able to advertise their business on the door.

A motion was made by Dr. Branham and seconded by Mr. Garber to grant an additional attached sign at 345 Voyager Way as requested, subject to the Cummings Research Park Board approval and with the stipulation that the attached signage be limited to a total of 3 attached signs. **Approved unanimously.**

Chairman Sisson then joined the meeting.

Case No. 8635 **3816 Tenth Avenue;** The location of a structure and distance separation between a primary structure and an accessory structure; Carl Wayne Sanders, appellant. Mr. Cummings stated the location of the property and said the request will require a 5 foot distance separation variance between a primary structure and an accessory structure. Mr. Cummings stated that the request will also require a 17 foot secondary front yard setback variance. 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. Mr. Cummings stated that in a Residence 2A Zoning District, the secondary front yard is 20 feet.

Ms. Angela Sanders appeared before the board. Ms. Sanders stated they have a carport structure that was put up by a contractor and she was unaware that a permit was required or that the structure was in violation of the zoning regulations. Ms. Sanders stated that the carport was located inside the fence and now she is trying to find an appropriate location to put the carport. Ms. Sanders stated that due to storms occur and numerous trees in the back yard that, she could not put the carport in the rear yard. Chairman Sisson asked how the carport is anchored. Ms. Sanders stated that the carport is tied to the ground with 8 stakes in 8 different areas.

Chairman Sisson asked if the City has any issues with the 5 foot distance separation request. Mr. McGuffey stated that the City has no issues with the distance separation request. Chairman Sisson asked the appellant if the carport could be moved to be in line with the home. Ms. Sanders stated that she could relocate the carport and make it in line with the home if she removed her clothes line. Chairman Sisson stated that he is opposed to such a substantial secondary front yard variance request. Chairman Sisson asked if the carport was in line with the house, would there be a need for setback variance. Ms. Hindman stated that a secondary front yard setback variance would be required; however, the request would be greatly reduced from the current request. Mr. McGuffey stated there is a 60 right-of-way and the road is 25 feet wide. Mr. McGuffey stated that there is a large grass and gravel area that appear to be the appellant's property that is actually located in the right-of-way. Mr. McGuffey stated that there are no plans to widen this road. Mr. McGuffey further stated that the lot size is similar to that of lots in the

Five Points area; however, those lots are zoned Residence 1C and have a 5 foot secondary front yard setback. Chairman Sisson stated that from an attorney's standpoint, they will see that this is not the same zoning district as the subject property and argue that the Board has set a precedent for similar requests in a Residence 2A Zoning District. Mr. McGuffey stated that he agreed with Chairman Sisson's concerns, but was providing feedback as to other lots similar in width and that have a large right-of-way. Chairman Sisson stated that he would not be opposed to supporting a 5 foot secondary front yard setback variance as the carport would be in line with the home.

A motion was made by Chairman Sisson, and seconded by Vice-Chairman Peake to grant a 5 foot distance separation variance between a primary structure and an accessory structure and a 5 foot secondary front yard setback variance at 3816 Tenth Avenue, SW, due to the fact that there is a substantial right-of-way and with the stipulation that the carport not be enclosed. **Approved unanimously.**

Case No. 8636 **214 Oakwood Avenue;** PVA landscaping and a reduction in the number of parking spaces; Richard H. Van Buskirk of VANCAL, LLC, appellant. Mr. Cummings stated the location of the property and said the request will require a 5 foot perimeter landscape variance along the west side property line. Mr. Cummings stated that this request will also require a reduction of 17 parking spaces. Mr. Cummings stated that according to Article 71.4.2, perimeter landscaping areas shall be at least five (5) continuous feet in depth, excluding walkways, measured perpendicularly from the adjacent property line or right-of way to the back of curb or pavement edge. Mr. Cummings stated that according to Article 70.1, the required number of parking spaces for a restaurant must be equal number to at least 50% of the seating capacity. Mr. Cummings stated that this restaurant requires 36 parking spaces.

Mr. Van Buskirk appeared before the Board. Mr. Buskirk stated that he is constructing a Dairy Queen restaurant at this location. Mr. Buskirk stated that included in the deed with the sale of this property, they are permitted to utilize the abutting shopping center's parking to remedy where Dairy Queen's parking will be insufficient. . Mr. McGuffey stated they will demolish the existing structure and with the construction of the new restaurant, the appellant will also redesign the parking area.. Mr. Buskirk stated that their plan involves removing 3 parking spaces and will have a total of 19 parking spaces.

Chairman Sisson asked about the landscaping requirements. Mr. McGuffey said the Zoning Ordinance states that 5 feet of perimeter landscaping is required for properties that have 15 or more parking spaces or 5,000 square feet of paved area. Mr. McGuffey stated that the perimeter landscaping variance request is needed as the property is paved up to the property line along the west side. Mr. McGuffey stated that the Board has heard similar requests when there is shared access between two properties.

A motion was made by Mr. Coffey and seconded by Vice Chairman Peake to grant a 5 foot perimeter landscape variance along the west side property line and a variance for a reduction of 17 parking spaces at 214 Oakwood Avenue due to the fact that the appellant has been deeded

additional parking spaces on the adjacent lot as requested. **Approved unanimously.**

Case No. 8637 **1504 Humes Avenue;** The location of a structure; Michele S. Biletski of American Dream Properties, Inc., a Nevada Corporation, appellant.

A motion was made by Chairman Sisson and seconded by Vice Chairman Peake to continue the variance request for 30 days. **Approved unanimously.**

Case No. 8638 **706 Windham Street;** The creation of a non-conforming lot to include lot area and the location of a structure; Michele S. Biletski of American Dream Properties, Inc., a Nevada Corporation, appellant.

A motion was made by Chairman Sisson and seconded by Vice Chairman Peake to continue the variance request for 30 days. **Approved unanimously.**

Case No. 8639 **800 Clinton Avenue;** A use variance to allow professional offices and retail use; Homira Fahimi of Dwelling Rehab, LLC, appellant. Mr. Cummings stated the location of the property and said the request will require a use variance to allow professional offices and retail spaces in a Residence 1B Zoning District.

Ms. Homira Fahimi & Mr. Majdi Mortazavi appeared before the Board. Ms. Fahimi said they would like to utilize the spaces at this location for office uses. Mr. Mortazavi stated that the property was previously approved for a variance in August of 2015 for specific office uses, but he would like to broaden the type offices that could operate at this location. Mr. Mortazavi said they would like to use the spaces for a real estate office, and engineering office, a law office, or consulting office. Ms. Fahimi said the property offers 50 parking spaces available for employees and clients. Ms. Fahimi stated that only exterior work will be required Chairman Sisson asked for the City to provide history on the variance that was approved in August of 2015. Ms. Hindman stated this property was approved for a use variance on August 18, 2015, to allow a real estate office, an insurance office, and an engineering office in a Residence 1B Zoning District at 800 Clinton Avenue as presented, due to the fact that the property has a unique frontage, and with the stipulations that no additional paving be added and that the landscaped areas be maintained or improved.

Chairman Sisson asked if the appellant had any specific tenants in mind. Mr. Mortazavi said they do have an engineering company, a law office, and an accountant that are possible candidates. Chairman Sisson stated that normally with a use variance in residential neighborhood, the Board is very restrictive, but because of the unique circumstances with and around the site, the Board granted a use variance to that property for specific uses. The Board did this to inhibit just any use to locate their business at this property without first hearing to see if they are compatible to the neighborhood.

Ms. Mortazavi stated the property is isolated and is surrounded by 3 streets. Mr. Coffey inquired about the square footage of the building. Ms. Fahimi stated that the square footage of church is

approximately 11,000 square feet. Ms. Fahimi stated that there are 2 buildings at this location. Ms. Fahimi stated that every floor is approximately 2,800 square feet and sanctuary is approximately 4,500-5,000 square foot. Mr. Coffey asked how many parking spaces would be required for office uses in an 11,000 square foot building. Ms. Hindman stated if it is restricted to professional office uses, the number of required parking spaces is one space for each 400 square feet. Mr. McGuffey said you take the total number of parking spaces on the property and divide by 400 and that is the total number of parking spaces required.

Connie Carr of 1202 Clinton Avenue appeared before the Board. Ms. Carr inquired as to how someone can come before the Board and request for a use variance without notifying surrounding property owners. Chairman Sisson stated that the request was advertised in paper and the appellant was responsible for notify all property owners within 500 feet of 800 Clinton Avenue. Ms. Carr stated that her concern is additional traffic backing up due to the new 4 way stop. Ms. Carr further stated that her main concern is the proposed retail use.. Ms. Susie Garrett of 1115 Wellman Avenue appeared before the Board. Ms. Garret stated that the proposed retail use concerns her as well.

Chairman Sisson asked Mr. McGuffey to speak on the City's perspective of what is happening in areas like this around the downtown core where there are some changing dynamics in uses. Mr. McGuffey stated that the property to north is zoned Residential Office which is a professional office district. Mr. McGuffey stated that in regards to the site in question, it was too large to zone Residential Office which is why a use variance is required. Mr. McGuffey stated that the Big Picture planning effort is considering to allow mixed uses for some areas in Huntsville that abut neighborhood if located on wider roads that can support additional traffic; however this Master Planning effort is still in the planning phase and will not be in effect in the near future.

Mr. Coffey asked if the Zoning Ordinance defines professional offices or if the Board determines if each proposed use would be suitable or unsuitable. Mr. McGuffey said the Zoning Ordinance does not define professional office; rather, it just stated professional office use and how to calculate the parking for professional offices. Chairman Sisson inquired as to what would be allowed in a Residence Office District. Mr. McGuffey stated that would be at the discretion of Zoning Administration to interpret those requests for a professional office. Mr. Coffey asked if a proposed tenant would have to seek approval from Zoning Administration each time they requested an office use. Mr. McGuffey stated that an applicant's request must be reviewed each time they apply for a business license. Mr. Mortazavi stated that he previously lived in this area for many years and he has no desire to have a business that would be a detriment to the neighborhood.

Mr. McGuffey said we have a history of similar locations that were granted use variances for very specific office uses. Mr. McGuffey stated that the Legal Department has advised City staff to continue to request that the Board list specific office uses if a variance is granted. Mr. Sisson asked if the appellant had a list of proposed uses. Mr. Mortazavi stated that he would like to advertise the location to allow a real estate office, an accounting office, a financial advising office, an insurance office, a law firm, and an engineering office. Mr. Mortazavi stated that the

hours of operation should be between 8:00 a.m. to 5:00 p.m. Mr. Coffey inquired if an additional tenant not previously mention in the proposed uses, would have to come back before the Board for a use variance. Mr. McGuffey stated that any use that is not stated by the Board in a motion would have to request a use variance. Mr. McGuffey also stated a tenant will have to come before the Board for a sign variance should they choose to advertise their business at this location. Mr. Cummings stated that the appellant also requested retail uses in their variance request. Chairman Sisson stated that he is opposed to allowing any retail uses at this location. Ms. Fahimi stated that she is fine with not having any retail uses.

A motion was made by Chairman Sisson and seconded by Vice Chairman Peake to approve use variance to allow an engineering office, a law office, a real estate office, an accounting office, and a financial advising office in a Residence 1B Zoning District at 800 Clinton Avenue as presented, due to the fact that the property has a unique frontage, and with the stipulations that no additional paving be added and that the landscaped areas be maintained or improved.
Approved unanimously.

Chairman Sisson asked for a motion to approve the October 20, 2015, Board of Zoning Adjustment meeting minutes. A motion was made by Vice Chairman Peake and seconded by Mr. Coffey to approve the October 20, 2015, meeting minutes.

There being no further business, the meeting adjourned at 7:30 p.m.