

**OFFICIAL MINUTES
NORTHPORT BOARD OF ZONING ADJUSTMENT
THURSDAY, JULY 20, 2023**

The Northport Zoning Board of Adjustment was called to order at 6:00 p.m. on Thursday, July 20, 2023, in the Council Chambers of the Northport City Hall by Chair Jon Garner.

Upon roll call the following members were found to be present: Mr. Jon Garner, Mr. Chad Haynie, Mr. Kevin Shobe, and Mr. Brian Chandler. Absent and failing to vote was Mrs. Tena Phifer, Mr. Aubrey Dale and Mr. Tyler Walker. Also present were staff members Mrs. Julie Ramm, Mr. Shaun Patten, Ms. Meredith Mullins, Mrs. Morgan Williams, Mr. Chris Cunningham, and Mr. Brad Matthews.

Approval of Minutes

Motion by Mr. Shobe. to approve the minutes for June 15, 2023. **Seconded by Mr. Chandler.** Roll call vote was as follows: Mr. Shobe – Yes; Mr. Chandler – Yes; Mr. Garner – Yes; and Mr. Haynie – Yes.

Motion Carried.

Approval of Agenda

Mr. Garner stated that the board would hear New Business before Old Business.

Motion by Mr. Haynie. to approve the agenda for July 20, 2023. **Seconded by Mr. Shobe.** Roll call vote was as follows: Mr. Haynie – Yes; Mr. Shobe – Yes; Mr. Garner – Yes; and Mr. Chandler - Yes.

Motion Carried.

Approval of Proper Notification- Mrs. Ramm informed the Board that proper notification was given.

Verification of No Conflict of Interest - None

Notice of Right to Appeal

New Business

- a. **V-23-15** – John & Brenda Nuckols requests a variance from the accessory structure standards found in Section 607 to allow a pole barn for the property located at 13070 Jace Lane.

Mrs. Brenda Nuckols has requested a pole barn to cover the equipment that is stored at their residence of 13070 Jace Lane, that currently sits out in the weather. She stated that there is a buffering of trees that would separate the pole barn from the road. Mrs. Nuckols also stated that their residence is located at the end of a cul-de-sac with no direct neighbors and their residence is located down a hill. Mrs. Nuckols stated that the pole barn will help organize their belongings and make things neater.

Mr. Garner asked the petitioner if an enclosed structure was an option. Mrs. Nuckols stated that they were not going to do an enclosed structure and only here for the pole barn. She stated that the pole barn will not be visible to other neighbors and that the lot next to them is not a buildable lot. Mrs. Nuckols stated they did not need an enclosed structure and no utilities would be ran to the pole barn.

Mr. Garner open the floor for a public hearing.

Larry Mathis, 13686 Valerie Dawn Way, asked the board to deny the case. He stated that Montgomery Farms has a covenant and that the Homeowners Association does not allow this type of structure in their neighborhood.

Mr. Garner asked if the Nuckols were a part of the Montgomery Farm subdivision and asked if there had been any complaints. Mr. Mathis stated that the Nuckols state they are not part of the neighborhood, but they access their property through the neighborhood and pay their dues to the neighborhood.

Mr. Shobe asked if they were part of the association. Mr. Mathis stated they believe they are not in the associations, and this is a legal matter.

Mrs. Nuckols stated we did not realize a permit would be needed but after speaking to Jeff Hogg, who lives in the neighborhood, they wanted to pull a permit. She stated that the structure would not depreciate the value of surrounding homes.

Mr. Garner stated the property value is a matter of opinion.

Mr. Shobe asked if the Nuckols paid dues. Mrs. Nuckols stated that we pay our dues on the corner lot of Montgomery Farms that they own. She stated that they bought this lot to keep from someone from building a home in front of their house. Mrs. Nuckols stated that the property that they live on is 7 acres and was pulled out of the Montgomery Farms subdivision.

Mr. Haynie asked what the Homeowner's Association issues were on the structure. Mr. Mathis stated that the Homeowners Association and covenants standpoint is that any additions should match the home and the pole barn does not. Mr. Haynie stated by the look of the pictures submitted to the board that the structure is in the front yard based off the layout and that the structure will not match the existing structure. Mrs. Nuckols stated if this was an enclosed structure would this be approved. Mr. Haynie stated in his opinion, yes.

With no one else to appear before the board, Mr. Garner closed the public hearing.

Motion by Mr. Garner I make a motion to grant John and Brenda Nuckols a variance to allow a pole barn no closer than 105 feet from the front property line for the property located at 13070 Jace Lane.

Seconded by Mr. Shobe. Roll call vote was as follows: Mr. Garner – No, Mr. Shobe – No; Mr. Haynie – No; and Mr. Chandler – No; **Motion Failed.**

- b. V-23-16 – Michael Tilford requests a variance from maximum allowed ISR found in Table 6-2 for the property located at 11731 Arbor Oaks Road.

Mr. Michael Tilford, 11731 Arbor Oaks Road requested the variance for maximum allowed ISR for an in ground pool to be placed at their residence located at 11731 Arbor Oaks Road. He stated that this has been approved by the Homeowners Association. Mr. Tilford stated that his builder stated to them that this would improve the drainage of his property. He stated the property behind them is not developed and water currently runs off and this would help with that. He stated that they have looked into pavers and the cost of them is too expensive.

Mr. Garner asked Mr. Matthews about the ISR issue. Mr. Matthews stated that there is no real way to detail by the site plan that was submitted. He stated that the allowable use is 30% based off the area and

allowing this variance, the use will be 36% ISR. He stated he is not aware of any huge impacts this would cause due to the area with this being one residence. He stated that if everyone was to request this type of variance in the area, then there would be an issue.

Mr. Garner asked if there was a neighborhood pool. Mrs. Ramm stated there was a neighborhood pool that was highly used by the neighborhood.

Mr. Garner opened the floor for a public hearing.

With no one to appear before the board, Mr. Garner closed the public hearing.

Motion by Mr. Haynie I make a motion to grant Michael Tilford a variance from maximum allowable ISR, to allow the installation of a 16x36 swimming pool for the property located at 11731 Arbor Oaks Road. **Seconded by Mr. Chandler.** Roll call vote was as follows: Mr. Haynie – Yes; Mr. Chandler – Yes; Mr. Garner – Yes; and Mr. Shobe – Yes. **Motion Carried.**

Old Business -

- a. **V-23-11** - James Outdoor, LLC is requesting a variance from the billboard standards found in Section 804.01.C for the property located at 13512 Highway 43 N.

Adam Webb, 1900 The Exchange Southeast, Ste. 480 Atlanta, GA, stated that he was the attorney for James Outdoor, LLC and that everything his client did was by the book. He stated his client did his research, located a piece of property, got a lease, started the application process, and got a survey of the property. He stated when he turned in the state sign application, ALDOT confirmed with the city that the property in the application was not within the city limits, and the state issued their permit in December 2022. He stated his client then took out a loan and ordered the billboard structure. He stated that this process has cost his client approximately \$170,000 that the billboard structure is currently sitting in a storage yard not generating income while his client is still paying the loan. Mr. Webb stated that they believe this is a perfect illustration of the type of hardship for which the law allows a variance. He stated that Section 808 of the city's sign ordinance states that the Zoning Board should only grant a variance in the case of an extreme hardship. Mr. Webb stated that on July 10th they submitted to the Board and staff a cover letter that explained the basic issues. He stated that the first issue is defining economic condition as provided in the city's sign ordinance. He stated this refers to general economic conditions, not the financial loss of the petitioner. Mr. Webb stated that Alabama case law supports the idea that the type of financial loss faced by his client could be the basis for the Board granting a variance. Mr. Webb stated the second issue was with the ALDOT application. Mr. Webb turned the floor over to Mr. James, owner of James Outdoor, LLC.

Mr. John James, 13758 Highland Pointe Drive, Northport, AL stated that he had spoken with Ms. Darby with ALDOT and that she stated that she had met with city staff and that ALDOT had decided to not participate in the current Zoning Board hearing.

Mr. Webb stated that there is an ALDOT permit attached to the July 10th letter to Board. He stated that in the Board's packet, there is a map indicating that the sign area will be located between McDonalds and Jacks which includes the statement that the city has confirmed that the property in the application is not in the city limits. Mr. Webb stated that a third issue was that the Board requested simulated images, which the petitioner submitted. He stated they have submitted 3-D rendering images of how the billboard would look from several angles. Mr. Webb stated that they received an email from the city stating that the city hired a surveyor using taxpayer dollars to survey the area.

Mr. James stated that he reached out to the local surveying company, Montgomery & Hinkle, Inc., who had originally surveyed the area for James Outdoor, LLC, to review the original survey. He stated that Montgomery & Hinkle did a deep dive into the past surveys to ensure the original survey was accurate. He stated that they used a survey for 2016 and 2022 that were included in the packet.

Mr. Webb stated that the sign is going to be built on the Hendrix property only. He stated his client only has a lease for the Hendrix property. He stated that a previous survey done by David McKinney compared to the Montgomery & Hinkle survey that was provided to the board demonstrates no difference. Mr. Webb stated that his client will be glad to stipulate that this billboard will only be located on Hendrix property. He stated that when he saw that the staff report for this case included information from the new survey conducted by the city, he immediately responded to staff with a letter. He stated that the letter submitted states that Montgomery & Hinkle is a trusted local surveyor who has done accurate work in this case. He also stated that the board could put the stipulation on this case requiring that the billboard only be constructed on the Hendrix property. Mr. Webb stated that in the staff report, staff went outside the sign ordinance and brought in general zoning code standards that are very different. He stated that there was no basis to go outside the side ordinance to the general zoning code. He stated that the section of the zoning code that forbids a variance for a use that is not otherwise permitted in a zone should not apply to signs.

Mr. Garner open the floor for public comments.

Wendell Paul Howell, 12495 Oak Ridge Road, stated that the owner of James Outdoor, LLC is his son-in-law, and he has done everything by the book. He stated that he hopes that the board will approve this variance.

Braden Smith, 3765 68th Avenue, stated that he knows that the owner of James Outdoor, LLC is trustworthy and that he hopes that the board will approve this variance.

Audrey James, 13758 Highland Pointe Drive, stated that they have done everything the Board has asked them to do and she requested that the Board grant the variance.

With no other members of the public to appear before the board, Mr. Garner closed the floor.

The Board called on city staff to clarify the city's position. Chris Cunningham, City's Assistant Attorney, stated that nothing in the city's presentation was intended to reflect poorly on the petitioner's character. He stated he would like to use a PowerPoint to help everyone visualize the issues. He provided a citation to state law noting the powers of the board and that the spirit of the zoning ordinance should be preserved. Mr. Cunningham stated that any hardship to the petitioner was self-created and could not be the basis for a variance under Alabama law. He stated that the applicant had provided the wrong parcel information to all of the government agencies involved, including ALDOT, the City of Northport, and the Zoning Board, and that the actual proposed location of the billboard has always been shown on city maps as within the city limits. He stated that the lease itself was based on the wrong parcel ID. Mr. Cunningham stated that the parcel ID ending in "000" provided by the applicant was not the actual proposed location of the billboard. He stated that the actual proposed location is on the adjacent parcel with the parcel ID ending "004." Mr. Cunningham showed and discussed a copy of a recent survey of the property in question illustrating that the proposed billboard location falls within the boundary of a property annexation completed in 1999, not the parcel upon which the petitioner provided. He compared this to the survey used by petitioner in proposing the billboard location. Mr. Cunningham noted that it appeared the petitioner's proposed billboard location was based on the mistaken assumption that the

boundary of the lease to the neighboring McDonald's business was also the city limit boundary. Mr. Cunningham stated that this lease boundary has never been the city limit boundary. Mr. Cunningham further noted that the sign structure, as proposed, would also hang over this McDonald's lease, which the petitioner mistakenly believed was the city limit line. He stated all the steps taken by the petitioner were done before the permitting with the city and therefore this is a self-created hardship. Mr. Cunningham restated that under Alabama law, a self-created hardship cannot be the basis for a variance.

Mr. Garner asked if the parcel ID was submitted in the application in the city. Mr. Cunningham stated yes, it was submitted.

Mr. Haynie asked about the zoning of the property. Mr. Cunningham stated this is zoned for C-3. Mr. Patten stated that billboards are only allowed in C-6, M-1 and M-2 zoning.

Mr. Shobe asked if the Hendrix Family owned all the parcels. Mr. Cunningham stated yes, but they have split the parcels for different uses. Mr. Shobe asked if this was a separate parcel. Mr. Cunningham stated yes this is a different parcel.

Mr. Garner asked if there was a request to rezone this parcel since this billboard is not allowed in a C-3 zone. Mr. Cunningham stated no. Mr. Garner stated that the variance is based on the distance to a residence, distance to the property line and the C-3 zone. Mr. Cunningham stated that this is correct.

Mr. Shobe asked to confirm that the lease is not for the correct parcel. Mr. Cunningham stated that the parcel ID listed in the lease is not the correct location of the proposed billboard.

Mr. Haynie asked if it was 2000 feet from another billboard or if there are others in this area. Mrs. Ramm stated she did not know if this was in violation.

Mr. Garner asked if the parcel ending in "000" was in the application. Mr. Cunningham stated that it was in the application. Mr. Garner asked if the actual proposed billboard was supposed to be in the parcel ending in "004." Mr. Cunningham stated that was correct.

Mr. Garner asked if both the parcel ending in "000" and "004" are each within the city limits and zoned as C-3. Mrs. Ramm stated that the parcel ending in "000" is zoned AG and the parcel ending in "004" is zoned as C-3. Mr. Cunningham stated parcel ID ending in "004" has always been shown in the city maps as within the city limits, including in those maps submitted to ALDOT, the city, and this Board by the petitioner.

Motion by Mr. Haynie to take a 5-minute recess. **Seconded by Mr. Shobe.** Roll call was approved by voice vote. **Motion Carried.**

Motion by Mr. Garner to reconvene the meeting. **Seconded by Mr. Haynie.** Roll called was approved by voice vote. **Motion Carried.**

Mr. Haynie asked the petitioner's counsel if he disagreed that the proposed billboard location was actually on parcel "004" which has always been shown on all maps to be in the city limits and zoned as C-3. Mr. Webb stated that the city was provided with the coordinates of exact proposed location and that the city created the hardship by telling ALDOT that this location was not in the city limits.

Mr. Haynie asked if this alleged misstatement occurred during the application to the state or the city. Mr. Webb stated that it was part of the state application. Mr. Haynie asked if the petitioner had any record of the conversation that took place between the state and the city. Mr. Webb stated that he knows how the State of Alabama does it: a petitioner must stake the proposed location and there have been surveys stating where the billboard is going to go. Mr. Webb stated that this location is what the city confirmed to ALDOT.

Mr. Haynie asked the city staff about the conversation with ALDOT. Mr. Patten stated that ALDOT representative Ms. Campbell called him and asked if the parcel ending in "000" was in the city limits. Mr. Patten stated that he had told Ms. Campbell that the parcel ending in "000" did not appear to be in the city limits according to the map. Mr. Patten stated that the city was not provided with the latitude/longitude coordinates for the proposed location.

Mr. Webb stated that he would like the Board to look at the documents and stated that this had been tabled a month ago. He stated that the only thing that this Board should look at was whether or not a hardship has been demonstrated. Mr. Webb stated that the state application with the precise coordinates was submitted and approved through the state permitting process. He stated that to apply for a state permit you must stake the area of the sign location. Mr. Webb stated that the city acknowledged that the city maps were wrong at one time with regard to the parcel ending in "000." He stated there was no parcel number located on the state permit, only coordinates. Mr. Webb stated the properties are all owned by the Hendrix Family, LLC. He stated that the Board should only look at the issue of hardship for James Outdoor, LLC.

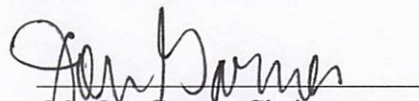
Motion by Mr. Haynie I make a motion to grant James Outdoor a variance from the billboard requirements for 1) required minimum distance to a residence, 2) required minimum distance to a property line, and 3) requiring zoning district for a billboard, to erect a new billboard on the property located at 13512 Highway 43 North. **Seconded by Mr. Shobe.** Roll call vote was as follows: Mr. Haynie – No; Mr. Shobe – No; Mr. Garner – No; and Mr. Chandler – No. **Motion Failed.**

X. DISCUSSION

XI. ADJOURNMENT

All members voted yes by a voice vote and the meeting was adjourned.



Julie Ramm, Secretary

Mr. Jon Garner, Chairman