



City of Jonesboro

Municipal Center
300 S. Church Street
Jonesboro, AR 72401

Meeting Minutes - Draft Board of Zoning Adjustments

Tuesday, April 16, 2019

1:30 PM

Municipal Center

1. Call to Order

2. Roll Call

Present 4 - Doug Gilmore; Sean Stem; Rick Miles and Jerry Reece

Absent 1 - Max Dacus Jr.

3. Approval of Minutes

[MIN-19:034](#)

MINUTES: March 19, 2019

BZA Minutes from March 19, 2019 BZA Meeting.

Attachments: [Meeting Minutes from March 12, 2019.pdf](#)

A motion was made by Rick Miles, seconded by Sean Stem, that this matter be Approved. The motion PASSED with the following vote:

Aye: 3 - Sean Stem; Rick Miles and Jerry Reece

Absent: 1 - Max Dacus Jr.

4. Appeal Cases

[VR-19-04](#)**VARIANCE: 702 Creath Avenue**

Horizon Land Surveying, LLC on behalf of Dan Freeman is requesting a variance for address 702 Creath Avenue for a setback variance to allow for an encroachment into the front 25 sq. ft. building setback with the new setback being 12.5 sq. ft. This is located within an R-2 Multi Family Medium Density District.

Attachments: [Application.pdf](#)
 [Plot Plan.pdf](#)
 [Returned letter from owner of property.pdf](#)
 [USPS Receipts.pdf](#)

Horizon Land Surveying, LLC on behalf of Dan Freeman is requesting a variance for address 702 Creath Avenue for a setback variance to allow for an encroachment into the front 25 sq. ft. building setback with the new setback being 12.5 sq. ft. This is located within an R-2 Multi Family Medium Density District.

APPLICANT: Danny Burns with Horizon Land Surveying, LLC requested a variance for 702 Creath. Mr. Freeman wants to build a single family residence home there and with the current setbacks it only has 17.5' to build his house. The existing structure that used to be there was I believe a 24 by 36. We are wanting to move that 25' from the setback and get a variance for 12.5. It's situate on the corner of Creath and Baker Street. Front of the house, yeah there.

COMMISSION: I guess my first question would be how much driveway is going to be left between the street and the house.

APPLICANT: Danny Burns with Horizon Land Surveying, LLC stated He's going to build right up to the 12.5 setback if approved and then he's going to have his driveway from there, out. In total he's going to have about 22.5 to the back of curb.

COMMISSION: Rick Miles asked so the existing building that's there now is being torn down completely.

APPLICANT: Danny Burns with Horizon Land Surveying, LLC stated yes, we were going to try and get it located, but it had already been tore down before this came up to his attention and I asked him if the foundation was still in place where we could at least locate that and he said no they had already removed that too so there was no way for me to show where the other home was situated. The one he is proposing to build is roughly the same size as the one that was there previously.

COMMISSION: Sean Stem asked what is causing the request for variance. Is it the house previously was set further back.

APPLICANT: Danny Burns with Horizon Land Surveying, LLC stated no, the house previously was encroached upon the current setbacks, too.

COMMISSION: Sean Stem stated so it's going to go, basically, where it's at

now.

APPLICANT: Danny Burns with Horizon Land Surveying, LLC stated yes, right where it was. He said it was easier to build a new home than it was to remodel.

COMMISSION: Rick Miles stated this is for Darrell, is this variance going to cause changes in codes?

STAFF: Derrel Smith stated No sire, codes haven't changed. It's just a small lot that was built on years ago so they just didn't have enough lot size to build a home on, really. Back then they didn't really care about setbacks like we do now.

COMMISSION: Rick Miles stated so it is like a grandfather situation.

STAFF: Derrel Smith stated well the structure is gone so you can't call it a grandfather.

COMMISSION: Rick Miles stated no, I'm saying in the past.

STAFF: Derrel Smith stated in the past, yes, it was.

APPLICANT: Danny Burns with Horizon Land Surveying, LLC stated if it wasn't a corner lot, we really wouldn't have much of an issue, it's just the lot the way it is.

COMMISSION: Sean Stem stated Derrell, they could have built that before they tore the other down. Is that the way it works.

STAFF: Derrel Smith stated if they built on the same footprint, they could have continued.

COMMISSION: Doug Gilmore stated they would not have had to get a variance.

COMMISSION: Rick Miles asked is there a structure on either side, both sides of this property?

APPLICANT: Danny Burns with Horizon Land Surveying, LLC stated there is a home to the North then you got an alley to the East. Even with 17.5', there is a lot of room to build anything suitable.

COMMISSION: Jerry Reece stated he would make a motion to grant the variance as long as it wouldn't be any closer than the house is located now which I assume is that 12.5'.

COMMISSION: Rick Miles stated, the problem is, that house is not there and there are no footings left either.

COMMISSION: Jerry Reece stated to even be able to tell.

A motion was made by Sean Stem, seconded by Jerry Reece, that this matter be Approved. The motion **PASSED** with the following vote.

Aye: 3 - Sean Stem; Rick Miles and Jerry Reece

Absent: 1 - Max Dacus Jr.

[VR-19-05](#)**VARIANCE: 1401 Hillcrest Drive**

David and Jodi Boling are requesting a variance for address 1401 Hillcrest Drive for an 8 ft. fence to replace the 6 ft. fence along Nettleton Avenue and Hillcrest Avenue, which are located in the front side yards. This is located in an R-1 Single Family Medium Density District.

Attachments: [Application.pdf](#)
 [Exhibits.pdf](#)
 [USPS Receipts.pdf](#)

David and Jodi Boling are requesting a variance for address 1401 Hillcrest Drive for an 8 ft. fence to replace the 6 ft. fence along Nettleton Avenue and Hillcrest Avenue, which are located in the front side yards. This is located in an R-1 Single Family Medium Density District.

APPLICANT: David Boling requested a variance for 1401 Hillcrest Drive. Mr. Boling wants to replace a 6' fence with an 8' fence. We are a corner lot. Currently we have a 6' wooden privacy fence, it's a shadowbox that runs approximately 115 ft. on the Northside of the property that runs parallel to Nettleton and then we have about 35' that connects to the house that runs on the Hillcrest side. We're requesting an 8' fence to run along the Nettleton side and then also that part that runs on the East side, connected to the house, move that back about 15'. Two primary reasons; one is privacy. Not able to see in that photo there, we have a three year old daughter that we have a playground and really the only level spot on the home is right there on the East corner. It's the lowest spot of the house, the lowest part of the land, we have a playground out there. People driving the street is approximately two feet higher than the lowest spot on the ground so even though we have that in the lowest spot where you're not able to see her playing you still see people that, the sidewalk is even higher than the street, has a couple of occasions where people, it's a heavily trafficked street, had some inappropriate hand gestures given to my daughter and I while we were playing back there, as well as some verbal words. I just prefer my daughter not be around that. Again, the privacy issue is just to be able to block that off from the street. So that's what we're seeking from you today.

COMMISSION: Same type fence, you going back with a shadowbox?

APPLICANT: David Boling stated instead of a shadowbox, we're doing a privacy on the exterior just so that when you're driving down the road you can't. The way the shadowbox is now, you can drive down, you can see everything in the back. You really can't keep anything back there without fear of someone wanting what you may have back there. A higher fence and complete privacy rather than a shadowbox is what we're looking at. The shadowbox would remain on the westside that runs with Mr. Taylor's. He's in the back, it's already there. We won't be doing anything to that, just tying into it.

COMMISSION: Sean Stem stated this doesn't have anything to do with the variance. You know the good side has to face the neighbor.

APPLICANT: David Boling stated absolutely, the pretty side. It will be facing the street, not the runner boards.

COMMISSION: Sean Stem stated even your neighbor.

APPLICANT: David Boling stated there's already a fence on that side, where the house is. That's a shadow box fence. I'm not doing anything to that. That's the Stubblefield's that live there. So there won't be any modification to that at all. It's just simply the one that runs on the Nettleton side and the part that actually adjoins the house. It's just the one that runs parallel so it's really two sides we're looking at modifying. The way Hillcrest runs, were at the bottom of the hill so, 6' fence on that side which is a lot higher than 6' for us because it terraces down.

A motion was made by Jerry Reece, seconded by Sean Stem, that this matter be Approved. The motion **PASSED** with the following vote.

Aye: 3 - Sean Stem; Rick Miles and Jerry Reece

Absent: 1 - Max Dacus Jr.

[VR-19-06](#)**VARIANCE: 2511 E Highland Drive**

George Hamman of Civilogic on behalf of Cavanaugh trust Properties, LLC is requesting a variance for address 2511 E Highland Drive for a Billboard Sign to be classified as a legal nonconforming sign and be able to put the sign back in the same place the sign was located. This is located within a C-3 General Commercial District.

Attachments: [Application.pdf](#)
 [Letter.pdf](#)
 [Plans for Billboard Sign.pdf](#)
 [Adjoining Property Owner.pdf](#)
 [Commercial Application.pdf](#)
 [Plans for Billboard.pdf](#)
 [USPS Receipt.pdf](#)

George Hamman of Civilogic on behalf of Cavanaugh Trust Properties, LLC is requesting City of Jonesboro a variance for address 2511 E Highland Drive for a Billboard Sign to be classified as a legal nonconforming sign and be able to put the sign back in the same place the sign was located. This is located within a C-3 General Commercial District.

APPLICANT: Chris Gardner, on behalf of Cavanaugh Trust Properties, requested a variance for address 2511 E Highland Drive for a Billboard Sign to be classified as a legal nonconforming sign to be placed in area where previous sign was located. The issue here is really about ordinance number 117-259F which is the off-premises sign ordinance. Do you have a copy of the ordinance, or do we need to pass that out? Do you have a reference to it? Again, the ordinance in question is 117-259F. This has been docketed as a variance request, but as a technical matter, I need to make sure that it's clear. It's not really a variance request. I think your forms really kind of talk about anything that comes before you guys as being a variance request, but it's really an administrative appeal of a permit decision by the Planning Department which is under the authority of the Board of Zoning Adjustment. That's why we're here today. Here's the issue. Pursuant to 117-259F, my client has applied for a permit to replace a legal non-conforming billboard and the Planning Director has denied the permit on the basis that the permit application was not filed before the original sign was moved or was removed even though the ordinance is silent and speaks of no required deadline for the permit application. If you go to sub section F, you'll see that there's absolutely nothing there about this particular issue. The ordinance is silent as to when a legal, non-conforming use loses its legal, non-conforming status. And the city, they've not published any guidance on when a legal non-conforming billboard loses its status, or when a permit must be filed to preserve it. My client has complied fully with your ordinance as written and a permit should be issued. If I could, let me give you a little factual background on the history of this particular matter. In August 2016, my client acquired the property located at 2511 E Highland through a foreclosure sale. Most of you will know this as the old Arby's site in front of Lowe's Home Improvement store and the building had some structural integrity issues and was no longer safe to occupy. The prior owner fell on some hard times and the property became a vacant eyesore on Highland Drive. At the time of the foreclosure, sale to my client,

there existed a legal non-conforming billboard on the Northwest corner, or the Northwest side of the lot which was owned and maintained by Lamar Advertising. Now, Lamar did not have a recorded lease for the legal non-conforming sign and legally my client believed at the time that they acquired ownership of the sign in the foreclosure sale. A disagreement arose with Lamar and my client as to whether or not Lamar or my client was bound by an unrecorded lease and also who owned the sign. So, finally, early in 2018, a resolution was reached which involved the back payment of some rent to be client and which also allowed Lamar to take title to the original legal non-conforming sign as a fixture and remove it, which Lamar did on his own initiative sometime in March of 2018. After that dispute was finally resolved with Lamar, my client was able and freed up to do some due diligence on the redevelopment of the site along with some other properties that they are developing or redeveloping at the intersection of Highland and Caraway. Cavanaugh Trust Properties is investing millions of dollars to redevelop and revitalize three vacant and non-productive commercial sites in this vicinity and it's an instrumental part of revitalizing this portion of the Highland and Caraway corridors. So, finally, in November this past year my client was able to conclude their due diligence and develop some proposed site plans for the site. The preliminary site plan were shared with the city and discussions began with the city planning department. My client indicated his desire, at that time, to replace the legal non-conforming sign that had been previously removed by Lamar and at that point, we learned from the city that planning department took the position that the replacement sign would not constitute a replacement of a legal non-conforming sign under the ordinance, but would constitute a new sign. Planning staff was never really ever able to tell us, or to cite any provision of the ordinance that would prohibit replacement of the original sign as we have requested. So if you'll look at the pertinent provisions of the ordinance, again its section F, there's no debate that the prior sign, the original sign, was a legal non-conforming sign as defined by subsection F. So, if it was a legal non-conforming sign and subsection F says that a legal non-conforming sign may be maintained as a matter of right. If you go down to subsection 3A of Section F, it provides that a legal non-conforming sign may be replaced by a new sign provided it does not exceed the size of the sign it is replacing and meets all structural standards of this section. These are the only stipulations for replacement and the ordinance does really speak any further on this matter. The replacement sign, which my client has proposed, is identical to the original sign we seek to replace. It will be in the same location as the original sign and it meets all of the structural standards of the ordinance. These are the only conditions imposed by the ordinance for replacing a legal non-conforming sign. We were told by the planning department that in order for our replacement to qualify, the permit application had to be filed prior to the old sign being removed by Lamar. They said that as soon as the sign was removed, the non-conforming use ceased. However, there is no place in the ordinance that addresses this issue at all. It does not speak to it in any form or fashion. The ordinance is absolutely silent. By comparison though, the very same ordinance allows a sign to be replaced if it's damaged or destroyed from a casualty, for example, a storm. So the city tells us that when this happens, the sign can be replaced and a permit filed or applied for after the sign has been destroyed or removed and the legal non-conforming status of that destroyed sign would not be jeopardized and it would not cease. However, the ordinance is absolutely silent on that issue as well. So, the city is using two different unwritten standards for determining when a legal non-conforming use ceases with these signs. If a storm knocks is

down, the legal non-conforming status continues and it can be replaced and a permit filed after the sign came down and is removed. But if the sign is removed after it was in out particular instance, then the legal non-conforming use ceases immediately and it can't be replaced according to their interpretation. Neither of these standards are expressly laid out in the ordinance. They're not written down anywhere and applying two different, unwritten standards in such cases, in our opinion, is arbitrary and capricious. It's unlawful for the city to do such a thing. We also know that prior city planners in the past have routinely granted replacement of legal non-conforming signs when the permit application was filed within 12 months after the old sign was taken down. Now, I will admit that was an informal practice. There was never anything in writing about that, but again, it was never spelled out in the ordinance. We are asking the city to simply comply with its very own ordinance as it's written. If our submittal to replace the legal non-conforming sign does not comply with the ordinance, we would ask someone to please explain to us, how is that out of compliance? No one's been able to do that for us yet. We have strictly complied with the ordinance as it's written. We understand the city may not want another billboard put up at this location and they may want to further regulate the proliferation of billboards along our streets and highways. That's an understandable desire. But the proper way to do this is to amend the ordinance so that property owners', like my client, have reasonable clarity about what the law requires so that they can reasonably enjoy the fruits of their investments and their labor. The ordinance allows my client the ability to replace the legal non-conforming sign as a matter of right and we would respect request that you reverse the city planner's decision to deny the permit. The city should follow the ordinance as its written, not how they wish it was written.

COMMISSION: Derrel, why don't you give us your take on this please?

STAFF: Derrel Smith stated first they appealed the decision to the MAPC, was their first shot at this. MAPC voted unanimously to uphold the decision to not allow the new sign. Our opinion is that the sign was taken down by the owners. Once it's taken down, even though it doesn't say a time period, it seems to lose its non-conforming status.

STAFF: City Attorney Carol Duncan asked if I can address that one issue. It doesn't have a time period under the sign ordinance, but if you look at Section 3, Division 3, non-conforming structure and uses, which is where I think you have to refer to find the timeframes on all non-conforming uses, whether it be a sign, a house, a piece of land, it affects all three. It says Section 117-84, Discontinuance of Use, under A you have whenever any part of a structure or land occupied by non-conforming use is changed or replaced a use conforming to the provision of these regulations, such premises shall not thereafter be used or occupied, but the one that applies to this, under B talks about structures, under C talks about other types of property. When no closed structure is involved, discontinuance of a nonconforming use for a period of six months shall constitute abandonment, and shall not thereafter be used in a nonconforming manner. And these ordinances are found under the very beginning, either right before or right after, the ones that establish the BZA, talks about administrative policies and procedures, and they apply to all the zoning ordinances. The rules are written. It may not be written specifically under the sign portion, but this applies to structures, land, or other non-conforming uses. I do believe the rules are written. It talks about if it's

been more than 12 months for a structure. If it's been six months for non-structure, but it specifically written in there that if you no longer continue the use then it's no longer a non-conforming use, it goes away. That's the position of the city.

APPLICANT: Chris Gardner, on behalf of Cavanaugh Trust Properties, asked if there are any other issues. I can speak to some of those if appropriate.

COMMISSION: You can continue, yes.

APPLICANT: Chris Gardner, on behalf of Cavanaugh Trust Properties, stated this issue was brought before MAPC for their review. The first time we filed an application with the city the permit was denied and the permit was denied for the same basis, but it was a different permit application because what we proposed doing at that point of time, what my client proposed, was that the sign would have three panels, instead of two, and it was also proposing to move the sign to the opposite side of the property. The city objected on the basis of a legal non-conforming use of whether it did or not under this ordinance. Because we needed to find out what the city's issues were. The MAPC does not have appellate review of a permit application and its denial. That's strictly the board of Zoning Adjustment. The enabling statutes and the ordinances permit for site plans, other types of things, to be brought by the private citizen to the MAPC to get their views and understand what the city's concerns may or may not be about a site plan development and whether or not they think those things are in conformity with ordinances and what have you. So that particular permit application was brought to them and the three issues they raised were, one, is the location of the sign. They were concerned that the sign had been moved from its original location to another location on the lot. We've corrected that in this application. The second issue the MAPC raised was the issue of the three panel sign versus a two panel sign. We addressed that issue and we fixed it in this permit application, brought it back to the city. The other issue we cannot solve. We can't go back in a time machine and solve the issue of when an application was originally filed. Again, the ordinance does not speak to this so this issue about the general non-conforming ordinances that they've referenced. With all due respect, Mr. Smith and Ms. Duncan, that's the very first time you've ever raised this issue. You've never once cited those statutes or those ordinances ever. This is the first time in any of our discussions that you've ever discussed those ordinances having any sort of culpability here.

STAFF: City Attorney Carol Duncan stated that's exactly the law that Mr. Smith has been quoting to you though. He's been quoting to you. It really doesn't matter whether we've raised that issue or not. You said it's not written anywhere in the ordinances what the time guidelines are and I said it is. I found it and showed you where it is written in our ordinances where the time guidelines are.

APPLICANT: Chris Gardner, on behalf of Cavanaugh Trust Properties, stated he does not believe these particular ordinances have any application to the sign ordinance. It's a different ordinance and it was adopted at a different time. But even if it does have application, then we get the benefit of a twelve month.

STAFF: City Attorney Carol Duncan stated it is not a structure. If you read it. If no enclosed structure is involved, discontinuance of a non-conforming use for

a period of six months shall constitute abandonment and should thereafter be used in a non-conforming manner.

APPLICANT: Chris Gardner, on behalf of Cavanaugh Trust Properties asked, what is the definition of an enclosed structure or non-enclosed structures? Is that defined anywhere in the ordinance.

STAFF: City Attorney Carol Duncan stated a sign is not an enclosed structure. I think we can all agree. You can't go inside it so it can't be an enclosed structure. I can look and see if we have definitions anywhere, but I think we can use a dictionary to determine the definition of an enclosed structure.

COMMISSION: Rick Miles stated when this property was originally purchased, you stated 2013.

APPLICANT: Chris Gardner, on behalf of Cavanaugh Trust Properties stated 2016 was when it was originally purchased through a foreclosure sale.

COMMISSION: Rick Miles stated this sign was on the property at that time.

APPLICANT: Chris Gardner, on behalf of Cavanaugh Trust Properties stated it was on the property at that time.

COMMISSION: Rick Miles stated since 2016 that property has sat vacant for one reason or another. When and who took it on themselves to remove that sign?

APPLICANT: Chris Gardner, on behalf of Cavanaugh Trust Properties stated in March of 2018, there had been an ongoing dispute between Lamar and my client as to who owned the sign and who was entitled to it. That prevented any development of the property and being able to do anything with it at that point until the issue got resolved. There was a cloud about how the property could be developed and whether or not Lamar had any rights to a portion of the property. That finally was settled and in March of 2018 Lamar removed the sign.

COMMISSION: Rick Miles asked was that under an agreement between your client and Lamar?

APPLICANT: Chris Gardner, on behalf of Cavanaugh Trust Properties stated yes, that is correct.

COMMISSION: Rick Miles asked so the settlement came to fruition in March of 2018 to allow them to remove a structure that was bought along with that property, is that not correct?

APPLICANT: Chris Gardner, on behalf of Cavanaugh Trust Properties stated that is correct.

COMMISSION: Rick Miles asked why would you allow them to remove something when you actually owned it?

APPLICANT: Chris Gardner, on behalf of Cavanaugh Trust Properties stated that's the debate. The question is whether they owned it, or whether we did through the foreclosure sale. That was the question because there was an unrecorded lease that said Lamar owned the sign and that they had to pay

rent.

COMMISSION: Rick Miles stated at the time the purchase took place in 2016, was it not written in the contract that anything that was structurally sound on that property, remained in that property and on that property, and became the ownership of the new owner.

APPLICANT: Chris Gardner, on behalf of Cavanaugh Trust Properties stated it was purchased through a foreclosure sale at the courthouse steps. There was no contract for it at that time. It was purchased under a public sale because it had gone to foreclosure.

COMMISSION: Doug Gilmore asked is it true an agreement was between Cavanaugh and Lamar that the sign was Lamar's?

APPLICANT: Chris Gardner, on behalf of Cavanaugh Trust Properties stated that is correct. There was a settlement finally reached. That was in March of '18.

COMMISSION: Rick Miles stated so in March of '18, they literally came over, cut the sign off at the ground and took it.

APPLICANT: Matt Cavanaugh came to the podium and stated rather than going through the expense of a lengthy trial determining ownership of the sign between Cavanaugh and Lamar, they took the sign with my understanding of the code is written that I would be able to replace it.

COMMISSION: Rick Miles asked, but you agreed to allow them to take the sign?

APPLICANT: Matt Cavanaugh stated it was the lesser of two evils. You could hash it out in court.

COMMISSION: Rick Miles stated he understood. All I am trying to determine is that you physically agreed at that particular time to allow them to remove that sign from your property.

APPLICANT: Matt Cavanaugh stated Lamar produced documentation that they own the structure and so rather than having a legal fight on whether who actually owned it, the land owner or Lamar, it was agreed that they would take the sign and that I would replace it following the code that is currently written.

COMMISSION: Doug Gilmore stated he is struggling as Chairman of this committee why this committee needs to be involved in what I see is a pretty clear matter. From the city's attorney, from previous decision by the planning commission, and the planning office.

STAFF: City Attorney Carol Duncan stated it was the initial debate that Mr. Gardner and I had. He couldn't file a second application then appeal it to a different body than he appealed the first one to. He made the argument that MAPC doesn't cover this which it was his choice to appeal in to MAPC. I don't think staff told him to appeal that to MAPC. The time is run on then appealing that into circuit court. You have 30 days to file a lawsuit if you disagree with MAPC. This is a new application. I originally cited the rules that you can't

present essentially the same application again to a different body. When I looked at the rules during our debate he asked me to point to where it said that. When I started looking at those rules, there found the rules adopted by the City Council and the rules adopted by MAPC are their rules. I couldn't find any rules for the BZA that said the same thing. I assumed you all had rules that worked the same way as MAPC and City Council, but you don't have any rules that say you can't re-present the same application again, or how long you have to wait to re-present, or how much of the application has to change.

COMMISSION: Doug Gilmore asked do we even have to hear it?

STAFF: City Attorney Carol Duncan stated that it's your decision. What I've found is that you didn't have those operating rules the same. So that is when I conceded to Mr. Gardner and said yes, we will allow the appeal to come into BZA because I couldn't point to a written rule that you guys have that said you wouldn't hear the same application or a new application on a similar property. That is why we're here.

APPLICANT: Chris Gardner, on behalf of Cavanaugh Trust Properties, stated again, I go back to, and I think it's technical, but we need to be technical here about what the rules are. If you look at the ordinances and the enabling statute, MAPC does not have any jurisdiction over the administrative officers decisions as to whether to grant a permit or deny a permit. Now they do have, under the enabling statute and also under the ordinances, we and even the public has the right to bring something before the MAPC to get their views on how a site should be developed and whether it conforms or not. But it's not an appeal of a permit denial or application. The reason it's not is because that's not even addressed in the enabling statutes. Which you can take it to the MAPC and ask their opinion on things, which is what we did and, admittedly, they told us seven zero they didn't agree with us. For a variety of reasons. I'm not going to lie to you about that by any stretch of the imagination.

COMMISSION: Doug Gilmore stated you brought them a proposal that changed the original location and the original shape. That's probably why you were voted down. Why don't you take it back to MAPC and ask them what you're asking us.

APPLICANT: Chris Gardner, on behalf of Cavanaugh Trust Properties, stated once you address the city's issues as they've been presented to us by the MAPC and the issues.

COMMISSION: Doug Gilmore stated what our city attorney told us is that it's been longer than the time period that you were allowed. This body will not stand and say, ok, now you've made it different. While at the same time, you really didn't because you can't change the fact that it was taken down for x amount of months and nothing done about it. That fact cannot change. In my opinion, this board will not listen, any further, to this argument. We will not vote on this issue.

APPLICANT: Chris Gardner, on behalf of Cavanaugh Trust Properties, stated before you take that position, let me cite to you powers and duties of the Board of Zoning Adjustment. Section 117-61-1 The Board of Zoning Adjustments shall have all the powers and duties prescribed by law and by this chapter which are more particularly describes as follows. To hear and decide appeals where

it is alleged there is error in any order, requirement, decision, or determination made by the administrative official and the enforcement of this chapter. The board may hold firm or reverse, in whole or in part, said decision of the administrative official. I don't mean to be derogatory, but I'm going to tell you trying to follow some of these city ordinances is one of the toughest things I think we've ever been able to do. They're not clear. But when I read that, that tells me that we're down to strictly a permit denial, whether it should have been denied, or should not have been denied, that's before this board.

COMMISSION: Doug Gilmore stated you did have 30 days after that planning commission vote of no confidence, zero to seven vote, you had 30 days to file suit, is that right?

APPLICANT: Chris Gardner, on behalf of Cavanaugh Trust Properties, stated on that particular permit application.

COMMISSION: Doug Gilmore stated that's the one we're visiting now.

APPLICANT: Chris Gardner, on behalf of Cavanaugh Trust Properties, stated this a second and different application.

COMMISSION: Doug Gilmore stated this doesn't change that you had a right after they ruled, 30 days.

APPLICANT: Chris Gardner, on behalf of Cavanaugh Trust Properties, stated we did, but we tried to address the issues raised by the MAPC. We were trying to operate in good faith. The MAPC raised three different issues. Two of them were about the location of the sign and then how many panels were on the sign. We tried to address that and bring it back to the city for review. That's what we're doing here. We're not trying to act in bad faith. We're trying to act in good faith to try and do what the city has asked us to do and what MAPC has asked us to do.

COMMISSION: Rick Miles asked on any signage throughout the city of Jonesboro, we have a footage requirement, correct? Between the signs. Where would this actual sign fall within footage variances from sign to sign.

STAFF: Derrel Smith stated it doesn't meet the spacing requirement for billboards. It's 600', 800' from another billboard. It's supposed to be 1500. What they're asking is if you all feel you need to overrule my decision, that if does it meet the requirements then you can do that. Or you can say that the decision is correct and we go from there.

COMMISSION: Rick Miles stated as the vice chairman of this committee I understand that opportunity, that we have authority. But I cite again, and maybe I need to ask it in a different way, because of the location of that sign from the very beginning, and it does not fall within the requirements of our signage footings.

STAFF: Derrel Smith stated that is the reason we would not allow it. If it had been there and hadn't been taken down and been taken down for nine months before they applied for any appeals, if it was in that six month time period, we would have gone ahead and probably allowed the non-conforming use to continue. But it was nine months instead of six months. Since it was gone that

long it doesn't fall into non-conforming, it has to meet our new codes and our new codes don't allow one there.

COMMISSION: Rick Miles asked if it didn't comply with several ordinances.

STAFF: Derrel Smith stated it doesn't meet the spacing requirement for billboards.

A motion was made by Jerry Reece that this matter be Approved but no 2nd. The motion FAILED with the following vote.

Nay: 3 - Sean Stem; Rick Miles and Jerry Reece

Absent: 1 - Max Dacus Jr.

[VR-19-07](#)

VARIANCE: 5208 Cherub Cove

Mark Morris of Mark Morris Construction on behalf of Bryan Barber is requesting a variance for address 5028 Cherub Cove to construct a 6 ft. fence in the side front yard setback. This is located in R-1 Single Family Medium Density District.

Attachments: [Application.pdf](#)
[Letter.pdf](#)
[Site Plan for Fence Location.pdf](#)
[Verifying Setback Email.pdf](#)
[Property Owner Notification.pdf](#)
[Pictures.pdf](#)

Bryan Barber is requesting a variance for address 5028 Cherub Cove to construct a 6 ft. fence in the side front yard setback. This is located in R-1 Single Family Medium Density District.

APPLICANT: Brian Barber of 5028 Cherub Cove is requesting a fence that extends to the utility easements by the road facing side of the house to allow for more privacy in the backyard.

COMMISSION: Doug Gilmore asked when is this city going to outlaw building a house on a corner? And who's job is it to say where the front of the house is. Do you have to say this is the front? You have two fronts.

COMMISSION: Stated, I have to ask, from this location, is there any hindrance to the right of way?

APPLICANT: Brian stated no sir.

A motion was made by Rick Miles, seconded by Sean Stem, that this matter be Approved. The motion PASSED with the following vote.

Aye: 3 - Sean Stem; Rick Miles and Jerry Reece

Absent: 1 - Max Dacus Jr.

[VR-19-08](#)**VARIANCE: 5201 Prospect Road**

Glen and Nancy Moring are requesting a variance for address 5201 Prospect Road to put a cover over their existing patio which would attach to the house and extend within the side setback 7.5 ft. leaving only 5 ft. from the property line. This is located in the R-1 Single Family Medium Density District.

Attachments: [Application.pdf](#)
 [Letter.pdf](#)
 [Residential Application.pdf](#)
 [Site Plan.pdf](#)
 [Adjoining Property Owners.pdf](#)

A motion was made by Rick Miles, seconded by Jerry Reece, that this matter be Approved. The motion PASSED with the following vote.

Aye: 3 - Sean Stem; Rick Miles and Jerry Reece

Absent: 1 - Max Dacus Jr.

[VR-19-09](#)**VARIANCE: 514 Airport Road**

Trish Dooly of Cupples Sign Co. on behalf of Stoneridge Church of Christ is requesting a variance for address 514 Airport Road for approval of a digital / illuminated sign withing 250 ft. of other residentially zoned properties. This is located in R-1 Single Family Medium Density District.

Attachments: [Application.pdf](#)
 [Letter.pdf](#)
 [Pcture.pdf](#)
 [USPS Receipts.pdf](#)

A motion was made by Jerry Reece, seconded by Sean Stem, that this matter be Approved. The motion PASSED with the following vote.

Aye: 3 - Sean Stem; Rick Miles and Jerry Reece

Absent: 1 - Max Dacus Jr.

[VR-19-10](#)**VARIANCE: 4345 Cypress Pointe**

Kevin Jones of K and T Custom Homes is requesting a variance for address 4345 Cypress Pointe to approve an encroachment on the eastern portion of the lot of a 6.5 ft. side setback instead of the 7.5 ft. side setback that is required. This is located in R-1 Single Family Medium Density District.

Attachments: [Application.pdf](#)
 [Site Plan.pdf](#)
 [Adjoining Property Owner Notifications.pdf](#)
 [Application and SWPPP.pdf](#)
 [Plans.pdf](#)
 [Plat.PDF](#)

A motion was made by Sean Stem, seconded by Rick Miles, that this matter be Approved. The motion PASSED with the following vote.

Aye: 3 - Sean Stem; Rick Miles and Jerry Reece

Absent: 1 - Max Dacus Jr.

[VR-19-11](#)**VARIANCE: 4000 Wigeon Cove**

Josh Moss of Moss Fencing on behalf of Abbigale Alloway is requesting a variance for 4000 Wigeon Cove for a 6ft. privacy fence to go in the side front yard setback. This is located in R-1 Single Family Medium Density District.

Attachments: [Application.pdf](#)
 [Drawing.pdf](#)
 [Adjoining Property Owners.pdf](#)
 [Application and SWPPP.pdf](#)
 [Plans.PDF](#)

A motion was made by Rick Miles, seconded by Jerry Reece, that this matter be Approved. The motion PASSED with the following vote.

Aye: 3 - Doug Gilmore; Rick Miles and Jerry Reece

Nay: 1 - Sean Stem

Absent: 1 - Max Dacus Jr.

[VR-19-12](#)**VARIANCE: 600 Shadow Lane**

Joe Selby is requesting a variance for address 600 Shadow Lane for a setback variance on Flint Avenue to match up with the home on the North Side of the Property. The setback for this property is 25 ft. and the encroachment is 13.4 ft. into the setback. This is located in an R-1 Single Family Medium Density District.

Attachments: [Application.pdf](#)
 [Letter.pdf](#)
 [Selby BZA Variance Request.pdf](#)
 [Plat.pdf](#)
 [Adjoining Property Owner Notifications.pdf](#)

A motion was made by Sean Stem, seconded by Rick Miles, that this matter be Approved. The motion PASSED with the following vote.

Aye: 3 - Doug Gilmore; Sean Stem and Rick Miles

Absent: 2 - Max Dacus Jr. and Jerry Reece

5. Staff Comments**6. Adjournment**