

MINUTES OF MEETING

HOOVER BOARD OF ZONING ADJUSTMENT

Date: August 23, 2021
Time: 5:30 P.M.
Place: Hoover Municipal Center
Present: Mr. Curtis Jackson
Mr. Dan Mikos
Mr. David LeCompte
Mr. Kyle Puchta
Mr. Jim Brush
Mr. Lawren Pratt

Absent: Mr. TJ Dolan

Also Present: Mr. Mac Martin – City Planner
Ms. Vanessa Bradstreet – Zoning Assistant
Ms. April Danielson – City Attorney Staff

1. CALL TO ORDER

The meeting was called to order by Mr. Mikos. The secretary had the roll call and a quorum was present. Mr. Mikos announced the voting members for this meeting would be Mr. Jackson, Mr. Pratt, Mr. Brush, Mr. Puchta, and himself.

2. APPROVAL OF MINUTES: Mr. Mikos asked if anyone had any additions or corrections to the minutes from the July 26, 2021, BZA meeting. There being none, Mr. Mikos asked for the minutes to be accepted by acclamation.

The following case was continued at the July 26, 2021, BZA meeting:

3. BZA-0721-11 – First Sunbelt Properties, Inc., representing CM 280, LLC, is requesting a variance to permit a single 13’4” tall, 54 square foot multi-tenant sign at the intersection of US Hwy 280 and Adena Lane for the purpose of on- and off-premise advertising for businesses located on Adena Lane. The requested sign would be in lieu of detached pole signs otherwise permitted on each property. The property is owned by CM 280, LLC and is zoned PC (Planned Commercial). **(APPROVED)**

Ms. Carlene Dobson, attorney for First Sunbelt Properties, 3348 Smier Road, Birmingham, AL 35216, stated they had previewed this case last month but didn’t have the specifics worked out. She stated what they proposed was a rendering (shown) would be constructed on Lot 6A and would include advertising for the

businesses on Lot 6A which was permitted under the code but would also permit advertising for businesses on Lots 2A, 3A, and 5A. She stated that if any businesses on those lots advertised then on that sign, then that lot would relinquish its' right for any freestanding sign exceeding 70" in height and additionally that lot would be limited to an aggregate sign face area of no more area than 40 square feet for a small freestanding sign or building exterior signage of a total of 40 square feet. Ms. Dobson went on to explain that if a business on a lot advertised on this directory sign as off-premise advertising, they felt that having this one directory sign would be more aesthetically pleasing than having several pole signs and would provide more safety with the one sign and help to ease traffic.

Ms. Dobson stated there is currently a declaration that created and governed this subdivision, therefore, in the signage section (5.11) they would include the fact that Lots 5A, 3A, and 2A could have off premises signage on this directory sign, but if they did, they would relinquish the right to having freestanding signs over 70" in height and in addition to that, the total of any such freestanding sign and building exterior signage would have to be 40 square feet or less.

Mr. Mac Martin, City Planner, stated that was everything they had gone over and had been supplied with the updated restrictions which basically had more to do how Lot 6A was treated since they were not requesting off premise advertising and they were excluded from a lot of the restrictions placed on the exterior lots. Mr. Martin stated the city was pleased and satisfied with the revised request.

Mr. Brush asked what the date of the revisions was and Mr. Martin stated he had received the revisions the date of the meeting which was August 23, 2021.

Mr. Mikos asked if there were any questions from any Board members or the audience. There were none. Mr. Mikos asked for a motion. Mr. Jim Brush made a motion to approve BZA-0721-11 as amended by the revisions submitted today to the BZA committee. Mr. Jackson, Mr. Pratt, Mr. Brush Mr. Puchta, and Mr. Mikos voted "aye" unanimously. The variance was approved.

4. BZA-0821-12 – Lance & Sandra Yates, 649 Village Crest Circle, are requesting a variance to allow construction of a fence in the front yard and to construct a roof structure extending 8 feet into the required 10 foot rear setback. Mr. & Mrs. Yates are the property owners and the property is zoned PRD (Planned Residential Development District). **(DENIED)**

Mr. Lance Yates, 649 Village Crest Circle, Hoover, AL 35226, came forward to represent the case. Mr. Yates stated the reasons of building the fence and partially enclosing their patio. He stated they were trying to provide their grandchild a safe place to play. Mr. Yates proceeded to show several pictures of their property. Mr. Yates described drainage problems they had had for several years and things they had tried to do for erosion problems. They also had a French drain installed.

Mr. Mikos addressed the issue of them not obtaining a building permit, being told to stop work by a building inspector, and then never coming back to obtain a permit for over a year. Mr. Mikos then addressed the lack of permit meant that no city inspections had ever been done on the property. Mr. Mikos added several other violations that were built with no permit. He listed they built into the 10 foot setback about 8 feet, built an actual room not just a patio, and installed a front yard fence inside an easement. Mr. Yates asked for an explanation of the easement.

Mr. Mikos explained they actually had two front yards because of them facing two roads, which meant they had a 25' setback on the side that has the fence. Mr. Mikos stated there was an easement that they built into that runs parallel to Sulphur Springs Road. Mr. Mikos stated they would have needed a variance to build inside an easement. A discussion was held about the water problems they had experienced.

Mr. Mikos asked Mr. Yates if they had gotten permission by the HOA prior to building this. Mr. Yates stated they did and went on to say he was President of the HOA and his wife was Secretary. He then listed several of the HOA board members that had reviewed the plan, some of who were at this meeting.

Mr. Puchta asked if they had a contractor for this project and if they had never mentioned getting a building permit. Mr. Yates stated they had some people who had helped them. Mr. Mikos asked who the fence contractor was and also who did the framing. Mr. Yates answered Jonathan Stevens was the contractor who did everything.

Mr. Mikos then asked if anyone in the audience would like to speak to this request. Ms. Mary Hayes, 639 Village Crest Circle, spoke with concerns about this request. Ms. Hayes spoke about the decorative wrought iron fence owned in common by the homeowners association. Ms. Hayes stated the fence the Yates' built was permanently affixed to the wrought iron fence which prevented the homeowners being able to maintain the fence which belonged to the homeowners as a whole and was their responsibility to maintain.

Ms. Hayes also stated the fence had effectively eliminated the pedestrian egress from the cul-de-sac and was a safety hazard in her opinion. Ms. Hayes added that aesthetically and with respect to color, the fence did not fit into their HOA.

Mr. Mikos asked if the HOA had any requirements regarding building structures or colors. Ms. Hayes stated the requirements were to be soft tones and should fit into the rest of the neighborhood.

Ms. Sandra Yates, 649 Village Crest Circle, stated the wrought iron fence was supposed to be black. She stated it was currently rusted and had not been painted since the developer put it in.

Discussion was then held about if the fence was affixed or not. Mr. Jackson asked Mr. Martin about structures build into the easement. Mr. Martin stated that no structures should be built inside an easement.

Mr. Pratt asked Ms. Hayes if any plans were ever submitted to the HOA for approval regarding this plan. Ms. Hayes answered yes. Mr. Pratt then asked Mr. Yates if plans were ever submitted. Mr. Yates answered he gave members a plan that showed installing a fence and enclosing the patio.

Ms. Sandra Yates, 649 Village Crest Circle, then explained there was no formal ARC Committee for this HOA. She stated it was a very small HOA.

Mr. Mikos asked if there were any other questions. There were none. Mr. Mikos asked for a motion. Mr. Brush made a motion to approve BZA-0821-12. Mr. Puchta seconded the motion. After a roll call vote, the motion was denied unanimously. Mr. Mikos announced the request had been denied and Mr. Yates asked what their options were. Mr. Mac Martin, City Planner, announced the encroachments would need to be removed. Mr. Yates asked exactly what would need to be removed. Mr. Martin stated the entire enclosure in the back, the room had not been permitted and had no inspections done, and the fence.

5. **BZA-0821-13** – Tacala, LLC, representing Montclair Restaurants Inc. is requesting a variance to the landscape/tree conservation criteria for redevelopment of property located at **1553 Montgomery Hwy.** Tacala is planning to demolish the existing building and build a new restaurant with drive-thru. The applicant is seeking a reduction to the required width of front perimeter landscaping along US 31 by 13' along with the required tree plantings, and a reduction to the required side perimeter landscaping width by 3' along the south side of the property (adjacent to Burger King). The ordinance requires 15' and 8' of perimeter landscaping respectively. The property is zoned C-2 (Community Business District). **(APPROVED)**

Mr. Mike Gray, Tacala, LLC, 3750 Corporate Woods Drive, Vestavia, AL, 35242, was present to represent this case. Mr. Gray explained the location of this new Taco Bell was adjacent to an existing Burger King. He explained it used to be a Devine Carpet and Flooring business. He stated this property probably was never designed based off current zoning requirements for this area. Based on current existing traffic patterns and existing driveways (shared between the two lots), they were requesting reduction in landscape requirements. He stated they had reached out to ALDOT with a request to plant in the ROW, but had been denied. Mr. Gray they then tried to make the best of what they had working with Sharon Nelson, Landscape Architect, for the City of Hoover to come up with the best approach they could to meet as many requirements as possible for this site. He added they had provided additional landscaping and stated it would be very well planted and very well landscaped.

Mr. Mikos asked if he had a written denial from ALDOT. Mr. Gray stated he had sent the e-mail from ALDOT to the city. Mr. Mikos mentioned the subdivision down the street that had obtained approval from ALDOT to plant in the ROW and couldn't understand why they would approve them and not the new Taco Bell. Mr. Gray answered they had obtained approval to fill in the one remaining section of ditch through there that is surrounded by guard rail. Mr. Gray stated they were going to pipe that to match other properties adjacent to them, so they were going to aesthetically correct that one area.

Mr. Pratt asked Mr. Gray if the guard rail would be removed. Mr. Gray answered yes, it would be removed. Mr. Pratt then asked about some straggly trees on the property. Mr. Gray answered that anything on Lorna Road would be replaced, (north of the driveway). Mr. Pratt then asked about other site parameters such as parking, traffic flow, etc. Mr. Gray answered those things had all been addressed.

Mr. Pratt then asked about the drive aisle width between the parking spaces where the guard rail is going to be removed and the building itself. Mr. Pratt asked if it could be narrowed a little bit so they could get a strip of vegetation between the back of curb and where the guard rail would be removed. Mr. Gray answered they actually were going to plant some shrubs very close to the ROW. Mr. Gray stated they were doing this for the aesthetic side of it but from a tree standpoint, they would not be able to get it any further out. Mr. Gray added they were still going to add some trees in their islands which were not out there but were still looked at trees up front.

Mr. Martin, City Planner, stated he would still like to stick to his recommendation that they approve the variance as requested with a caveat that a more formal denial of additional trees with to the satisfaction of the Landscape Architect is sent to the city by ALDOT.

Mr. Mikos asked if there were any further questions. There were none. Mr. Mikos asked for a motion. Mr. Jim Brush made a motion to approve BZA-0821-13 with a provision that the requestor of the variance provide to the city a document (formal letter) from ALDOT that states they would not be allowed a variance for landscape, unless they could get some additional landscaping in the ROW. Mr. Puchta seconded the motion. After a roll call vote, the motion was approved unanimously.

7. **BZA-0821-14** - Mr. Marc Cameron, Oak Leaf Landscaping, representing homeowners Dan and Stacy Walters at **2616 Montauk Road**, is requesting a variance to allow rear covered patio, roof, and fireplace to be constructed 3'10" inside the 10' rear setback. The structure would also encroach into a platted 10' storm sewer easement. The property is zoned PUD PR-1 (Planned Single Family District). **(Case was Withdrawn by Applicant)**

Ms. Stacy Walters, 2616 Montauk Road, was present to represent this case. Ms. Walters stated she is asking for a variance because they wanted to extend their existing back patio roof to cover the patio to meet the fireplace that was 3' into the storm sewer easement. Ms. Walters stated the fireplace was already built and did go to the HOA first then submitted a permit but did not do that when they extended the patio. Ms. Walters stated she was very well aware that she would have to bear the costs if the city had to ever do any repairs in the easement. She stated there is nothing built behind her.

Mr. Mikos stated the real problem was that she built into the storm sewer easement. He suggested she have the section of the sewer easement removed and have her lot re-platted. Mr. Martin stated there was a storm easement that was in place to insure access for maintenance according to the plot plan an existing pipe that runs to the rear of all these properties and collects storm drainage. Mr. Martin stated he met with the City Engineer prior to this meeting and they could not recommend adding or building anything in this easement.

Ms. Walters asked if the neighborhood covenants would address the easement issue. Mr. Martin stated the city did not enforce covenants. Mr. Martin stated the city dealt with this on a fairly regular basis. Mr. Martin emphasized the importance of the easements being left alone because if the easement was there, there was a reason for it. Mr. Martin stated that it was his understanding that the chimney did proceed under construction without a permit, therefore, was not inspected.

Mr. Martin stated that as it related to the business of the BZA tonight, they were being asked to approve a variance for the addition of a porch that would encroach into the easement. Mr. Martin stated that the chimney was there, but what this board was being asked to do was to approve the variance to permit the encroachment into the easement and that was something they would not recommend.

Ms. Walters asked what if they stopped short of the easement. Mr. Martin then explained that if the addition of the porch stops short of the easement and the 10 ft setback, then this board, in only looking at the porch and only considering a variance for the porch would no longer have a case and after that, the applicant could ask for a withdrawal of the case and to go back to re-design. Mr. Martin added that the chimney was still in the setback and easement, but that was not what this board had been asked to make a ruling on.

Mr. Mikos brought up that if they did decide to sell the home, then getting a clear title on the property could be a problem. Mr. Martin stated they would recommend relocating the chimney out of the easement.

Mr. Mikos asked the applicant if she wanted them to go ahead and vote on it. Ms. Walters asked if there wasn't any way they could leave the chimney considering they were only 3 ft into the easement.

Ms. Walters then asked about fences built into easements. Mr. Martin stated there might be some built there, but Engineering and the Planning Department did not recommend it.

Mr. Pratt asked Ms. Walters if they would be willing to move the porch back so it would not be within the setback (storm sewer easement). Ms. Walters stated they would be willing to move it back but would not leave the fireplace there.

Ms. Walters then asked for the case to be withdrawn.

Mr. Mikos asked if there was any further business for the BZA. There was none. The meeting was adjourned.

Vanessa Bradstreet, Secretary, Board of Zoning Adjustment