Administration Building

Council Chambers

308 Fountain Circle

August 16, 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

Mr. Johnny Ozier – Supernumerary

Ms. Kimberly Ford-Supernumerary

Others Present:

Mr. Jim McGuffey, City of Huntsville Planning Services

Mr. Travis Cummings, City of Huntsville Zoning Administration

Mrs. Jon Johnson, City of Huntsville Zoning Administration, Recording Secretary

Sergeant Jonathan Ware, 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 following variance requests will be continued for 30 days: a use variance to allow a health care clinic at 1101 Pulaski Pike and 2208 Fitcheard Avenue NW. Also, Chairman Sisson stated Case 8704, PVA landscaping at 402 Governors Drive SW was withdrawn.

Chairman Sisson then called the extension items on the agenda.

**Case No. 8700** **1110 Locust Avenue SE**; The location of a structure;Benjamin Niemitz of Denton Niemitz Reality, LLC., appellant. Mr. Cummings stated the location of the property and said the request will require a 15 foot 6 inch front yard setback variance. In a Residence 1B Zoning District, a 30 foot front yard setback is required.

Mr. McGuffey stated this is an existing house, a newly constructed home, that is requesting a front yard setback variance. In previous years this case came to our attention for an interpretation of the developed vs undeveloped lot. Mr. McGuffey stated the case went before the court system and now it is back before us because the Supreme Court determined we were looking at the ordinance in a different way. So, now we are looking at a front yard setback variance for the location of a structure.

Chairman Sisson asked Mr. McGuffey to describe the ordinance. Mr. McGuffey explained Article 73 talks about developed vs undeveloped lots. In using an average adjacent to develop vs undeveloped lot, within 100 feet on each side using the location of the existing structures to average the front yard setback of the developed or undeveloped lot and in this case this is the house in front of the Board tonight.

Todd Campbell appeared before the Board representing Ben Niemitz of Denton Niemitz Reality, LLC, the owner of this piece of property. Mr. Campbell stated they are appealing the citation given on June 1, 2016 by the City Of Huntsville. The citation stated the subject property was in violation of the Zoning Ordinance based on Supreme Court decision of the Article 73.7.4 applied. Mr. Campbell stated they are requesting a variance because an unnecessary hardship exists on this piece of property. Mr. Campbell states under the Alabama Case Law, the primary consideration in variance cases states whether an unnecessary hardship exists which creates a literal enforcement of the Zoning Ordinance. Mr. Campbell stated he believes the facts of the case shows an unnecessary hardship exists based on the fact his client relied in good faith on the City Inspector’s determination that this was a developed lot and a 30 foot setback applied. Also, Mr. Campbell stated the fact that his client has put in a substantial amount of time and money, improved the appearance and value of the property, this creates an unnecessary hardship warranting a variance in this case. Mr. Campbell also believes an unnecessary hardship exists because his client is deprived of basic rights associated with owning private property.

Chairman Sisson asked Mr. McGuffey when the home was built. Mr. McGuffey stated it was built and received the certificate of occupancy in November of 2013. Chairman Sisson summarized the timeline of events associated with this property and asked Mr. McGuffey for any clarifications. Chairman Sisson stated the house was built 3 years ago, building permit applied for/granted, no variance sought at that time, the building was built and received certificate of occupancy at that time, then a challenge came from a neighbor on the interpretation of the setback of the house. Mr. McGuffey stated yes when the home was under construction a challenge was brought to the City’s attention by an aggrieved party. Chairman Sisson stated so the Supreme Court has overturned the City’s ruling and there is a front yard setback issue. Mr. Campbell stated due to the special circumstances and facts of this case support granting a variance.

Chairman Sisson asked the Board for any other questions. Dr. Branham asked why build 15 feet in front of other houses. Mr. Campbell stated they relied on the City Inspector’s determination that this was a developed lot and the 30 foot setback applied as opposed to the average of the neighboring properties. Mr. Campbell further said that issue was taken all the way to the Supreme Court and they overruled the City Inspector’s determination that this was a developed lot and a 30 foot setback applied. The Alabama Supreme Court said this is an undeveloped lot therefore the average applies and in this case it is around 45 feet. Mr. McGuffey stated in this particular block some of the houses are built further than 30 feet off the road.

Mr. Allan Anderson appeared before the Board representing the City of Huntsville. The issue the Supreme Court considered was if the ordinance that required an averaging, if the ordinance applied to the lot when the original house was demolished or did it not. The Supreme Court said it did and as a consequence Mr. McGuffey’s ruling that it did not was incorrect. As of now, that has been remanded and as a result, the City of Huntsville complying with that decision has issued a notice of violation. Mr. Anderson explained to the Board what they are here to consider is if the owner now is entitled a variance for whatever hardship was created. Mr. Coffey asked the question if the Board has the ability to defer question to the courts. Mr. Anderson stated he was not aware that you do. Mr. Anderson stated if the aggrieved party doesn’t like the decision of the Board, they have the ability to appeal but they have to have a decision to appeal from the Circuit Court. Mr. Anderson stated the aggrieved party (Mr. Chestnut) and the City Of Huntsville has a tentative settlement in connection with their dispute over this issue. Mr. Coffey asked what constitutes an aggrieved party. Mr. Anderson explained an aggrieved party is someone that has an interest in the property. Mr. Anderson also stated by Mr. Chestnut being a neighbor next door, he qualifies as an aggrieved party. However, once you get further away from the property there is a legitimate question if there are damages or not. Mr. Ozier asked if they sent any notices to people within 500 feet of property and if they received any opposition. Mr. McGuffey explained the Zoning Administration did receive calls.

Chairman Sisson asked for any more questions from the Board. Dr. Branham asked the question why the neighbors didn’t bring to attention earlier. Mr. McGuffey stated the complaint was brought to our attention when the second story framing was going up. Mr. Coffey asked the question in order for someone to appeal from the Board’s decision; one has 15 calendar days to appeal to the Circuit court. Mr. Coffey also asked, unless this is finalized in the next 15 calendar days, any aggrieved party will not have jurisdiction to take it to a higher court. Mr. Anderson stated if the appeal is not taken in 15 days they will have to file it with Mr. McGuffey and then with the Circuit Court.

Mr. Robert Butler appeared before the Board. Mr. Butler stated he is concerned because the house is built and the laws were not followed. Mr. Butler also feels like Mr. Chestnut and other neighbors haven’t had their rights protected and feels like it is Zoning Administration’s job to protect homeowner’s and not just the builder. Chairman Sisson explained the house was at the minimum building line and complied with ordinance. When the house was removed, the two houses beside it were averaged and a new setback was created and that’s why it’s an unusual circumstance. Mr. McGuffey stated the courts have made it clear this will not happen again based on their decision and any new home construction must be in align with adjacent properties.

Ms. Melissa Musgrove appeared before the Board. Ms. Musgrove home was built in 1929 and lives right next door. Ms. Musgrove stated everybody has the right to build houses but this can’t happen again. Ms. Musgrove feels like she is an aggrieved party also. Vice Chairman Peake asked Mr. McGuffey why the existing houses were built like that. Mr. McGuffey stated they were built many years ago and in that particular block of Locust, the houses were built further back on this side and on the other side of street are closer to street. Mr. McGuffey stated there was no building or zoning ordinance and that is where the builder put them. Mr. McGuffey stated the trend is to bring them forward.

Ms. Diane Strickland appeared before the Board. Ms. Strickland states her house is built 20 ft from line. Ms. Strickland feels like Mr. Niemitz built the house and it fits the neighborhood. Ms. Strickland feels like the house has added to the neighborhood and agrees with it.

Ms. Mary Hinkston appeared before the Board. Ms. Hinkston is retired military and stated she told Mr. Niemitz to do the job right and you should know what you are doing. Chairman Sisson explained to Ms. Hinkston, Mr. Niemitz did do what he was supposed to do and was given a building permit. Ms. Hinkston feels like it is spoiling the integrity of the neighborhood.

Ms. Leslie Tripp appeared before the Board. Ms. Tripp stated in the Mayfair area and where she lives that they are being subject to a lot of development in the Medical District. Also, the statement that was made about there is not any current construction that is consistent with the setback of the established houses is not true. Ms. Tripp stated they are seeing a lot of homes being built forward and blocking some of the existing houses.

Chairman Sisson asked the Board for any more questions. None was given. Chairman Sisson asked the City for any more questions. Mr. McGuffey stated the City has no comments.

A motion was made by Chairman Sisson and seconded by Vice-Chairman Peake to approve a 15 foot 6 inch front yard setback variance. The motion did pass with a vote of 4 to 1.

Chairman Sisson then called the regular agenda items.

**Case No. 8706 3807 Telstar Cir**; A use variance to allow a community center; Sylvia Collins, appellant. Mr. Cummings stated the location of the property and said the request will require a use variance to allow a community center in a Residence 2B Zoning District.

Mr. McGuffey stated we are here to revisit this case because it was for one year only and for this appellant only. Dr. Sylvia Collins appeared for the Board and has operated for 20 years. Chairman Sisson asked if anything has changed regarding the Zoning. Dr. Collins stated no. Chairman Sisson asked if they had received any complaints or anything. Dr. Collins stated no they have not received any complaints. Dr. Collins stated they received a Dollar General Grant to offer a reading remedial program to neighboring elementary school kids, has offered English as a Secondary Language Courses, and GED tutoring. Chairman Sisson asked Dr. Collins if they had any challenges to stipulations that were established before. Chairman Sisson asked if she had the desire to rent it out. Dr. Collins stated she would like to eventually rent it out for programs and it would certainly help support the programs. Chairman Sisson explained Dr. Collins can allow others to use the building but not rent it out.

Chairman Sisson asked the City if they had received any complaints. Mr. McGuffey stated the City has received no complaints. Mr. Coffey asked the question if the ordinance requires them to come back annually. Mr. McGuffey stated no, it was a stipulation from the Board. Mr. McGuffey stated she was only given a one year trial, to see if the neighbors had any problems and we haven’t received any complaints to the office. Mr. Coffey stated so in essence it is expiring and not an extension. Mr. McGuffey stated yes.

A motion was made by Mr. Coffey and seconded by Dr. Branham to approve a use variance to allow a community center in a Residence 2B Zoning District as presented, due to the length and success of the existing varied use, due to the fact that the community center will be in a separate building as the child care facility, and with the following stipulations: the community center must be used for educational use only, no activities related to this variance may take place in the child care facility, the facility cannot be rented out for social or athletic functions, all activities must cease to operate by 8:00 p.m., and the variance is for this appellant only. **Approved unanimously**.

Mr. Garber is present and will start voting.

**Case No. 8707 828 Baylor Drive;** The location of a structure; David Chenault; appellant. Mr. Cummings stated the location of the property and said the request will require a 2 foot 3 inch rear yard setback variance. In a Residence 1A Zoning District, a 40 foot rear yard setback is required.

Mr. Chenault appeared before the Board. Mr. Chenault explained they are remodeling an old house in Jones Valley Estates Second Addition. Mr. Chenault stated his rear yard has a very shallow rear lot line. Mr. McGuffey stated the area in violation is about 3 feet and he is at 37 feet and the addition to the screened porch is close to the rear yard. Chairman Sisson asked Mr. Chenault how many letters were mailed out and if he heard anything from them. Mr. Chenault stated he mailed out 51 letters and didn’t hear anything from them. Chairman Sisson asked the Board for any comments or questions. No comments were given.

A motion was made by Dr. Branham and seconded by Mr. Coffey to approve a 2 foot 3 inch rear yard setback variance. **Approved unanimously**.

**Case No. 8708 1408 Clinton Avenue;** The location of a structure, total lot coverage, and distance separation between a primary structure and accessory structure; Leigh Hoskins appellant. Mr. Cummings stated the location of the property and said the request will require a 3% total lot coverage and a 3 foot 4 inch distance separation between a primary structure and accessory structure. In a Residence 1C Zoning District, total lot coverage cannot exceed 40% of the total lot area. According to Article 73.8.1 of the Zoning Ordinance, accessory structures shall be at least (5) feet from all lot lines and accessory structures must be at least 10 feet from all other structures on the lot. A previous variance was granted on June 21, 2016 to allow a 2 foot 3 inch side yard setback variance for an addition to an existing accessory structure. Mr. Coffey recused from this case.

Mr. McGuffey stated that 2 months ago they wanted to build a small addition on the front of the garage. Ms. Hoskins stated they are asking for a proposed screened porch and carport to put in the back area and because of this, it will put them over the 40% lot coverage. Vice-Chairman Peake stated that when they heard this before, the addition to the garage was too close to the side yard. Mr. McGuffey explained the lot coverage in this area was increased from 35%-40%.

Chairman Sisson asked the Board for any comments or thoughts. Vice-Chairman Peake asked Ms. Hoskins how long have they lived in the home. Ms. Hoskins stated since October. Vice-Chairman Peake stated the lot coverages were raised from 35%-40% because the lots were small. Mr. McGuffey stated the request we have seen are for the detached garages and has been for rear yard lot coverages. The total lot coverages have been pretty firm in this area. Vice-Chairman Peake stated there are distance separation issues and the lot coverage is not to go over 40% and they can decide what to do.

A motion was made by Vice-Chairman Peake and seconded by Mr. Garber to approve a 3 foot 4 inch distance separation and a 2 foot 3 inch side yard setback variance for an addition to an existing accessory structure. The motion did pass with a vote of 4 to 1.

**Case No. 8709 912 Cleermont Drive**; The location of a structure; Barry Johnson, appellant. Mr. Cummings stated the location of the property and said the request will require a10 foot rear yard setback variance. In a Residence 1A Zoning District, a 40 foot rear yard setback is required.

Mr. Johnson appeared before the Board. Mr. Johnson explained they want to put a patio covering onto an existing patio. Chairman Sisson asked how many letters were mailed out. Mr. Johnson stated they mailed out 72 and did not hear anything back from them. Mr. Johnson stated he received a letter from a neighbor that was in support of it. Mr. McGuffey stated the addition is in the corner lot of the rear yard and is a triangular shape. Mr. McGuffey stated they are close to the rear yard setback but not there and that is the request before the Board.

Chairman Sisson asked the Board for any questions. No comments were given.

A motion was made by Dr. Branham and seconded by Vice-Chairman Peake to approve 10 foot rear yard setback variance. **Approved unanimously**.

**Case No. 8710 1401 Four Mile Post Rd**; A use variance to allow temporary Christmas tree sales, the use of a trailer as a sales office, and signage; J. Wayne Packard of High Country Christmas Trees for Carolyn J. Blue, appellant. Mr. Cummings stated the location of the property and said the request will require a use variance to allow Christmas tree sales, a variance to allow the use of a trailer as a sales office, and a variance for attached and accessory ground signage.

Mr. Packard and his partner Rob Hunt appeared before the Board. Mr. Packard stated he has been selling trees for 30 years and would like to set up his tree lot at this 11 acre tract. Mr. Packard stated they had to move due to John Blue construction on previous lot. Mr. Packard stated the lot will be off the side street off of Four Mile Post Road. The entrance to the tree lot will be across from the movie theater. Mr. Packard stated they will bring in gravel. Chairman Sisson asked if the gravel will be taken up when finished. Mr. Packard stated the gravel will be left, because Mr. Blue will be developing lot eventually.

Chairman Sisson asked for the City’s input. Mr. McGuffey stated it is a new location and he just wants to make sure he has a location to sale his trees. Chairman Sisson asked Sgt. Ware if this location would be a problem. Sgt. Ware stated he didn’t think it will affect Four Mile Post Rd. Chairman Sisson asked the Board for any questions or comments. Dr. Branham asked how long will the tree sale be. Mr. McGuffey asked Mr. Packard what was his starting date and times. Mr. Packard stated the starting date will be November 21, 2016 to December 25, 2016 with hours of operation being Monday through Saturday 8:00 a.m. to 9:00 p.m. and Sunday 10:00 a.m. to 8:00 a.m. for this appellant only.

A motion was made by Dr. Branham and seconded by Mr. Garber to approve a use variance to allow Christmas Tree sales, a variance to allow the use of a trailer as a sales office and a variance for attached and accessory ground signage to operate November 21, 2016 to December 25, 2016 with hours of operation being Monday through Saturday 8:00 a.m. to 9:00 p.m. and Sunday 10:00 a.m. to 8:00 p.m. for this appellant only. **Approved unanimously**.

**Case No. 8711 2075 Cecil Ashburn Drive**; A use variance to allow temporary Christmas tree sales, the use of a trailer as a sales office, and signage; J. Wayne Packard of High Country Christmas Trees for Damson Park Investments, LLC, appellant. Mr. Cummings stated the location of the property and said the request will require a use variance to allow Christmas tree sales, a variance to allow the use of a trailer as a sales office, and a variance for attached and accessory ground signage.

Mr. Packard stated this location is where he was last year that belongs to Jed Park & Associates. Mr. Packard stated they may not actually be setting up on this property because there are active contracts on the property. Chairman Sisson stated the Board doesn’t do provisional variances.

Mr. McGuffey stated the Board doesn’t do provisional variances because of the position it may put us in, but if he is under contract. Mr. McGuffey stated this location is located in an empty field across from Moe’s and Mellow Mushroom. Mr. McGuffey stated the Board could make conditions as to this site or the other site but not both and nobody else will be allowed to go on the other site unless they came to the Board. Mr. Packard stated they have a tentative lease at this location and would like to stay at this location but the contract may fall through and that’s why the 1401 Four Mile Post Road location is needed. Mr. Packard stated they will not be operating at 2 locations.

A motion was made by Mr. Garber and seconded by Mr. Coffey to approve a use variance to allow Christmas Tree sales, a variance to allow the use of a trailer as a sales office and a variance for attached and accessory ground signage to operate November 21, 2016 to December 25, 2016 with hours of operation being Monday through Saturday 8:00 a.m. to 9:00 p.m. and Sunday 10:00 a.m. to 8:00 p.m. for this appellant only. **Approved unanimously**.

**Case No. 8712** **420 Eustis Ave**; The location of a structure; Anderson H. Kelly, Sr., appellant. Mr. Cummings stated the location of the property and said the request will require a

5 foot west side yard setback variance. In a Residence 1A Zoning District a 10 foot side yard setback is required for a two story dwelling.

Mr. McGuffey stated Mr. Kelly is proposing an addition to his home and it is a little too close to the property line. Mr. Kelly, his wife, Kathy and Mr. Frank Nola his architect appeared before the Board. Mr. Kelly stated the home was built in 1928 by his wife’s grandfather. Mr. Kelly stated they need to create a downstairs bedroom space, so in order to do that they need to convert some space interiorly. Chairman Sisson stated the existing building is 4 feet from property line and the proposed addition is 5 feet from the property line.

A motion was made by Mr. Coffey and seconded by Vice-Chairman Peake to approve a 5 foot west side yard setback variance, contingent upon Historic Board approval. **Approved unanimously.**

**Case No. 8713 1400 Evangel Drive**; PVA lighting; Kirk A. Thompson of Downtown Rescue Mission, Inc., appellant. Mr. Cummings stated the location of the property and said the request will require a variance to allow a reduction of the required PVA Lighting. According to Article 71.6 of the Zoning Ordinance, a minimum illumination output of 0.4 foot candles using LED light sources as measured at ground level is required. Chairman Sisson and Mr. Coffey recused from this case.

Ms. Allison Cory from Chapman Sisson Architects and Kirk Thompson of Downtown Rescue Mission appeared before the Board. Ms. Cory stated they are here to ask for a variance for the existing portion of the site lighting. Ms. Cory explained the Downtown Rescue Mission serves disadvantaged men, women and children of the community and they currently have a need for expansion. Ms. Cory stated they will be adding a new building on the side that will serve the women and children and the men can expand throughout the facility. On the existing portion they are required to bring all the site lighting into compliance. Ms. Cory stated they are proposing to replace all the existing fixtures on existing poles with a new more efficient LED light fixture. Also, in addition they will be adding a light fixture behind the guard shack, where electricity is easily obtainable and with making those improvements will allow for the main entry all the way to the new portion of the site will bring lighting up to code requirements. Ms. Cory stated that on the back side of property there are 3 areas that do not meet the code requirements on the existing site and those are the areas they are asking for the variance. Vice-Chairman Peake asked if a photometric study was done. Ms. Cory stated yes it has been done.

Dr. Branham stated he would think the Downtown Rescue Mission would want to be well lit. Dr. Branham asked the question why would you do less than what’s required. Ms. Cory stated they are proposing to make improvements that are easily obtainable. Vice-Chairman Peake asked Ms. Cory to explain what is done in the back area that doesn’t have enough light. Ms. Cory and Mr. Thompson stated they have the service area for the kitchen, a walk in freezer, where they take food donations, a dumpster to dispose of waste from serving meals, a maintenance shop, transformers and electrical and gas access in that area. Vice-Chairman Peake stated a lot of the lighting requirements are for security issues at night and asked are there other security measures in place that might compensate for the lack of light back there. Ms. Cory states they have a perimeter fenced area around the property and security cameras that are interior and exterior. Mr. Thompson states there policy is that at 8:00 p.m. they close down their gates and don’t allow people back in. Mr. Thompson further said the only exception to get back in is if they receive a phone call from the hospital, bringing someone to them or returning them and if the police picked up someone and wishes to bring them there. Also they do have staff there 24 hours a day to help maintain the facilities.

Mr. Ozier asked if the unlighted area is fenced off from the compliant area. Mr. Thompson stated the 14 acres are fenced off. Ms. Cory stated no, the only plans are to fence off the new area off from the existing area. The new area which is the new women and children’s area will have a fence and motorized gates. Dr. Branham stated he couldn’t understand why a complex in Huntsville would not be more deserving of having proper lighting. Mr. Thompson stated he would like to have the proper lighting too but cost is a factor and with a limited budget. Mr. Garber asked if they could put lights on the building to improve the area in the back area. Ms. Cory said it would improve but doesn’t know how much they could actually get onto the paving area.

Mr. McGuffey stated in the past the Board saw cases where gates to areas were under lit and it was based on hours of operation and if the service was not being performed in the dark then they gated that particular area for vehicle access. Some of these cases were seen on commercial and industrial projects. Dr. Branham stated at this location you will see people there. Mr. McGuffey asked Mr. Thompson how many of the patrons use vehicles, staff versus people with vehicles. Mr. Thompson stated they deal with homeless people and they don’t have vehicles. Mr. Thompson stated the vehicles there are staff related and maybe 3 to 6 vehicles there on an average. Mr. Ozier asked if the pedestrians inside the area are allowed access to the under lit areas after dark. Mr. Thompson stated without staff permission they are not allowed in the under lit areas.

Dr. Branham stated he thinks they need more lights on the building, where the lights can shine to the parking area. Dr. Branham thinks this will be a less expensive option.

A motion was made by Dr. Branham and seconded by Ms. Ford to approve a variance to allow a reduction of the required PVA lighting with the stipulation they add 3 wall pack lights on the building. The motion did pass with Vice-Chairman Peake, Mr. Garber and Dr. Branham and Ms. Ford voting. Mr. Ozier did not vote on this request.

**Case No. 8714 740 Mira Vista Drive SE**; The location of a structure; Curtis S. Strange, appellant. Mr. Cummings stated the location of the property and said the request will require a 10 rear yard setback variance. In a Residence 1A Zoning District a 40 ft rear yard is required.

Mr. McGuffey stated Mr. Strange will like to build an addition onto the rear of his home. The proposed addition is too close to the rear yard and he is requesting a rear yard setback variance. Mr. Strange stated he purchased the home a couple of months ago, has wife/3 kids and mother-in-law is moving in with them. He would like to build an addition so mother-in-law will not have to climb the stairs. Mr. Strange stated the golf-course is about 75-100 foot from the out of bounds playing course from his rear property line. Mr. Strange stated he mailed out 30 plus letters and only received one call about this request. Vice-Chairman Peake asked Mr. McGuffey if part of the existing house was non-compliant. Mr. McGuffey stated yes it is a little in violation.

Mr. Coffey stated that it appears both adjacent properties have extended rear yards as well. Mr. McGuffey stated yes that through the years we have seen requests that abut Valley Hill Golf Course. Chairman Sisson asked for any other questions, none was given.

A motion was made by Dr. Branham and seconded by Mr. Coffey to approve a 10 foot rear yard setback variance. **Approved unanimously**.

**Case No. 8715 1519 Brook Hollow Circle NW**; The location of a structure; Nancy Jtineant Harris, 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. This request will also require a 4 foot 7 inch side yard setback variance. According to Article 73.8 of the Zoning Ordinance, accessory structures must be at least 10 feet from all other structures on the lot. Also, in a Residence 1A Zoning District, no accessory structure shall be erected in any front yard or any required side yard except underground fallout shelters.

Mr. McGuffey stated Mrs. Harris has a hardship because the floodway boundary in the rear prohibits them from putting the proposed detached structure in the boundary.

A motion was made by Chairman Sisson and seconded by Mr. Coffey to approve a 5 foot distance separation variance between a primary structure and an accessory structure, and 4 foot 7 inch side yard setback variance. **Approved unanimously**.

**Case No. 8716 2303 and 2305 Jordan Lane SW**; The type of signage; Carter Harsh of MAP Development, LLC, for MAP Bob Wallace LLC, appellant. Mr. Cummings stated the location of the property and said the request will require a use variance to allow green and red LED lighting for an electronic message center sign. According to Article 72.5.25 text messages shall be limited to either white or amber in color on a black background and entire text message must be monochrome.

Mr. McGuffey stated this is the new Walmart Neighborhood Center at the intersection of Bob Wallace Ave and Jordan Ln. The fuel center has proposed to have green and red LED lights to designate fuel types. Mr. McGuffey stated the project is 30 days upon completion and the ordinance states amber and white lights. Mr. McGuffey stated the Planning Staff is looking to revise the sign ordinance. Mr. McGuffey stated the Supreme Court has asked the sign ordinance to be reviewed. Dr. Branham stated the LED lights will only be for fuel. Mr. McGuffey asked Mr. Harsh how many Walmart’s outside the City of Huntsville have used green/red Led lights. Mr. Harsh stated about six Walmart’s have used the lights and it is for quicker recognition for motorists driving by.

A motion was made by Chairman Sisson and seconded by Dr. Branham to approve a use variance to allow green and red LED lighting for an electronic message center sign only for fuel prices and based on the provision that the City is in process of amending ordinance. **Approved unanimously**.

**Case No. 8717** **1101 Pulaski Pike NW**; A use variance to allow a health care clinic; Leslie Pollard of OU Enterprise, LLC, appellant.

A motion was made by Chairman Sisson and seconded by Vice-Chairman Peake to approve the request to continue for 30 days a use variance to allow a health care clinic at 1101 Pulaski Pike NW, Leslie Pollard of OU Enterprises, LLC, appellant. **Approved unanimously**.

**Case No. 8718** **2208 Fitcheard Avenue NW;** A use variance to allow a health care clinic; Leslie Pollard of OU Enterprise, LLC, appellant.

A motion was made by Chairman Sisson and seconded by Mr. Garber to approve the request to continue for 30 days a use variance to allow a health care clinic at 2208 Fitcheard Avenue NW, Leslie Pollard of OU Enterprises, LLC, appellant. **Approved unanimously.**

**Case No. 8719 4815 University Drive NW**; PVA perimeter landscaping; Cathleen O. Anderson of Anderson Wynn, appellant. Mr. Cummings stated the location of the property and said the request will require a 5 foot perimeter landscape variance along the south side property line. 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. McGuffey stated this case and the next case will be heard together but voted on separately. Mr. McGuffey stated this is an existing site with 3 tenants. The property fronts University Dr. and rear faces Sanderson St. The three tenants on the property are the Wintzell’s Oyster House Restaurant, Tenders and the Hampton Inn. Mr. McGuffey stated they are looking to subdivide the property, the new proposed property line runs down the center of the parking lot, and they are asking for 5 feet of perimeter landscaping on both sides of proposed property line. Mr. McGuffey said they cannot put perimeter landscaping on the property line because it will disrupt the flow of traffic. Dr. Branham stated no landscaping, and Mr. McGuffey stated correct, no landscaping. Chairman Sisson asked if one of the properties was being sold. Mr. Mark Halmark, who is representing Ms. Cathleen Anderson stated the Hampton Inn is being sold. Chairman Sisson asked the Board for any more questions. Vice-Chairman Peake asked if there will be any less landscaping than there is currently. Mr. McGuffey stated no this line will exist essentially for the transfer of property and it will not exist on site. Mr. Alex Coleman, with Johnson & Associates that did the survey appeared before the Board also. Dr. Branham asked the question if the landscaping will be exactly how it is now. Mr. McGuffey stated yes it will remain the same. Chairman Sisson asked the Board for any other questions or comments, none was given.

A motion was made by Dr. Branham and seconded by Vice-Chairman Peake to approve a 5 foot perimeter landscape variance along the east and south side property line. **Approved unanimously**.

**Case No. 8720 5100 Sanderson St**; PVA perimeter landscaping; Cathleen O. Anderson of Anderson Wynn, LLC, appellant. Mr. Cummings stated the location of the property and said the request will require a 5 foot perimeter landscape variance along the east side property line. 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.

Chairman Sisson asked exactly where Sanderson St. was and Mr. Cummings stated it is where the Wintzell’s Oyster House Restaurant is located.

A motion was made by Dr. Branham and seconded by Mr. Coffey to approve a 5 foot perimeter landscaping variance along the west and north side property line. **Approved unanimously**

Chairman Sisson asked for a motion to approve the June 21, 2016, Board of Zoning Adjustment meeting minutes. A motion was made by Chairman Sisson and seconded by Dr. Branham to approve the June 21, 2016, meeting minutes. **Approved unanimously**.

Chairman Sisson asked for a motion to approve the July 19, 2016, Board of Zoning Adjustment meeting minutes. A motion was made by Chairman Sisson and seconded by Dr. Branham to approve the July 19, 2016, meeting minutes. **Approved unanimously**.

There being no further business, the meeting adjourned at 7:48 p.m.