Administration Building

Council Chambers

308 Fountain Circle

December 15, 2020

6:00 p.m.

**BOARD OF ZONING ADJUSTMENT**

Members Present:

Mr. Martin Sisson - Chairman

Mr. Bert Peake – Vice Chairman

Mr. Fred Coffey

Ms. Kimberly Ford

Ms. Wendy Lee – Supernumerary

Dr. David Branham

Others Present:

Mr. Thomas Nunez, City of Huntsville Planning Department

Mr. Travis Cummings, City of Huntsville Zoning Administration

Mrs. Jon Johnson, City of Huntsville Zoning Administration

Mr. Robert Baudendistel, City of Huntsville Zoning Administration

Mr. Trey Riley, City of Huntsville Legal Department

Sergeant Grady Thigpen, Huntsville Police Department

Officer Whitney Somerville, 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 If required, proper permits must be obtained during that time.Due to the Covid-19 pandemic, upon written request the Zoning Administration Office may grant a six-month extension of the 6-month period. 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 cases are all continued for 30 days: The location of a structure at 312 Sunset Avenue SW, The location of a structure at 2915 Seventh Avenue SW, The location of a structure at 2605 Poincianna Street SW, and the location of off-street parking and shared access at 1749 Pulaski Pike NW. Also, the following case has been withdrawn: The location of signage at 7500 Iredell Main NW Unit A & 7501 Iredell Main NW Unit B.

Chairman Sisson then called the extension items.

**Case No. 9292** **2033 Rothmore Drive SW;** The location of a structure;Whitney Robinson, appellant. Mr. Baudendistel stated the location of the property and stated this request will require a 1 foot 8 inch setback variance for the location of a detached accessory structure. No accessory structure shall be at least five 5 feet from all lot lines.

Mr. Robinson appeared before the Board. Mr. Robinson stated he assumed the accessory structure was placed 5 feet off the property line. However, after a survey was done, Mr. Robinson found out the structure was a 1 foot 8 inch off the property line. Mr. Whitney stated he is in the process of vacating the easement. Mr. Cummings also stated Mr. Robinson is in the process of vacating the easement, he had to go through the City Council, but had already gotten permission from Huntsville Utilities and the Engineering Department. Chairman Sisson asked Mr. Robinson how many letters were sent out. Mr. Robinson stated around 58 letters and only heard from 4 neighbors, that were not in objection of his variance. Chairman Sisson asked the Board for any questions. No comments were given.

A motion was made by Dr. Branham and seconded by Mr. Coffey to approve a 1 foot 8 inch setback variance for the location of an accessory building and subject to vacation of easement approval. **Approved unanimously**

Chairman Sisson asked the City to give an introductory statement explaining the reason why we have an Administrative Review. Mr. Fred Coffey recused on these cases. Chairman Sisson stated the Board understands an Administrative Review is when the Board evaluates the Zoning Administrator’s determination of a case and if these cases can all be heard together. Mr. David Canupp of Lanier Ford appeared before the Board representing the City of Huntsville and stated we can group the cases all together. Mr. Canupp further explained the cases all have different issues, they are all Mr. Bell’s cases and will be easier to review them all at once. Mr. Canupp also stated there are no variance request for the cases and thus the sole issue is whether the Zoning Administrator made an appropriate determination; thus, the Board is simply asked to conduct an administrative review for each case. Chairman Sisson stated so the Board is not listening for a hardship but if they agree with the Zoning Administrator’s decision. Mr. Canupp stated that is correct. So, therefore all the eight cases listed below will be heard together.

Case 9295 An Administrative Review for type of signage in a Neighborhood Business C1 Zoning District at **2121 Whitesburg Drive SE**, Neil Bell for New South Media Group, LLC and Outdoor Marketing & Development, LLC, appellant.

Case 9296 An Administrative Review for type of signage in a Neighborhood Business C1 Zoning District at **4113 Bob Wallace SW**, Neil Bell for New South Media Group, LLC and Outdoor Marketing & Development, LLC, appellant.

Case 9297 An Administrative Review for type of signage in a Neighborhood Business C1 Zoning District at **8220 Stephanie Drive SW**, Neil Bell for New South Media Group, LLC and Outdoor Marketing & Development, LLC, appellant.

Case 9298 An Administrative Review for type of signage in a Neighborhood Business C1 Zoning District at **8402 Whitesburg Drive SW**, Neil Bell for New South Media Group, LLC and Outdoor Marketing & Development, LLC, appellant.

Case 9299 An Administrative Review for type of signage in Light Industry Zoning District at **4016 University Drive NW**, Neil Bell for New South Media Group, LLC and Outdoor Marketing & Development, LLC, appellant.

Case 9300 An Administrative Review for type of signage in a Highway Business C4 Zoning District at **4811 University Drive NW**, Neil Bell for New South Media Group, LLC and Outdoor Marketing & Development, LLC, appellant.

Case 9301 An Administrative Review for type of signage in a Light Industry Zoning District at **7904 Memorial Parkway SE**, Neil Bell for New South Media Group, LLC and Outdoor Marketing & Development, LLC, appellant.

Case 9302 An Administrative Review for type of signage in a Neighborhood Business C1 Zoning District at **7531 Bailey Cove Road SE**, Neil Bell for New South Media Group, LLC and Outdoor Marketing & Development, LLC, appellant.

**Remarks by Mr. Bell / New South Signs**

Chairman Sisson asked Mr. Bell to introduce himself. Good afternoon ladies and gentlemen, my name is Neil Bell and I’m the principal owner of New South Media Group, LLC, the appellant in this case. Earlier this year, we submitted a total of 8 applications seeking to build signs of varying content, sizes, locations in the City. The addresses where each sign would be located are included as agenda item for tonight’s hearing. All of the application materials for each location were attached to our appeal applications thus should be part of the record.

City staff denied the applications all on the same ground, that the signs were impermissible “non-accessory signs.” These denials are also part of the record. We respectfully disagree with City staff’s actions in this regard and that’s why the present appeal was filed. We thank you for taking the time to hear us out today. What we would like to do is give you a brief overview of our business, applications, and the grounds for the appeals. If you have any questions during any part of the presentation, please do not hesitate to stop me and ask.

**New South and the Signs**

We are a small sign company that is family owned and operated. We have many years of experience in the sign business and have owned and operated signs all over the southeast, including many in Alabama. We specialize in building signs in areas that are underserved by advertising signs. Huntsville is in high demand from local advertisers who want to get their messages out to the people of the City. Signs are still the most cost-effective way for small businesses, citizens, churches, and even government entities to get their messaged to the public. Now it is important to note that we intend to post all manner of commercial and noncommercial messages on the proposed signs. Examples of noncommercial messages that would be posted on the signs include messages supporting our troops, for various favored churches and non-profits, and messages sponsored by the Alabama Department of Public Health.

After spending much time pinpointing ideal locations for new signs, our agent negotiated agreements with Huntsville landowners that would allow us to post signs on their properties in exchange for substantial rent payments. All of the sites at issue are commercially or industrially zoned and maintain commercial uses adjacent to some of the busiest roads and highways in the City. All of the proposed signs are fully compliant with state law. Some are proposed to be electronic LED multiple message signs. LED is the wave of the future in the sign industry. They allow several advertisements to be posted on a sign face every minute. They are also safer because advertisements can be changes via computer so folks no longer have to climb the poles to change advertisements. Most importantly, LED signs allow public safety messages to be posted with the push of a button whenever necessary. Amber Alert’s, fugitive information, and weather emergencies – whenever there is a need, all it takes is a call to us and such messages would go up on the sign.

**The Applications**

We obtained a copy of the City’s sign application and noted it required us to specify the “type of sign” being applied for, such as “political sign,” “business center sign,” “accessory sign,” and “non-accessory sign.” Since these terms mean different things to different people, we consulted the City Sign Control Regulations and found that most of these sign types are specifically defined based on the content of the message displayed on the sign. For example, “accessory sign” must contain content related to what is going on at the property, whereas “non-accessory sign” must contain content unrelated to what is going on at the property.

In completing our applications, we tried to choose the “type of sign” that most suited the sign content we wished to display. One sign would display content related to the sign’s location, so we chose accessory sign. Two signs would display content unrelated to the sign’s location, so we chose non-accessory sign. Two other signs would display strictly noncommercial content. Since some noncommercial messages are related to the sign locations and some are not, we could not choose between accessory and non-accessory ground signs and simply noted the signs would be “noncommercial signs.” Messages would include content from churches, hospitals, colleges, and other non-profit and governmental organizations. Two other signs would display content sponsored by governments. Specifically, we often post messages on our signs on behalf of the Alabama state government, such as Department of Public Safety messages. I want to hand out some copies of this content for the record.

The City sign control regulations state “this ordinance shall not apply to any signs erected and maintained pursuant to and in discharge of any government function” so we labeled these two signs “government function signs” on the applications. Finally, one sign would display content for various small business artisans in the City, such as masons, carpenters, painters, designers, and the like, so we labeled it an “artisan sign.” For each of the 8 applications, we completed them in full, prepared a site plan showing where on the property the sign would be located, submitted a copy of the lease and related paperwork giving us the right to maintain the proposed sign, and submitted engineering plans showing the manner of sign construction. Some of them also included the messages that would be displayed on the sign to prove the “type of sign” we chose was accurate.

Each of the applications was denied by City staff because the staff stated that it proposed an impermissible non-accessory sign. This includes the six applications that did not qualify as “non-accessory signs” under the City sign control regulations because they were not unrelated to the property where they would be posted. For the record, I want to hand out a spreadsheet that shows material information for each sign, to make it easier for you to follow. This shows all material information, including the address of the property where each sign is proposed, the type of sign applied for, the size, the height, and the basis for denial.

**The Appeal**

The letters that accompanied each appeal application are in the record, but I will summarize the reasons for appeal. We appealed these denials on two grounds. First the sign control regulations are content-based and unconstitutional and deprive us of our free speech rights and thus the denial of all applications was improper. We understand the City’s position is this Board has no authority to rule on whether the sign control regulations are constitutional or unconstitutional but note this objection for the record.

Second, we contend that City staff made a mistake when they classified six of our signs as non-accessory ground signs even though they do not meet the definition of such sign. City staff had no basis *not* to apply the regulations specifically applicable to the type of sign we applied for in reviewing the applications. This was a critical mistake because different types of signs have different regulations that apply to them. Government-function signs, for example, are completely exempt by Section 72.12 of the code and thus these signs, at 2121 Whitesburg and 7531 Bailey Cove, are allowed as a matter of right. Likewise, the only regulation applicable to an artisan sign, other than content, is that it be limited to 160 square feet. Our application at 4113 Bob Wallace sought a 150 square foot sign and complied with this restriction.

Our proposed non-commercial signs, at 8220 Stephanie Drive and 8402 Whitesburg Drive, do not fit within any “type of sign” regulated by the regulations and are thus not prohibited. Finally, our proposed accessory sign, at 4811 University Drive, we believe fully complies with the applicable accessory sign regulations in a C-4 district. By deeming these six signs non-accessory signs, as opposed to the sign types identified on the application, staff applied the wrong set of regulations and improperly denied these applications. This has obviously precluded us from posting these signs and exercising our speech rights.

**Post Appeal Activities**

After we filed the appeals, we received a letter from the City Attorney that alleged our signs were rejected for *other* reasons not specified by City staff. I want to introduce a copy of this letter, as well as my attorney’s response to this letter, into the record. We respectfully believe the additional purported bases of denial are improper and in any event are incorrect. We studied the City application and sign control regulations and spoke with City staff prior to submitting our applications to ensure they would be complete. Our applications contained all required materials. They were not rejected because they were incomplete, as the City’s letter contends, but because they violated the non-accessory sign regulations applied by staff. For all the reasons expressed in our letters, we ask that staff’s denial of our applications be reversed. Mr. Bell further stated the City took the applications and basically treated the wrong sign type and denied all of them.

**Remarks of Mr. Canupp in Support of Zoning Enforcement Coordinator**

Chairman Sisson asked can someone speak on the City behalf. Mr. David Canupp will speak on the City’s behalf. Mr. Canupp asked Mr. Bell if he submitted a copy of Mr. Trey Riley’s October 6, 2020 letter as part of his exhibits. Mr. Bell stated yes. Mr. Canupp introduced email correspondence between Mr. Scott Phares the Sign Inspector, which attaches a one-page document entitled “Nonaccessory Ground Sign Applications.” Mr. Canupp stated that the reason for the introduction of this exhibit is that Mr. Bell previously introduced an excel spreadsheet document purporting to state that the sole basis of denial for each sign was that the signs were unlawful non-accessory signs. Mr. Canupp further stated this spreadsheet introduced by Mr. Bell was not a City document, that the City never sent this to Mr. Bell, and that the City would have not created this document because this was not an accurate or complete statement of the City’s reasons. Mr. Canupp explained that the City’s reasons are clearly stated in Mr. Riley’s October 6 letter in which the City attempted at length to help Mr. Bell to get the City more complete sign applications so that we could more appropriately evaluate his request. Mr. Canupp further explained that before Mr. Riley’s letter, Mr. Phares sent out the one-page document called “Nonaccessory Ground Sign Applications.” Mr. Canupp represented that this document actually listed some of the main reasons for denial for most of the signs, at least those for which applications had been submitted at the time the document was compiled and transmitted to Mr. Bell. Mr. Canupp further noted that, at the bottom of the “Nonaccessory Ground Sign Applications” document, it specifically states that “the above-mentioned reasons for denial are not meant to be understood as solely as the reasons for denial. Additional reasons for denial may be applicable.”

Mr. Canupp explained that the significance of this statement in the “Nonaccessory Ground Sign Applications” document is that when the City encounters an application that is not complete or is missing information, the City typically explains what is still needed in order to fully process the application. Here, Mr. Canupp explained, the City could never get any additional information requested and there were several things wrong with the applications. Mr. Canupp further explained the sign inspector looked at a few dispositive reasons supporting denial, listed them, and stopped due to their being so many issues wrong with the sign applications. Mr. Canupp also stated that the City believed that Mr. Riley’s October 6 letter to Mr. Bell’s lawyer would enlighten him to the many issues so that Mr. Bell could send in amended applications with appropriate corrections. Instead, Mr. Bell’s attorney took the position that New South did not want to amend the applications and would stand on what was already submitted. Mr. Canupp expressed the hope that this background would be informative as to why we are all here tonight - *i.e.*, because the City does not have complete applications.

Mr. Canupp also stated that he wanted to be clear that Mr. Bell operates an important business that serves other businesses and that he does not intend to criticize Mr. Bell’s business. Mr. Canupp did state that he does not necessarily agree that the City has “underserved areas” in terms of signs given that the City allows signs throughout the City and simply has areas where large signs are permitted and areas where small signs are permitted.

Mr. Canupp next stated that there was a need to correct some other statements made by Mr. Bell before moving on. First, Mr. Canupp stated that there was a discussion of how Mr. Bell's company received state approval for signs. Mr. Canupp stated that there are a few signs within the sign application package that would need state approval because they are on a state highway. However, that did not happen because no application was made for state approval and he hadn't received City approval.

Mr. Canupp further explained that as the Board proceeds to review the various applications, it will find multiple characterizations, and he acknowledged that Mr. Bell characterized the City's decision as content-based, meaning based on the content of the sign. Mr. Canupp stated that nothing could be further from the truth. Instead, Mr. Canupp clarified that City does not make content-based distinctions in terms of what kind of sign is allowed. In fact, Mr. Canupp stated that in the few situations where there was content that was made a part of the record, that was because Mr. Bell himself listed the proposed content in the application even though he did not need to do so. For example, Mr. Bell submitted two government function signs, and for each one he provided the City a copy of what he intended to put on the sign. However, the City never required that and has nothing to do with what he puts on a given sign. Mr. Canupp therefore stated that the City did not make a content-based decision; instead, it was looking at the parameters of the sign and the application of the sign code in order to make the decision.

**4016 University and 7904 Memorial Parkway**

Mr. Canupp then began his discussion of the eight different permit application denials by grouping two of the applications together – 4016 University Drive and 7904 Memorial Parkway. Mr. Canupp stated if the Board considers these two applications together that it will be helpful. The reason is that each of these applications stated on their face that the application sought a permit for a non-accessory ground sign. Mr. Canupp explained that the City has rules for non-accessory ground signs; for example, a survey is required, the applicant must have permission from the property owner, and the proposed signs must be distanced/spaced appropriately from other signs and rights of way. Mr. Canupp stated both of these permit applications failed those requirements due to the proposed signs not being spaced correctly: one of them was 794 ft from the next billboard and needed to be 1000 ft. Another one needed to be 50 ft off the right-of-way and the sign was less than that. Mr. Canupp further explained these were not necessarily all of the reasons for permit denial, but they were enough for the City to inform Mr. Bell that it could not grant his company the permits because the proposed signs are in violation of the rules.

Mr. Canupp stated that this is not to suggest that there were not additional reasons. In fact, Mr. Canupp explained that Mr. Riley’s October 6 letter to Mr. Bell explained a series of problems. For instance, Mr. Riley explained to Mr. Bell that it was not clear he had the proper lease agreements in place to place signs at these locations. Mr. Canupp further explained Mr. Bell’s applications were for a non-accessory ground sign, and he couldn’t get a non-accessory ground sign not because of what he was putting on the sign but due to the location of the proposed signs. Mr. Canupp reminded the Board that Mr. Bell has not asked for a variance from the Board and, given that his permit applications violate the rules and he does not contend otherwise, is unclear on exactly what the Board could do to remedy the situation. Mr. Canupp stated that given only an Administrative Review has been sought, these two applications should probably be taken off the table because the Zoning Enforcement Coordinator did not make any errors in application of the Sign Regulations and Mr. Bell did not seek a variance.

**2121 Whitesburg and 7531 Bailey Cove**

Mr. Canupp grouped the next two signs together, 2121 Whitesburg Drive and 7531 Bailey Cove Road. Mr. Canupp stated the sign permit application form has a series of boxes that the applicant can select. Mr. Bell selected the “Other” box and typed in government function sign. Mr. Canupp explained that “government function sign” is not a category on the sign permit application and that there is a reason for that. Mr. Canupp stated under the City of Huntsville’s Sign Regulations, the City cannot grant or require a permit for a government function sign due to the fact the City has no authority over other governments. So, Mr. Canupp continued, if the State of Alabama wants to come in and construct a sign on its property within the City limits, the City of Huntsville cannot stop them. For that reason, the City’s Sign Regulations specifically state that there shall be no permit required for government function signs.

So, Mr. Canupp explained that when City staff received the application for a government function sign, they were doubly confused. First, no government was submitting the application. Second, there was no need for an application for such a use in the first place. Not only that, Mr. Canupp stated the City sign regulations did not apply the way Mr. Bell’s company claimed. Mr. Canupp referred specifically to the City of Huntsville Zoning Ordinance, Article 72.3.3 which states no permit is required for signs advertising garage sales or for signs erected and maintained pursuant to and in discharge of any governmental function, or required by law, ordinance, or governmental regulation. Mr. Canupp also stated there are court decisions in the State of Alabama that provide that a municipal government cannot regulate what signs a state government or other city/government entity desire to erect. Therefore, that is why no permit is required. Mr. Canupp reiterated that this exemption doesn’t allow a private business to say “hey, I’ll advertise government messages and therefore get around your sign regulations.” That’s never what this was intended to do. Mr. Canupp further stated that it is not the City’s place to consider what someone puts on the sign, anyway. The City’s government function exemption is to make clear that the City cannot regulate other governments. Mr. Canupp expressed doubt that the City has ever had anyone apply for a government function sign when they are not the government.

Mr. Canupp stated that even beyond this fundamental issue, the signs proposed for 2121 Whitesburg and 7531 Bailey Cove were not appropriate for other reasons. For 2121 Whitesburg Drive, Mr. Bell provided a lease agreement from the property owner for the building where the Great Panda and Mexican Restaurant are located, saying they consent to where the sign; but the application indicated the sign location was in the middle of the parking lot, and the parking lot is not owned by the people who signed the lease agreement. The parking lot is owned by Charles William Dunbar; there was no indication that Mr. Bell had Mr. Dunbar’s consent to locate the sign in the middle of his parking lot, much less a 350-square foot billboard/non-accessory ground sign that is not permitted in a Neighborhood Business C1 Zoning District.

Mr. Canupp stated the same thing goes for the sign permit application at 7531 Bailey Cove Road. Mr. Canupp stated that this application was also for a government function sign, a non-accessory ground sign. Non-accessory ground signs are not allowed in a Neighborhood C1 Zoning District, Mr. Canupp explained. He then stated that neither was the proposed sign an accessory sign, because Mr. Bell himself volunteered to the City that he wanted to advertise government messages which did not relate to a business or profession conducted on the premises.

Finally, Mr. Canupp reminded the Board that the “Nonaccessory Ground Sign Applications” sheet submitted by the City does not include reference to either of these two addresses because the applications came after the sheet was developed and transmitted to Mr. Bell. However, Mr. Riley explained all of these issues in his letter of October 6, in addition to the other problems with related applications. Mr. Canupp then noted that another thing that is important about Mr. Riley’s letter is that in the letter, he repeatedly asks the attorney for New South if he could resubmit the applications and correct these issues because the City wants to work with New South and would love to approve these signs if they meet the requirements of the Sign Regulation. But Mr. Bell’s attorney, for right or for wrong, decided he did not want to amend his application. So, the City believes its denial of these applications was not wrong.

**4113 Bob Wallace Avenue**

Mr. Canupp stated the application for 4113 Bob Wallace Avenue was for an artisan sign. Mr. Canupp reminded the Board that Mr. Bell’s company operates in lots of cities and is likely fairly sophisticated in terms of knowing city sign ordinances. However, Mr. Canupp stated that there is no way in the word that one would read our Huntsville Sign Regulation and its definition of an “artisan sign” and believe that the City would permit believe a 35 ft tall, steel, core-drilled billboard was an artisan sign. Mr. Canupp noted the definition of the artisan sign requires it to be a temporary sign, of an artisan, maintained only while work is being performed on the premises, such as where a builder was constructing a residence. Here, Mr. Canupp stated, this sign was not temporary and was not being placed by an artisan, leaving the City no ability to approve its construction. So, not surprisingly, Mr. Canupp said, the City did not approve the sign.

Mr. Canupp added that this was not the only reason the sign at 4113 Bob Wallace Avenue was denied. He reminded the Board that the permit applicant must provide consent of the owner to support the application. Here, Mr. Bell provided a lease agreement for the wrong parcel of property – it was not for 4113 Bob Wallace Avenue, but instead related to 2719 Patton Road and was a copy of the City’s Quit Claim Deed vacating an easement, and not consent to locate the sign there. Mr. Canupp further explained this was pointed out to Mr. Bell and his attorney and the City freely concedes that perhaps the City is missing something about property situation, but that this was pointed out to Mr. Bell’s attorney and they decided not to submit any other materials to clarify the situation for the City.

**8220 Stephanie Drive and 8402 Whitesburg Drive**

Mr. Canupp grouped 8220 Stephanie Drive and 8402 Whitesburg Drive together since they were both proposed on the applications as “non-commercial signs.” Mr. Canupp stated that again, Mr. Bell selected the “Other” box on the application and typed in “non-commercial sign.” Mr. Canupp stated the City does not really have a sign application category for a non-commercial sign. Mr. Canupp stated it appears Mr. Bell was attempting to rely on a provision of the City’s Sign regulations referenced in Article 72.6 of the Sign Regulation that is for non-commercial signs allowed in residential districts. Mr. Canupp explained that residents can certainly put up political signs and things such as that, but he pointed out that neither 8220 Stephanie Drive nor 8402 Whitesburg Drive are in residential districts; therefore the City could not process these applications as completed.

Instead of being in residential districts, each of these applications sought to place signs in a Neighborhood C1 Zoning District. The City does not permit non-accessory signs in C1 Districts, representing another reason for the denial.

Mr. Canupp further stated the City did not receive the type of survey that it is accustomed to receiving showing exactly where the sign was proposed to be located. At 8220 Stephanie Drive, the diagram / plat submitted suggested that the sign location might be in a railroad right-of-way. Mr. Riley pointed this out in his October 6 letter, but because the City was refused any response to this inquiry in the letter as to location, the City still really does not know; however, it looks like the sign is not on the right piece of property, even to the extent that the City proceeded to analyze the issue past the problems with the size of the sign and the zoning district.

**4811 University Drive**

Mr. Canupp stated the application for a sign permit at 4811 University Drive sought an “accessory” ground sign. Mr. Canupp stated that, typically, an accessory ground sign is when a business puts up a sign on the premises advertising the business. Mr. Canupp further explained this particular property already had two accessory ground signs on the premises.

Mr. Canupp described the property as a corner lot at the intersection of University Drive and Wynn Drive where an Exxon Gas Station is located; he stated that on each of the street frontages for the property, there is already an accessory ground sign with gas station prices listed. Therefore, another sign would not be allowed within a certain number of feet of the existing sign on the same frontage. Thus, taking Mr. Bell at his word that he was seeking to erect an accessory sign, the City denied the application because there was already an accessory ground sign located on the same frontage.

Mr. Canupp further stated that the reality is that this proposed sign is not an accessory sign at all. He noted that the attachment with the application indicated that the proposed sign was a large, steel, core drilled sign with an anchored footing. He stated that the proposed diameter of the sign pole was 3 ft (36”) wide, whereas an accessory ground sign can only have a pole width of 2 ft (24”).

Finally, it was not totally clear where the sign was being located from the submission and if Mr. Bell had all of the rights to erect the sign at this location. Mr. Canupp added that the City summaried in its “Nonaccessory Ground Sign Applications” document that not all reasons for the denial were listed.

**Conclusion**

Mr. Canupp stated that he hoped the Board would see that the City was not trying to violate anyone’s rights, but was simply trying to figure out how to deal with these unusual and somewhat unique applications that rendered proper administration of the Sign Regulations simply impossible. He closed by stating that there was no inappropriate action by the City and that there had been no variance request made, so there is nothing the Board should do.

**Response by Mr. Bell / New South Signs**

Chairman Sisson asked Mr. Bell if he would like to respond. Mr. Bell stated as far as some of these applications being incomplete, New South turned the applications in and they were denied, and when the fundamental signage you are trying to apply for you are told you can’t do, why spend the time to provide them with everything else.

Mr. Bell further stated all of our rights on these properties have been straightened out and we have everything they would need. Mr. Bell stated the City didn’t grant these applications because they saw them as non-accessory signs, and they really didn’t go further than that; then, when they later went through everything, they sent us a letter about that. Mr. Bell commented that if the City is calling all of these the same kind of sign, even though that’s not what he’s applying for, why should we be turning in all this other stuff.

Chairman Sisson stated that he would permit questions from Board members, and noted that the Board could not entertain constitutional issues. Chairman Sisson then remarked that he does know that frequently the Board has heard of City staff dealing iteratively with appellants on issues that, you know, this piece is missing, that needs to be provided, that kind of thing. He remarked that he is sure that City staff would love to hear that Mr. Bell has the ability to complete applications and the Board would love to hear that as well. Chairman Sission then asked why New South did not just apply for a variance at these locations, noting as well that the Board sees a fair amount of sign variances and applies the variance process.

Mr. Bell stated he did not seek a variance because he fundamentally feels the City staff applied the wrong rules to this. Mr. Bell further stated he did not want to ask for a variance from the code; instead, he contends the City applied its Sign Regulations completely wrong.

Chairman Sisson asked the Board for any questions. Dr. Branham asked Mr. Bell if it was true that Mr. Bell was refusing to supply the necessary information to the City to render his applications complete. Mr. Bell stated the City denied the applications, and so he did not see why he should have to re-submit anything if they were denied. Mr. Bell said that he has all necessary information but it just seems a moot point.

Chairman Sisson stated that it was frustrating to the Board that Mr. Bell would take that view because the Board typically wants to hear a complete application, and in fact in previous cases the Board has agreed to continue matters so that the applications can be completed, to give that opportunity to applicants. Chairman Sisson stated that he shared Dr. Branham’s thoughts.

Chairman Sisson then stated that that since there were no further questions, he would ask if there was a motion to overrule the decision and noted that in the absence of a motion the actions of the City’s Zoning Enforcement Coordinator would be upheld. There was no motion made.

Mr. Nunez then asked if anyone from the community had comments. Mr. Ryan Sharp appeared and stated that he owns the property on Whitesburg Drive where Steak-Out is located, just north of where the proposed 2121 Whitesburg Drive sign is located. He stated that a 350 square foot billboard right there would be inappropriate considering his rent paying business owners can only get a 32 square foot sign. As to the concept that the signs erected by New South would be a public service, he stated that he does not work for free and doubts that New South does, either. He also stated he feels this would be opening the door to a lot of billboards on Whitesburg Drive and feels no one would like to see that.

Chairman Sisson asked Mr. Bell if he intended to charge churches, non-profits and others to have messages on his signs. Mr. Bell stated some do, and some don’t. He stated he has advertised for Chamber of Commerce, the State and he has advertised COVID-19 Information.

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

Chairman Sisson asked for a motion to overrule the Zoning Administrator’s decision on the following cases:

Case 9295 An Administrative Review for type of signage in a Neighborhood Business C1 Zoning District at **2121 Whitesburg Drive SE**, Neil Bell for New South Media Group, LLC and Outdoor Marketing & Development, LLC, appellant.

Case 9296 An Administrative Review for type of signage in a Neighborhood Business C1 Zoning District at **4113 Bob Wallace SW**, Neil Bell for New South Media Group, LLC and Outdoor Marketing & Development, LLC, appellant.

Case 9297 An Administrative Review for type of signage in a Neighborhood Business C1 Zoning District at **8220 Stephanie Drive SW**, Neil Bell for New South Media Group, LLC and Outdoor Marketing & Development, LLC, appellant.

Case 9298 An Administrative Review for type of signage in a Neighborhood Business C1 Zoning District at **8402 Whitesburg Drive SW**, Neil Bell for New South Media Group, LLC and Outdoor Marketing & Development, LLC, appellant.

Case 9299 An Administrative Review for type of signage in Light Industry Zoning District at **4016 University Drive NW**, Neil Bell for New South Media Group, LLC and Outdoor Marketing & Development, LLC, appellant.

Case 9300 An Administrative Review for type of signage in a Highway Business C4 Zoning District at **4811 University Drive NW**, Neil Bell for New South Media Group, LLC and Outdoor Marketing & Development, LLC, appellant.

Case 9301 An Administrative Review for type of signage in a Light Industry Zoning District at **7904 Memorial Parkway SE**, Neil Bell for New South Media Group, LLC and Outdoor Marketing & Development, LLC, appellant.

Case 9302 An Administrative Review for type of signage in a Neighborhood Business C1 Zoning District at **7531 Bailey Cove Road SE**, Neil Bell for New South Media Group, LLC and Outdoor Marketing & Development, LLC, appellant

No motion was made, therefore the request was denied and the Zoning Enforcement Coordinator’s decision was upheld.

**Case 9312** **2915 Seventh Avenue SW,** The location of a structure; Jacob Gattis of Guild Builders, LLC for Chris Hanback of H2S, LLC, appellant.

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

**Case 9313** **2605 Poincianna Street SW**, The location of a structure; Kevin L. McCormick and Melissa Barton, appellant.

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

**Case 9315 7500 Iredell Main NW Unit A & 7501 Iredell Main NW Unit B**, The location of signage; Kimberly Fellowes Gaines of Iredell Homeowner's Association, Inc, appellant.

This case was withdrawn.

**Case 9317**  **1749 Pulaski Pike NW** , The location of off-street parking and shared access; Vickie A. Gesellshap of Himmel Properties, LLC, appellant.

A motion was made by Chairman Sisson and seconded Mr. Coffey to continue this request for 30 days. **Approved unanimously**

**Case No. 9319** **312 Sunset Avenue SW**, The location of a structure; Lee Kinzer May, appellant. Mr. Baudendistel stated the location of the property and stated this request will require a 5 foot front yard setback variance for a proposed open front porch. In a Residence 1-B, a 25 foot front yard setback is required for an open front porch addition.

A motion was made by Chairman Sisson and seconded by Mr. Coffey to continue this request for 30 days. **Approved unanimously**

**Case No. 9320 1200 Locust Avenue SE**; The location of a structure; William S. Propst III, appellant. Mr. Baudendistel stated the location of the property and stated this request will require a 4 foot 10 inch rear yard setback variance. This request will also require a 15 foot 2 inch secondary front yard setback variance. In a Residence 1-A Zoning District, a 40 foot rear yard setback is required.

Mr. William Propst and Mr. Mark Brubaker appeared before the Board. Chairman Sisson asked Mr. Brubaker to explain the variance request. Mr. Brubaker stated the existing house is in violation of the side yard setback. Chairman Sisson asked if the proposed garage was in compliance with the side yard setback. Mr. Brubaker stated the proposed garage is 21 feet off of the property line. Chairman Sisson asked where was the 4 foot 10 inch rear yard setback. Mr. Brubaker stated this request was at the back of the garage, and 40 feet off the property line. Chairman Sisson asked Mr. Brubaker about the 15 foot 2 inch secondary front yard variance for the open carport. Chairman Sisson also asked what is required. Mr. Cummings stated 25 feet is required and they are at 21 feet. Mr. Cummings further explained the front yard setback is 35 feet and the secondary front is 10 feet off, therefore the secondary front yard setback is 25 feet.

Chairman Sisson asked the Board for any questions. Dr. Branham asked if the house was already out of compliance, why were they adding a carport that will increase the non-conformance. Mr. Brubaker stated it will be an open carport and be able to view the line of sight down Tennessee Street. Mr. Cummings stated Tennessee Street is very unique. Mr. Cummings stated on the east side of Tennessee there are several homes that are set back between 14 and 24 feet, but on the west side of Tennessee there are several primary homes and accessory buildings sitting right on the property line. Therefore there are several homes already within the secondary front yard setbacks. Chairman Sisson asked the Board for any more questions or comments. Dr. Branham stated he is not in favor of the open carport. Vice-Chairman Peake stated he agrees with Dr. Branham. Mr. Brubaker asked if they could do a 4 foot side stoop on the secondary front. Chairman Sisson stated they could do a covered stoop due to several homes already encroaching into the secondary front yard on Tennessee Street. Chairman Sisson also stated the stoop is not to be enclosed.

A motion was made by Chairman Sisson and seconded by Dr. Branham to approve a 4 foot 10 inch rear yard setback variance for the location of a rear attached garage and approved a variance to allow a 4 foot covered stoop on the secondary front. **Approved unanimously**.

**Case No. 9321 6275 University Drive NW**; PVA landscaping; Alex Coleman of Johnson & Associates for Brent Hendrix of BVA WESTSIDE SPE, LLC, appellant. Mr. Baudendistel stated the location of the property and stated this request will require a variance for PVA perimeter landscaping on the north and south property line due to the fact the appellant is proposing to subdivide an existing PVA area.

Mr. Alex Coleman of Johnson & Associates appeared before the Board representing BVA WESTSIDE SPE, LLC, and his client is requesting a variance for PVA perimeter landscaping. Mr. Cummings stated this is the Target Shopping Center area. Mr. Cummings stated the appellant is requesting to prevent landscaping from going in the drive aisle and parking space areas. Chairman Sisson asked Mr. Coleman if they had a drawing showing where the property will be actually subdivided. Chairman Sisson asked Mr. Coleman exactly where is the 5 foot landscaping be varied. Mr. Coleman stated on Lot 1A, on all 4 sides. Chairman Sisson stated on the north side there is perimeter landscaping already existing. Chairman Sisson stated to Mr. Coleman the Board really needs a drawing showing exactly where the property lines will be, and then The Board will know exactly what is being varied.

A motion was made by Chairman Sisson and seconded by Mr. Coffey to continue your request for 30 days. **Approved unanimously**.

**Case No. 9322 101 Springhaven Drive NW**; The location of a swimming pool; Brian S. Pletcher & Raquel D. Pletcher, appellant. Mr. Baudendistel stated the location of the property and stated this request will require a variance to allow a swimming pool to be located in a side yard due to the pie shaped lot and the large U&D Easement at the rear.

Mr. Pletcher appeared before the Board stating his rear yard is pie shaped, he has a large utility and drainage easement and will not have room to put a pool in the rear yard. Therefore, the pool will have to be located in the side yard. Mr. Coffey asked if he received any comments from the neighbors that received letters. Mr. Pletcher stated the neighbors have all been supportive. Chairman Sisson asked the Board for any comments or questions. No comments were given.

A motion was made by Vice-Chairman Peake and seconded by Dr. Branham to approve a variance to allow a swimming pool in the side yard due to the shape of the rear lot and the fact the lot is located in a cul-de-sac with a large utility and drainage easement. **Approved unanimously**

**Case No. 9323 6008 Mastin Lake Road NW**; The location of off-street parking, and a special exception to allow entertainment, patio seating and expanded hours of operation from 12:00 a.m. to 2:00 a.m. for on-premises retail sale, service, dispensing, or consumption of alcoholic beverages in a Neighborhood Business C-1 Zoning District; Carlos Burwell of Sac’s Kitchen, LLC, appellant. Mr. Baudendistel stated the location of the property and stated this request will require a variance for the location of off-street parking. This request will also require special exception to allow entertainment, patio seating, and expanded hours of operation from 12:00 a.m. to 2:00 a.m. for on-premises retail sale, service, dispensing, or consumption of alcoholic beverages in a Neighborhood Business C-1 Zoning District.

Mr. Burwell of Sac's Kitchen appeared before the Board stated this is a restaurant and is requesting a variance for the location of off-street parking to special exception to allow entertainment, patio seating, and expanded hours of operation from 12:00 a.m. to 2:00 a.m. for on-premises retail sale, service, dispensing, or consumption of alcoholic beverages in a Neighborhood Business C-1 Zoning District. Also, Mr. Burwell stated they have 24 parking spaces and have agreements with separate parking lots for extra parking. Mr. Cummings stated this was an office plaza with retail, and the appellant has taken over the entire building as a restaurant. Therefore, that changes the parking capacity for this existing building. The parking is based off the seating capacity. Mr. Cummings further stated Mr. Burwell is proposing to have 80 seats at his restaurant, and that will require 40 parking spaces and the site only has 24 parking spaces. Mr. Cummings explained Mr. Burwell has parking agreements with 2 property owners for extra parking spaces.

Mr. Burwell explained he will like to do karaoke and live jazz on the patio seating. Mr. Cummings explained he will only be able to do karaoke on the inside because no entertainment can be outside the building, or any live-entertainment exterior to the building. Mr. Coffey asked Mr. Burwell how would you access the patio. Mr. Burwell said through the building. Chairman Sisson asked Mr. Burwell how he would serve food on the patio. Mr. Burwell stated most of the food would be served on the inside of the building and the patio area would mostly be a smoking area due to no smoking on the inside. Mr. Cummings also stated Mr. Burwell would have to reduce the patio area in order to have enough PVA area on the site. Mr. Cummings stated Mr. Burwell would have to reduce the patio area to a 20'x24' in size. Vice-Chairman Peake asked how late was he currently open. Mr. Burwell stated he closes at 7 p.m. Vice-Chairman Peake asked Mr. Burwell what kind of establishments were the buildings that he is leasing parking spaces from. Mr. Burwell stated a hair salon that closes at 7 p.m. and the other building was just an abandoned building. Vice-Chairman Peake recommended that the Board put a time limit for a review to see how it will impact the neighborhood for a newly expanded restaurant. Mr. Coffey asked Mr. Burwell what time will the kitchen close under his new hours. Mr. Burwell stated at 11:00 p.m. Mr. Cummings stated this property is located in a Neighborhood Business C1 Zoning District, and if the kitchen closes at 11:00 p.m. then the facility should be closed, because he is a restaurant. Mr. Cummings also stated the expanded hours will constitute a lounge which is not permitted in a Neighborhood Business C1 Zoning District. Also, Mr. Coffey asked Mr. Burwell if he received any feedback from the neighbors he sent letters out too. Mr. Burwell stated no. Officer Somerville of the Huntsville Police Department recommends the patio area closes at 11:00 p.m. due to any noise issues.

A motion was made by Chairman Sisson and seconded by Mr. Ford to approve:

* A variance for the location of off street parking with the stipulation lease agreements are maintained and kept on file with the City of Huntsville for this appellant only and for one year only.
* Approved – A special exception to allow entertainment for this appellant only and for one year only.
* Approved – A special exception to allow patio seating with the stipulation the patio area is a maximum of 20’ x 24’ in size and the patio seating area can remain open until 11:00 p.m. all for this appellant only and for one year only.
* Denied – A special exception for expanded hours of operation from 12:00 a.m. to 2:00 a.m. to allow some time to determine the impact on the residential neighborhood for a newly expanded restaurant.
* **Approved unanimously**

**CASE 9324 106 Jefferson Street SW;** Jessica Harcrow of Knight Signs Industries, Inc. for Wesley B. Crunkleton of Jefferson Hotel Partners, LLC, appellant. Mr. Baudendistel state the location of the property and stated this request will require a 32 inch projection variance for an attached vertical lettered double faced sign. In a General Business C3 Zoning District, a double-faced sign shall project no more than 16 inches from the face of the building.

Mr. Fred Coffey recused from this case. Ms. Jessica Harcrow of Knight Signs Industries appeared before the Board. Ms. Harcrow stated they are requesting a variance for the projection, the proposed sign is projected at 48 inches, so therefore they are requesting an additional 32 inch projection variance for an attached vertical double faced sign. Ms. Harcrow further stated this is the only sign on the property for the hotel. Chairman Sisson asked Ms. Harcrow did the hotel have a name. Ms. Harcrow stated 106 Jefferson is the name and logo for the hotel. Vice-Chairman Peake asked the City if the size of the sign was compliant. Mr. Cummings stated yes. Vice-Chairman Peake also asked if the proposed amendment ordinance cover this. Mr. Cummings stated yes, the new ordinance will allow up to 48 inches.

A motion was made by Vice-Chairman Peake and seconded by Dr. Branham to approve a 32 inch projection variance for an attached vertical double-faced sign and based on the understanding the City is in the process of amending the Zoning Ordinance with the stipulation air rights are granted over any City Right of Way. **Approved unanimously**

There being no further business, the meeting adjourned at 8:20 p.m.