Administration Building

Council Chambers

308 Fountain Circle

April 20, 2021

6:00 p.m.

**BOARD OF ZONING ADJUSTMENT**

Members Present:

Mr. Martin Sisson – Chairman

Mr. Bert Peake – Vice Chairman

Ms. Kimberly Ford

Dr. David Branham

Mr. Johnny Ozier – Supernumerary

Ms. Wendy Lee - Supernumerary

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

Mrs. Courtney Edwards, City of Huntsville Zoning Administration, Recording Secretary

Mr. Robert Baudendistel, City of Huntsville Zoning Administration

Officer Johnny Hollingsworth, 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. 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 562 Carters Gin Road NW, The location of a structure at 3223 Bayless Drive SW, and the location of off-street parking and the location of shared ingress/egress at 1749 Pulaski Pike NW. Also, A variance for the type, size, height, and location of signage at 3014 University Drive NW has been withdrawn.

Chairman Sisson then called the extension items.

**Case No. 9212-1** **2030 Cecil Ashburn Drive SE - Suite 109;** A special exception to allow patio seating and expanded hours from midnight to 2:00 a.m.;Edward Bordelon of East Side Jalapeno Company, Inc., appellant. Mr. Baudendistel stated the location of the property and stated this request will require a special exception to allow patio seating and expanded hours from midnight to 2:00 a.m. in a Neighborhood Business C1 Zoning District.

Mr. Cummings stated this request was approved by the Board in 2020 and the appellant is now removing the request for live entertainment. Edwards Bordelon of East Side Jalapeno Company, Inc. appeared before the Board and stated they opened in August of last year and the only change they wanted to make was not having live entertainment. Chairman Sisson asked for clarification on the requests. Mr. Cummings stated the appellant is only requesting patio seating and expanded hours of operation. Vice Chairman Peake asked if the Huntsville Police Department had any complaints from this establishment. Officer Hollingsworth stated no complaints or calls of service at this establishment. Chairman Sisson asked if the City had heard any complaints. Mr. Cummings stated the neighborhood behind this establishment has voiced their concern and some of the citizens are present.

Julie Martz of 1403 Old Carriage Lane stated her property backs up to this establishment. Mrs. Martz also stated she can hear the music inside of her home. Mrs. Martz stated her home and some of the neighboring residential homes are within 150 feet of this property. Mrs. Martz also stated she is not in favor of this request. Mrs. Martz asked for clarification of why a new business gets to change the zoning or regulations. Chairman Sisson stated this request is a special exception and that means there is no zoning changes being made. Chairman Sisson also explained a special exception is a request that the Board looks at for a permitted use but what impacts the request would have on the neighborhood.

Roy Uhrig of 1305 Old Carriage Lane stated the End Zone is a popular place but hasn’t been open a full year and in his opinion the noise level is extreme.

George Case of 1303 Old Carriage Lane stated he agrees with what was stated previously and he is against this request.

Bekah Schmidt stated she received numerous concerns from the Community. Ms. Schmidt also stated the biggest concerns were the noise and the business being open until 2 A.M.

Nell Walker of 1402 Old Carriage Lane stated she has been woke up at 1:15 in the morning and she called the business to turn down the music. Ms. Walker also stated the business turned down the music, but it continues to be a problem.

Yvonne Betowt of 1310 Old Carriage Lane stated this neighborhood has always been quiet and she also has an issue with the noise and late hours.

Walt Hayes of 1404 Old Carriage Lane stated he would like some clarification on the type of establishment this is licensed to be. Mr. Hayes stated it was communicated to the neighborhood this was a restaurant and, in his opinion, it is not a restaurant.

Russ Russell of 7110 Heathrow Drive stated this request should be denied.

Nance Willuhn of 1406 Old Carriage Lane stated she supports local business in the area, but she does not support this 21 and up lounge.

Chairman Sisson asked for clarification on the use and if it’s permitted in a Neighborhood Business C1 Zoning District. Mr. Cummings stated the use is a Restaurant Liquor Retailer and it is permitted in a Neighborhood Business C1 Zoning District. Mr. Cummings also stated this establishment is looked at like a restaurant due to the fact they have 50% or more of food sales than alcohol sales. Chairman Sisson asked HPD about the noise ordinance. Officer Hollingsworth stated after 10 P.M. if you can hear the music then call police and they can enforce the ordinance. Vice Chairman Peake asked if HPD has had any noise complaint calls at this location. Officer Hollingsworth stated no. Ms. Lee asked if this location had a patio before. Mr. Cummings stated yes, the previous business had a patio and it was permitted without coming to the Board due to the fact they did not serve alcohol. Mr. Cummings stated the Board can restrict the time on the patio hours and can put a stipulation to not have outside speakers. Ms. Lee asked how many seats are on the patio. Mr. Borderline stated 20 is the seating capacity on the patio. Mr. Cummings pointed to the patio seating area. Dr. Branham asked if there is any other patio seating located in the area. Mr. Cummings stated yes at Mellow Mushroom. Dr. Branham stated the patio seating should not be denied, due to the fact Covid has pushed for more outside dining. Mr. Bordelon stated he is more concerned with being denied the expanded hours and it would hurt his business to not be open until 2 A.M. Ms. Ford stated if the speakers are removed from the patio, she does not have a problem with the patio. Chairman Sisson asked if the Board had any questions or a motion.

A motion was made by Dr. Branham and seconded by Vice Chairman Peake to approve a special exception to allow patio seating in a Neighborhood Business C1 Zoning District with the stipulations the patio seating area can remain open until 10:00 p.m., and existing patio speakers are removed for this appellant only and for 1 year only. **Approved unanimously.**

No motion was made on the following request: A special exception to allow expanded hours from midnight to 2:00 a.m. in a Neighborhood Business C1 Zoning District.

**Case No. 9330-2 1203 Bluefield Circle SE;** The location of a structure, Bruce Whitefield Perry for Anne Stewart Whitfield, appellant. Mr. Baudendistel stated the location of the property and stated this request will require a 16 foot rear yard setback variance, a 6 foot 11 inch north side yard setback variance, and a 4 foot 6 inch south side yard setback variance.

Bruce Whitefield Perry appeared before the Board and stated they are back before the Board after they had completed some revisions to the original site plan. Vice Chairman Peake asked if the rear or the side yard setback requests be reduced. Mr. Baudendistel stated both have been reduced. Mr. Perry stated they reduced the plan as much as they could and there are still no rear windows. Mr. Baundendistel pointed out the reductions in setbacks. Chairman Sisson asked if this is a two-story home. Mr. Perry stated this is a one story home with a bonus room upstairs. Mr. Cummings stated when this request was before the Board previously, neighbors had come out and voiced concerns about the rear yard setback. Mr. Cummings also stated the owner has worked to reduce the variance request on the rear. Chairman Sisson asked if there are any plans to expand on the second floor. Mr. Perry stated no. Dr. Branham stated these 4 lots are family land and the family laid the lots out. Dr. Branham also stated he does not like granting variances on vacant lots. Ms. Whitfield stated when the cul-de-sac was put in; the lots were then changed. Mr. Perry stated the easements on the property make it difficult to pick a floor plan that will fit on the lot. Vice Chairman Peake stated he understands wanting to maximize the lot, however when doing so the appellant has a responsibility to know when it’s overkill. Dr. Branham asked for clarification if the appellant is proposing 24’ from the property line instead of 40’. Mr. Cummings stated yes. Dr. Branham stated if this variance is granted then there should be a stipulation for no additions on the rear or on the second floor. Chairman Sisson stated they would also need to include no windows on the second floor.

A motion was made by Dr. Branham and seconded by Mr. Ozier to approve a 16 foot rear yard setback variance, a 6 foot 11 inch north side yard setback variance, and a 4 foot 6 inch south side yard setback variance due to the shape of the lot and the large Utility & Drainage Easements, all with the stipulations no additional windows on the rear second level of the home, and no future additions to the home. **Approved unanimously**.

**Case No. 8695-3 114 Jordan Lane NW**; A special exception to allow live entertainment in a Neighborhood Business C1 Zoning District; Timmy Faul, appellant. Mr. Baudendistel stated the location of the property and stated this request will require a special exception to allow live entertainment in a Neighborhood Business C1 Zoning District.

Mr. Timmy Faul appeared before the Board and stated he owns Tim’s Cajun Kitchen, and they have come before the Board several times. Mr. Faul stated they have never had a complaint. Chairman Sisson asked what time does the business close. Mr. Faul stated 10 P.M. Chairman Sisson asked if the Board had any questions or if there was a motion.

A motion was made by Dr. Branham and seconded by Vice- Chairman Peake to approve a special exception to allow live entertainment in a Neighborhood Business C1 Zoning District for this appellant only and for 3 years only. **Approved unanimously**.

**Case No. 9045-3 1812 Pulaski Pike NW**; A use variance to allow an adult day care; Connie P. Earskine, appellant. Mr. Baudendistel stated the location of the property and stated this request will require a use variance to allow an adult daycare in a Residence 1-B Zoning District.

Ms. Ford recused. Ms. Connie Earskine appeared before the Board and stated she is back before the Board to continue her adult daycare business. Chairman Sisson asked if there have been any complaints. Officer Hollingsworth stated no. Vice Chairman Peake asked why they have only been extended previously for 1 year only. Mr. Cummings stated the Board wanted to see more history for this request. Vice Chairman Peake asked how many patients did she have. Ms. Earskine stated 6 patients. Chairman Sisson asked if the appellant can be granted this request for 3 years. Mr. Cummings stated yes.

A motion was made by Chairman Sisson and seconded by Mr. Ozier to approve a use variance to allow an adult day care in a Residential 1B Zoning District, for this appellant only and for three years only, with the stipulations; the hours of operation being Monday through Sunday 6:00 a.m. to 6:00 p.m., no more than six adults for care during part of the 24-hour day, The State of Alabama Department of Human Resources Minimum Standards for Day Care Homes for Adults are met, and subject to approval for ADA compliance from the Inspection Department. **Approved unanimously**.

Chairman Sisson then called the agenda items.

**Case No. 9357 375 Natures Way SW;** The location of a swimming pool; Patrick J. Long and Christi Gardner appellant. Mr. Baudendistel stated the location of the property and stated this request will require a variance to allow a swimming pool in a side yard.

Mr. Cummings stated this lot has a front and a secondary front and does not really have a back yard. Dr. Branham asked for clarification on the location. Mr. Cummings stated the proposed pool would not be passed the plain of the house. Ms. Christi Gardner appeared before the Board and stated they will be building a privacy fence. Ms. Lee asked if the appellant has an HOA and if they approved this proposed pool. Ms. Gardner stated yes, the HOA approved the pool design.

A motion was made by Dr. Branham and seconded by Vice-Chairman Peake to approve a variance to allow a swimming pool in a side yard due to the fact this is a corner lot, with the stipulations the swimming pool location does not exceed the plain of the house and a privacy fence is installed. **Approved unanimously**

**Case No. 9358 562 Carters Gin Road NW**; The location of a structure; Walter Alexander and Charles Howard of A&H Construction/Development, LLC, appellant. Mr. Baudendistel stated the location of the property and stated this request will require a 20 foot front yard setback variance and a 25 foot 7 inch rear yard setback variance.

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

**Case No. 9359 520 Franklin Street SE**; The location of a structure; John Houston Gully and Rajean Meester Gully, appellant. Mr. Baudendistel stated the location of the property and stated this request will require a 13 foot11 inch rear yard setback variance and a 1 foot 10 inch side yard setback variance for the proposed addition.

Mr. John Houston Gully appeared before the Board and stated he is proposing to add an addition on the rear and side of an existing garage. Chairman Sisson stated there is a fair amount existing on this lot. Mr. Cummings stated the appellant now owns the lot to the north east. Mr. Gully stated the addition would allow him to build a storm shelter. Mr. Cummings stated this property abuts a concrete wall and a parking lot. Mr. Cummings also stated the property abuts the General Business C3 Zoning District. Chairman Sisson asked if he mailed out letters and if he heard anything from the neighbors. Mr. Gully stated yes but heard no opposition from the neighbors. Chairman Sisson asked for clarification on the ownership of the right-of-way or easement. Mr. Cummings stated the appellant provided some documentation; however, they would have to be verified. Dr. Branham asked if any of the homes abutting this property meet the rear yard setback. Mr. Baundendistel pointed to the homes that do not meet the rear yard setback.

A motion was made by Chairman Sisson and seconded by Vice Chairman Peake to approve a 13 foot 11 inch rear yard setback variance and a 1 foot 10 inch side yard setback variance due to the fact this property abuts a concrete wall, and a parking lot to a commercial building and subject to Zoning Administration approval of all legal ownership documentation. **Approved unanimously**

**Case No. 9360** **4506 Old Farm Cir SE**; The location of a swimming pool; Luke Wolff and Jessica Lee Wolff; appellant. Mr. Baudendistel stated the location of the property and stated this request will require a variance to allow a swimming pool in a side yard.

Mr. Luke Wolff appeared before the Board and stated he would like a swimming pool for his family. Mr. Wolff also stated his property is heavily sloped so the side yard is the best location for a pool. Chairman Sisson asked if this is a combined lots. Mr. Wolff stated yes. Mr. Baudendistel stated the topography is sloped and the lot has a lot of rocks. Mr. Cummings stated houses that cross over the property line are considered merged. Mr. Cummings also stated this lot functions like a secondary front. Vice Chairman Peake asked if the appellant will be screening the pool from view. Mr. Wolff stated they would be landscaping and putting up a privacy fence. Chairman Sisson asked if there was anyone who was here to comment.

A HOA representative appeared before the Board and stated they have been in communication with the appellant and they have concerns about a precedent being set in this neighborhood. He also stated the covenants state the side yards should be kept in a natural state. Chairman Sisson stated the appellant should take a continuation to further discuss with the HOA.

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

**Case No. 9361 3223 Bayless Drive SW**; The location of a structure; Jose Soto-Cortes, appellant**.** Mr. Baudendistel stated the location of the property and stated this request will require a 2 foot 6 inch setback variance for the location of a detached accessory structure.

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

**Case No. 9362 1749 Pulaski Pike NW**; The location of off-street parking and the location of shared ingress/egress; Vickie A. Gesellshap of Himmel Properties, 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 and a variance for the location of shared ingress/egress.

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

**Case No. 9363 1304 Locust Avenue SE**; The location of a structure; Edward Jones for Peter E. Farrell, Jr., appellant. Mr. Baudendistel stated the location of the property and stated this request will require a 4 foot 5 inch rear yard setback variance for the location an addition.

Edward Jones for Peter E. Farrell, Jr. appeared before the Board and stated he has been working with his client for over a year and originally the client wanted a swimming pool. Mr. Jones also stated after finding a sewer line running through the proposed location of the swimming pool, the client decided he now wants an addition. Mr. Baudendistel stated the proposed addition meets all setbacks except a 4 foot 5 inch rear yard setback. Mr. Jones stated they have been through the historic commission and have had no opposition from the neighbors. Mr. Cummings stated the side yard setback variance request is not needed due to the fact the fireplace is considered an architectural feature.

A motion was made by Vice Chairman Peake and seconded by Dr. Branham to approve a 4foot 5 inch rear yard setback variance for an addition. **Approved unanimously.**

**Case No. 9364** **401 Clinton Avenue NE** ; A use variance to allow a residential dwelling, a professional office in a Residence 2B Zoning District and a use variance for the location of off street parking; Nicole Rhodes of 401 Clinton LLC, appellant. Mr. Baudendistel stated the location of the property and stated this request will require a use variance to allow a multi-family residence and a professional office within the same building in a Residence 2-B Zoning District. This request will also require a use variance for the location of off-street parking.

Mrs. Nicole Rhodes and Mr. David Rhodes appeared before the Board. Mrs. Rhodes stated they would like to have a multi-family dwelling and turn the basement into an office space. Chairman Sisson asked the City why this would not be allowed. Mr. Cummings stated a dual use is not permitted in a Residence 2B Zoning District. Chairman Sisson stated therefore you cannot have them both at the same time. Mr. Cummings stated no, in the Residence 2B Zoning District, multi-family dwellings and professional offices are allowed but not both together. Mr. Cummings stated this property is adjacent to the Neighborhood Business C3 Zoning District and the City’s new parking garage where this use would be a permitted use.

Mrs. Rhodes stated this building was built in 1935 and now we plan to renovate the inside and make no changes to the exterior of the building. Chairman Sisson asked what was the square footage of the basement. Mrs. Rhodes stated 3000 square feet. Vice-Chairman Peake asked if this was the building that had a steep driveway. Mrs. Rhodes stated yes. Vice-Chairman Peake asked Mrs. Rhodes to explain the office use. Mrs. Rhodes stated there would be 2500 square feet of office space in the basement for CPA’s, Attorneys, or have very low impact office uses. Vice-Chairman Peake asked if this would be a multi-tenant office. Mrs. Rhodes stated they would only have 2 tenants. Mr. Cummings stated again if this was in the Neighborhood Business C3 Zoning District this use would be permitted, but it is not. Dr. Branham asked the City if there was any history of this type of use in a Residence 2B Zoning District. Mr. Cummings stated no, and that our legal staff had some concerns also. Vice-Chairman Peake asked the appellant if they were only allowed to pick one use, which one would they prefer. Mr. Rhodes stated the residential use and possibly have short term leases. Mr. Cummings stated the request is not for any signage, also there will be no parking on site and that the Board can stipulate the location of off-street parking.

Mr. Mike Self appeared before the Board. Mr. Self stated he was concerned with the parking, and this use setting a precedent in this Residence 2B Zoning District. Chairman Sisson asked if the City has considered rezoning this property. Mr. Nunez stated the mixed use is being considered to a new Zoning District.

Mrs. Lucy Brown appeared before the Board stating she does not like a mixed use, or addition of any business to this Residence 2B Zoning District. Mr. Cummings stated this section of the Residence 2B Zoning District is small and historic. Mr. Dwight Wright appeared before the Board concerned about the parking and exactly what was a professional office. Mr. Cummings stated in a Residence 2B Zoning District, office buildings are allowed. Mr. Cummings further stated a medical office is an office building and would be permitted, however professional offices are for attorneys, architects, or CPA’s. Chairman Sisson asked Mrs. Rhodes about the parking issue for this site. Mrs. Rhodes stated they are in the process of trying to obtain a parking agreement with the City to be allowed to park in the new parking garage which is off site from this property. Chairman Sisson asked the Board for any questions or comments. Dr. Branham stated he is concerned with the precedent this will set in a Residence 2B Zoning District. Vice-Chairman Peake made the remark we have Zoning Districts for this but just not a Residence 2B Zoning District. Chairman Sisson asked the City for any comments. No comments were given.

A motion was made by Chairman Sisson and seconded by Vice Chairman Peake to approve a use variance to allow a professional office within the basement of an existing multi-family residence in a Residence 2-B Zoning District due to the facts the appellant will protect the historic nature of the exterior of the building, will maintain the existing greenspace by providing off-site parking for the multi-family residence and professional offices, and the property is adjacent to the City’s new multi-level parking deck, and also approved a use variance for the location of off-street parking subject to a parking agreement to allow parking within the City’s new multi-level parking deck. The motion did pass with a 4 to 1 vote.

**Case No. 9365** **434 Locust Avenue NE** ; A variance to expand a non-conforming structure; Andrea T. Vandervoort, appellant. Mr. Baudendistel stated the location of the property and stated this request will require a 5 foot 6 inch side yard setback variance.

Chairman Sisson recused. Andrea T. Vandervoort appeared before the Board and provided an updated site plan. Vice Chairman Peake asked if the addition was on the rear of the home. Mr. Vandervoort stated yes. Mr. Baudendistel stated the proposed addition is extending but not increasing an existing non-conformance.

A motion was made by Mr. Ozier and seconded by Dr. Branham to approve a 5 foot 6 inch side yard setback for an addition due to the fact the addition does not increase the existing non-conforming side yard setback foot 5 inch rear yard setback variance for an addition **Approved unanimously**

There being no further business, the meeting adjourned at 8:43 p.m.