

**BOARD OF ZONING ADJUSTMENT MINUTES**  
**MEETING OF OCTOBER 1, 2007 - 2:00 P.M.**  
**MOBILE GOVERNMENT PLAZA, MULTI-PURPOSE ROOM**

**MEMBERS PRESENT**

Stephen J. Davitt, Jr., acting chair  
Sanford Davis  
Vernon Coleman  
Martha Collier  
Williams Guess  
J. Tyler Turner

**MEMBERS ABSENT**

Reid Cummings, chairman

**STAFF PRESENT**

Frank Palombo, Planner II  
Caldwell Whistler  
David Daughenbaugh, Urban Forestry  
Coordinator  
Tiffany Green, Secretary I

**OTHERS PRESENT**

John Lawler, Assistant City Attorney  
David Roberts, Traffic Engineering

Mr. Davitt noted the number of members present constituted a quorum and called the meeting to order. He then advised all in attendance of the policies and procedures regarding Board of Adjustment meetings.

The notation *motion carried unanimously* indicates a consensus, with the Chairman voting.

**HOLDOVERS:**

**# 5427**

**(Case #ZON2007-02041)**

**Anthony Richardson and Christopher Calhoun, Sr.**

**1907 Prichard Avenue West**

Southeast corner of Prichard Avenue West and Summerville Street.

**Use, Parking/Maneuvering, Landscaping and Tree Planting Variances to allow a convenience store on the ground floor with a studio apartment (single-family dwelling) on the second floor in an R-1, Single-Family Residential District, with undesignated parking and maneuvering areas, no landscaping provided and no trees on site; the Zoning Ordinance requires B-2, Neighborhood Business District, for a convenience store on the ground floor with a single-family dwelling on the second floor, striped parking stalls, 24' wide maneuvering area, 12 percent landscaping, and 22 total trees (15 overstory and 7 understory) are required.**

The Chair asked if anyone was present to speak on behalf of Anthony Richardson or Christopher Calhoun.

Members of the audience addressed the Chair expressing their desire to speak against the above referenced case. The Chair recognized them and allowed them to speak.

Gwendolyn Bonham, 2262 Lenox Avenue, Mobile, AL, spoke in opposition to having another convenience store in the neighborhood. She stated that currently there were four and that the residents of Morning Terrace think there are sufficient convenience stores in their neighborhood. She stated there were two on the corner of St. Stephen's Road, a J-Mart on Prichard Street, and farther down St. Stephen's Road, there was another. She went on to state that the majority of the residents in the area are elderly feel that the influx of convenience stores has become an inconvenience. It has increased both vehicular and pedestrian traffic. This proposed convenience store would be located right on Summerville St, between the corner of Summerville St. and St. Stephen's Road. The traffic in this area is already horrendous and she expressed concern that the proposed project would only make this issue worse. She also expressed concern over the track records of convenience stores regarding the issue of loitering. She stated the residents have had experiences with convenience stores in the past and they do not like them.

Abigail Shiver, who lives on the corner of Summerville St. and Joy Ln., stated that she would be quite close to the vicinity of this supposed building. She stated she was against it because right in front of her is another convenience store. She stated it always collects a crowd and that bringing another one to the area would just mean more people stampeding in and out of there. She said you can hardly get your cars in and out as it stands. She expressed hope that the Board would say no to another convenience store or any of the same kind of thing that was there before.

Mr. Davitt thanked those who spoke and asked if there were any others who wished to speak. He then advised the Board that this case had been held over from the previous month pending the submission of requested site work. To date that site work had not been submitted. He also noted that the applicant was not in attendance to present the case. He asked the Board members if any wished to comment.

There being no further discussion, Mr. Guess moved to deny the request and was seconded by Ms. Collier.

The motion to deny carried unanimously

**PUBLIC HEARINGS:**

**#5433**

**(Case #ZON2007-02256)**

**Norman R. Higgins, Jr.**

**951 Linlen Avenue**

(East side of Linlen Avenue, 400'± North of Chandler Street).

**Side and Rear Yard Setback Variances to allow the construction of a carport 0.5' off a side property line and 2.0' off a rear property line on a 70'-wide lot in an R-1, Single-Family Residential District; an 8' minimum side yard setback and an 8' rear setback are required on a 70'-wide lot in an R-1, Single-Family Residential District.**

Ron Higgins, 951 Linlen Avenue, Pinehurst Subdivision, addressed the Board requesting the above variance. He stated that the structure had been in place a little over a year and that it was constructed without knowledge of ordinances regarding such.

Carl Butler, 5500 William and Mary Street, also spoke with Mr. Higgins on Mr. Higgins behalf. He noted that the survey showed an undeveloped 20 ft lot between Mr. Higgins' building and the building adjacent to it. Mr. Higgins expressed belief that the 20 ft in question was an easement.

Mr. Palombo advised that it was not an easement, but instead it was 20 ft of a 40 ft vacated right of way, which had been included with this 50 ft lot.

Mr. Higgins brought up the option of purchasing the property, with Mr. Butler injecting that Mr. Higgins would like either the variance or the case being held over to allow Mr. Higgins the opportunity to discuss the purchase of adjacent property from his neighbor to the north.

Mr. Palombo stated that the purchase of the property to the north would rectify the issue to the north, however, Mr. Higgins would still be in ordinance violation with regards to his rear yard setback.

Mr. Butler asked if there would be objection to the variance on the back line.

Mr. Palombo stated that Mr. Higgins was asking for a variance on both lines.

Mr. Butler responded that they would like to have both variances granted, but in the case they were not, they would like to be granted additional time to resolve the matter in other ways.

Mr. Higgins was asked if the property in question was currently under contract. He advised the Board that it was not, but that he had been discussing this for some time with the current owner. He stated that the current owner had let him know that it was an option being considered. Mr. Higgins advised that the owner did not live there. The resident, instead, was the owner's daughter whom he believed was in nursing school. Mr. Higgins also advised that he maintained (i.e. cleaning and upkeep) the property, not the owner.

Mr. Coleman moved to hold the matter over for 60 days to allow Mr. Higgins an opportunity to negotiate with the owner of the property to his north.

Mr. Palombo advised the Board the motion would not address the back yard variance issue.

Ms. Collier stated that granting the hold over might offer the applicant the opportunity to resolve one of the variance issues, but seemed to put more situations in jeopardy. She also advised this was one of the reasons one did not need to build directly upon their property lines.

Mr. Higgins advised he had not built directly on his property line.

Mr. Palombo stated that Mr. Higgins' setback was 2 feet.

With regards to the backyard set back, Mr. Palombo advised that the Board had previously allowed for 5 ft setbacks but nothing less than 5 ft.

Mr. Turner asked if the foundation of the poles for the current carport were in concrete and if so, could they be dug up and moved?

Mr. Higgins advised the poles were in concrete.

Mr. Guess asked if there was a motion currently on the floor. Mr. Davitt responded there was and asked Mr. Coleman if he would like to amend it or leave it as it was, with the current 2 ft setback. Mr. Coleman said to leave it with the wording as follows, with Mr. Turner seconding:

**Side and Rear Yard Setback Variances to allow the construction of a carport 0.5' off a side property line and 2.0' off a rear property line on a 70'-wide lot in an R-1, Single-Family Residential District; an 8' minimum side yard setback and an 8' rear setback are required on a 70'-wide lot in an R-1, Single-Family Residential District.**

Mr. Davitt called the vote. The motion to approve the variance carried with one dissenting vote.

**#5434**

**(Case #ZON2007-02258)**

**Chartersouth, Inc.**

**1248 Hillcrest Road**

(Northwest corner of Hillcrest Road and Grelot Road)

**Front Yard Setback Variance to allow the construction of a convenience store gasoline pump canopy within 17' of a front property line in a B-2, Neighborhood Business District; a 25' front yard setback is required for all structures in a B-2, Neighborhood Business District.**

Mike Kinard, Chartersouth, 215 Distribution Drive, Birmingham, AL, for the applicant, and Justin Smith, Saad & Vallas Realty Group, 3601 Springhill Business Park, also for the applicant, were present in this matter.

Mr. Kinard stated they were seeking the above reference variance to bring the business into compliance with certain safety requirements made by Texaco, the branding retailer regarding distance from dispensers to the front of the store and sidewalks and a Texaco required canopy.

Mr. Smith stated that the building in question had previously been a restaurant, and prior to that, a convenience store. Industry safety requirements with regards to distance from the building, parking spaces and canopies have changed since that time. They have gotten bigger as vehicles have gotten bigger. The current proposal is for 5 pumps with a canopy in place to protect the customers from the elements and to provide a safe environment with lighting, safety information, as well as protect the pumps themselves. The variance being requested would not encroach on the 25 ft building setback with the gasoline pumps themselves, but rather would effect the overhang, which would be approximately 16 ft off the ground.

Mr. Davitt addressed the gentlemen stating there were other encroachment issues that needed to be addressed as well.

Mr. Palombo advised that with regards to the overhang setback, the requirement was either zero footage *or* 5 feet.

Mr. Davitt also brought to point the issue of necessary landscaping, including trees, for properties with 50% or greater coverage.

At this time, Mr. Kinard advised the board that a legal description for the north side of the property was being sought with regards to the issue of dual access to the shopping area to the back of the property.

Mr. Smith stated there was an agreement in place with the adjacent property owners, the Quackenbush Family Limited Partnership, for non-exclusive reciprocal easement between the two properties for the purposes of opening up a cross access driveway between the two properties to improve the flow of traffic. He acknowledged that this would have to go before the Planning staff as well. He stated that he believed a letter of support for this venture had been written by the Quackenbush family and sent to the Board of Adjustment.

Mr. Palombo stated the canopy sideyard setbacks in this district require either zero ft or a 5 ft. The movement of the canopy can either be lengthened by 2 ft or remove 3 ft from it. He addressed the fact the canopy addition will increase the site coverage to 50% or more, thus requiring full compliance with regards to landscaping and trees.

Mr. Smith advised the Board members that there was significant space for landscaping and that they would be in full compliance in this regard.

Mr. Davitt let the gentlemen know that that there was no letter from the Quackenbush family in the file.

Mr. Kinard asked if the staff would recommend either the zero setback or a 5 ft set back.

Mr. Palombo advised Mr. Kinard that the ordinance required either a zero or 5 ft setback. Mr. Kinard responded he thought they could do that either way.

Mr. Guess asked the gentlemen if there was a safety requirement between the parking spaces and actual canopy. Mr. Kinard advised that while 55 ft was the optimum, that 51 ft is the minimum allowance, by Texaco/Chevron standards.

Mr. Turner questioned how many pumps could typically be placed on the site, if the variance was not granted. He added that the typical petroleum station needs about 200 ft x 200 ft, and that it seems they were trying to “jam” a petroleum station in a site that’s not fit for it.

Mr. Kinard stated that an optimum site was 200 ft x 200 ft and that there will be 5 multi-product dispensers there. He advised the Board that the owner gets an investment from Chevron and/or Texaco to a certain amount of pumps before hand, or Chevron/Texaco will not assist the owner with such things as branding, etc.

Mr. Guess also questioned whether the current entrance to the property off of Hillcrest would be eliminated or would the property have 3 entrances?

Mr. Kinard stated the current entrance from Hillcrest would not be eliminated and there would be access to the property from Hillcrest, Grelot, and the dual access with the conjoining property.

Mr. Palombo reminded all that the dual access had not yet been approved by the Planning Commission.

Mr. Davitt asked Mr. Palombo to clarify that statement, and Mr. Palombo stated that the shared north access from the property in question to the Quackenbush property had not yet been approved. He advised the gentlemen that a PUD application would have to be submitted regarding this.

Mr. Smith advised the Board that the Planning Staff recommended they approach the Board of Adjustment with for this variance request prior to filing an application with the Planning Commission.

Mr. Guess asked if an applications to the Planning Commission had been filed and was advised it had not, and that the only approval that had been granted so far was that of the Quackenbush family and the property owner.

Ms. Collier asked if there was the possibility of losing Chevron/Texaco support if there were less than 5 pumps.

Mr. Kinard advised the group that, ideally, there would be 6 pumps, however, in this case, 5 would be sufficient.

Mr. Smith stated that the original plan had shown 6 pumps, but it had been eliminated based upon a recommendation to them that it would be better to request only a front yard setback from Board of Adjustment, rather than both a front and back yard setback.

Mr. Guess asked if this station would be similar to the other Texaco stations being currently built around Mobile County. Mr. Smith said yes, that this station was owned by the same ownership group out of Atlanta, GA, and would be a smaller version of others that have been built recently, such as the one on Moffett Rd, and the one currently going up on Old Shell Rd. He said they all are very modern, contemporary, high quality properties.

The chair hearing no further discussion, asked if there was a motion on the matter and Mr. Coleman so moved.

Mr. Palombo asked the Board if the staff could add conditions and Mr. Coleman agreed to the following:

- (a) approval for traffic engineering with the design, location, and size of curb cuts,
- (b) approval of the Planning Commission for the PUD and shared access,
- (c) full compliance with landscape and trees, and
- (d) location of the dumpster with the proper buffering.

Mr. Guess seconded the motion.

Mr. Davitt called the vote, stating the motion to approve the variance as follows:

**Front Yard Setback Variance to allow the construction of a convenience store gasoline pump canopy within 17' of a front property line in a B-2, Neighborhood Business District; a 25' front yard setback is required for all structures in a B-2, Neighborhood Business District.**

The motion carried unanimously.

**#5435/5386**

**(Case #ZON2007-02262)**

**Way of Life Community Church**

**1764 Riverside Drive**

(North side of Riverside Drive, 400'± West of Club House Road).

**Use Variance to allow a seven-month extension of approval on a previously approved Use Variance to allow a temporary disaster relief volunteer camp (kitchen, dining, sleeping and shower trailers) in an R-1, Single-Family Residential District; the Zoning Ordinance does not allow disaster relief camps or habitable trailers in R-1, Single-Family Residential Districts.**

J. D. Landis, 1104 Bartran Curve, Mobile, AL, and pastor of Way of Life Community Church, was present in this matter. He stated he was also the chairman for the Alabama-northwest Florida unit of Mennonite Disaster Services. He went on to remind the Board that his organization had been granted a variance the previous November for a temporary volunteer disaster site which had been operational since January. He advised the members that part of the reason for requesting an extension of the variance for 7 months was due to the fact that the job of disaster recovery is not finished and they continue to work with Mobile County long-term recovery. He went on saying that volunteers are coming less and less to this part of the gulf coast, so when there are willing Mennonite volunteers, they are glad to see them and willing to accommodate them. He stated this 7 month variance would allow them to go through the winter months and into the spring, which is the prime time to get work done, as Mennonite volunteers from the north love to come south during that time. The extension of the variance would also allow them time to remove the trailers and return the site to its expected condition. He let the Board know there were no changes needed to the variance and that as recently as two weeks prior, three of the City's inspectors had been out and "okayed" them.

Mr. Davitt asked Mr. Landis if he had seen the staff recommendations regarding the extension. Mr. Landis advised that he had not, so Mr. Davitt stated they had recommended an extension that would terminate the end of May 2008. He let Mr. Landis know that the extension required compliance with all city codes and ordinances, limited the site to 4 trailers, and at the end of the 7 months, the site must be cleaned up and returned to single family, residential character. This would mean all debris and signage removed, as well as renewing necessary permits.

Mr. Landis was in agreement with all of this.

Mr. Davitt asked if there was anyone present to speak in favor of this.

Michael Dilber, 700 Magnolia Rd, Mobile, and coordinator of long-term recovery for Volunteer Mobile, spoke. He stated he was responsible for working with all the community agencies and non-profits. He expressed how critical it was to have these types of volunteers in our community, especially the Mennonites, as they have an exceptional reputation for being able to take difficult projects and manage them. The Mennonite volunteers who participate are skilled and Mobile has been blessed to have had them in our community for as long as we have, speaking from the perspective of Volunteer Mobile, the coordinating agency, and as the representative of Volunteer Mobile, he was requesting the Board consider the extension.

Mr. Davitt asked if there were any others who wished to speak for or against the variance.

Mrs. Margaret Broome, 1901 Riverside Drive, stated she had live there for the last 35 years and that there were a number of elderly people who also lived in this area and could not come to this meeting to voice their objections. She told the Board that there were at least 6 churches, other than the Mennonites, that did work in that area of town, however, the Mennonites have not offered to work with any of them. She said that the Mennonites worked by themselves. She said that she has had to pick up paper in front of the church, in front of the house next door which the church owns, as well as in front of the church across the street from the church, which she believes they have possession of as well. She told the Board they had erected a metal framed sign in the front of the house across the street from the church that stated "Mennonite Disaster Service". She expressed that she and neighbors she had spoken with did not like the presence of the volunteers. She said she and many of her neighbors felt that the Church and volunteers didn't actually help the community of Riverside Drive. She expressed some concern over alleged illegal activities she believed were taking place at the location. She said the neighbors didn't like "stuff" like that in their neighborhoods. She expressed concern that the Church was attracting people from all different walks of life and things. She expressed concerned that the people coming to work with the Church were taking jobs from people in Mobile that need jobs. She was very concerned over the number of trailers listed being 4, as she had seen 6 to 8 trailers on the location. She stated that she felt the organization was not being truthful regarding their operations. She stated that she didn't think the street she lives on, which is also the location of the organization requesting the variance, did not look any better now than before they came. She reiterated concerns she had stated earlier, adding that she and her neighbors felt their property values were being deflated because of the church's trailers, and what she considered to be a "trailer court". She finished by expressing her deep wish that the Board not grant this variance.

Mr. Davitt, hearing no further discussion, asked if there was a motion to be presented.

Mr. Guess moved, with Mr. Coleman's second, to approve the requested variance with the following staff recommendations:

**Use Variance to allow a seven-month extension of approval on a previously approved Use Variance to allow a temporary disaster relief volunteer camp (kitchen, dining, sleeping and shower trailers) in an R-1, Single-Family Residential District; the Zoning Ordinance does not allow disaster relief camps or habitable trailers in R-1, Single-Family Residential Districts.**

The motion carried unanimously



**#5436**

**(Case #ZON2007-02279)**

**Carl B. & Brenda J. Humphreys**

**3013 Riverside Drive**

(East side of Riverside Drive, 70'± North of Grove Court).

**Use Variance to allow an accessory structure to be used as an additional dwelling in an R-1, Single-Family Residential District; only one dwelling is allowed on a site in an R-1, Single-Family Residential District.**

Kevin Loper, 3830 Patricia Drive, was present on behalf of the applicants, as they were out of town. She said she thought this was scheduled for holdover until November.

Mr. Davitt concurred that the staff had recommended it for holdover, but it might be heard in either October or November, depending on the length of the holdover. He went on to explain that the holdover was because there were some concerns and questions about the applicants' ability to go back and establish the non-conforming use of the property.

Ms. Loper state she believed Mr. Humphreys had done that and asked if the staff had received the letters Mr. Humphreys had gotten per their request. She asked if the staff had the letter, then the Humphreys simply needed to return in November.

Mr. Davitt said if the necessary materials were present and with no one in opposition to the matter, the issue might be resolved at that meeting.

Mr. Whistler advised the Board that he had all the necessary documentation on all 3 properties regarding "non-conforming". The documentation confirmed that none of the 3 properties had been vacant form longer than 17 or 18 months since the 1958. In trusting the previous owner, all 3 of those structures were grandfathered in as dwellings and can continue to be used as such. The current owners want to tear down the structure by the water and re-build it. However, the other two, especially the one by the street, have lost their "continuous use" status due to the hurricane. This would be considered a hardship. The original owners had permits for reconstruction, but when the family sold the property, that created a lapse of permitting activity.

The question of whether the structures meet the present "topo" and flood way codes was raised.

The staff stated these were existing structures which were repaired not rebuilt. The repairs were less than 50% of the total value of the homes, which meant they did not have to be raised to meet flood elevation. They stated that the structure in question had a tree come through the roof which meant roof and interior repairs.

Mr. Davitt asked, for clarification, about the structure next to Riverside Drive.

Ms. Loper stated that would be where they were going to rebuild.

Mr. Palombo stated they would be tearing down that structure and build again.

Mr. Davitt queried that if they tear it down and build it back, it would obviously more than 50%, per the ordinance.

Mr. Palombo responded that was correct, but that structure was not the subject of this variance.

With no further questions, Mr. Davitt said the chair would entertain a motion from the membership.

Mr. Guess asked if the property had already been grandfathered, was there a real need for a vote?

Mr. Palombo informed the Board as the addition to the new building would be larger than what was currently present, they had to vote on the variance. The Board had to approve the request to increase the square footage.

Ms. Collier moved to approve the following, with Mr. Coleman's second:

**Use Variance to allow an accessory structure to be used as an additional dwelling in an R-1, Single-Family Residential District; only one dwelling is allowed on a site in an R-1, Single-Family Residential District.**

The motion carried unanimously.

Mr. Davitt advised Ms. Loper that the Humphries did not have to come back before the Board regarding this case.

**#5437**

**(Case #ZON2007-02281)**

**Byron D. Ray, III & Anna K. Ray**

**West side of Hawthorne Place North, 355'± South of Kingsway Drive. Site Variance to allow the construction of a single-family dwelling with 38.2% total site coverage in an R-1, Single-Family Residential District; the Zoning Ordinance allows a maximum site coverage of 35% by all structures in an R-1, Single-Family Residential District.**

Anna Katherine Ray, 222 Rochester Road, was present, and stated she and her husband owned the lot and wanted to build a home on it. She advised the Board they were currently working with the third set of house plans. This was due in part to the size of the lot, the way the front cubs and back corner have made the lot irregular in shape and the number of trees located on the lot. She stated they felt it would be best to have the garage located at the back of the property versus the front, specifically for the sake of the trees. In doing so, this meant more covered spaces (i.e. porches, walkways, and storage). The extra percentage being requested in the variance represents this. The main dwelling is well below the maximum percentage for lot coverage. Mrs. Ray conceded that it would be better if the garage and storage areas were connected to the home, however, in an effort to preserve green space this was the best plan.

Mr. Davitt asked what was the square footage for the home.

Mrs. Ray stated it was approximately 4163 square foot of roofed area, and that included the two car garage, the walkway, and everything.

Mr. Palombo remarked that the lot size was a lot more than 10,000 square foot.

Mrs. Ray stated that the porch along the back is 27 feet long by 12 feet wide, the adjacent stoop coming off the walkway is about 8 feet by 8 feet, the walkway is 32 feet long by approximately 3.5 feet wide, and then the additional proposed storage areas off of the 2 car garage adds some additional square feet. She allowed that if it weren't for wanting a covered walkway and porch, they would be well beneath the ordinance percentage.

Mr. Davitt asked if there was anyone who needed to speak in opposition or if the board had questions.

Mr. Coleman moved to approve the following variance, with Mr. Guess' second:

**Site Variance to allow the construction of a single-family dwelling with 38.2% total site coverage in an R-1, Single-Family Residential District; the Zoning Ordinance allows a maximum site coverage of 35% by all structures in an R-1, Single-Family Residential District.**

The motion carried with one dissenting vote.

**#5438/5396**

**(Case #ZON2007-02282)**

**Shiloh Missionary Baptist Church**

**2756 Old Shell Road**

(Northwest corner of Old Shell Road and Bay Shore Avenue).

**Parking Ratio Variance to allow 171 parking spaces at a 750-seat church; the Zoning Ordinance requires 188 parking spaces (one per four seats) for a 750-seat church.**

Don Williams, Williams Engineering, represented the applicants, acknowledged the staff's recommendation for holdover. However, he stated, the issue will be the same a month from then as it was presently. The staff had recommended the holdover due to needing more information. Mr. Williams felt that the staff now had the information necessary to make a decision, but as they still had to go before the Planning Commission, the holdover would have no negative effect on the project.

Mr. Davitt addressed the right of way issue as brought up by the staff.

Mr. Williams stated that, according to the boundry study done, the Old Shell Road right of way in question is 25 feet from the center line of the road to the church's property line. He stated what was confusing is the right turn lane that goes directly into UMS-Wright, which is located directly across from the church, is apparently on private property. It was assumed that the turn lane was on the City's right of way. In as much as the turn lane is not part of the City's right of way, this still leave a 50 foot right of way at that point on Old Shell. Since this has been determined, the notation on the plat stating "right of way varies" should be deleted. Because the 50 foot right of way is intact, when the church goes before the Planning Commission in two week, there will not be a request for extra right of way. The church also has right of way on Bayshore Avenue, as well as on LeCren Street, the other two streets that border the church. Mr. Williams also noted that the church is reducing the number of curb cuts currently on the property. He noted that it is a significant expansion of church and an expansion of the parking

lot, but even so, they will be 16 parking spaces short, based upon the City's ordinance regarding same.

Mr. Coleman asked about an adjacent property.

Mr. Williams stated there are 2 pieces of property not included on the plat. The lower one is vacant, while the upper one still has a home on it. The church has tried repeatedly to purchase both parcels with no success.

Mr. Guess asked what was on those two parcels.

Mr. Williams stated he thought the larger parcel was vacant and just grassy. The smaller piece did still have a house on it. This would mean the church would have parking right next to this residence and that the church would put up either a 6 feet high wooden privacy fence or a landscape screen. Currently there was a landscape screen up in that area, but they would have to supplement that, but that was an issue he planned to discuss with the Planning Commission.

Mr. Palombo stated he believed the Board could vote on the parking ratio reduction and the Board could include the condition of based "upon Planning approval".

Mr. Williams was agreeable with this and informed the Board that the church was very much a neighborhood grounded church with many of its members walking to church. Mr. Williams noted that on Sundays, there was parking available along Bayshore Avenue that was not listed and included as park of the church's parking as they are not "on site". The area is "flagged" as "no parking except on Sundays", therefore there are probably 16 more spaces in that area.

Mr. Coleman moved to approve the following variance with condition, with Ms. Collier's second.

Mr. Turner wanted to know if Traffic Engineering had looked at all of the access/egress points.

Mr. Roberts stated that Traffic would need to look at the parking site plan again, but that would come through the Planning Commission review.

Mr. Palombo added that from the plans it appeared to him that it would make traffic easier and even noted where he believed the retention pond to be.

Mr. Turner asked if the retention pond would be underground for this property.

Mr. Williams advised that it would not be underground as that area is too shallow, with entire site probably having 2 feet or less of contour. Mr. Williams stated they would probably have to dig down just a bit to put in the retention pond, then they will ring it with shrubbery and probably a 3-4 feet high fence. Mr. Williams went on to discuss the fact that the church will be granting some additional right of way for a radius at Bayshore Avenue and Old Shell Road. He stated that the point where these two road come together is very severe, which has helped create a sight line problem. Based upon a recommendation from the Planning department, the church is granting some extra radius in that location by taking out that parking area. This will also allow for a return to a technical "sidewalk" situation as well, rather than simply paving the whole area.

They feel that by taking the parking from that point, it will be a lot better for traffic considerations, both in and out.

Mr. Coleman asked if the existing building would remain or be demolished.

Mr. Williams stated the original sanctuary will remain, becoming classrooms, however, the small church building further to the west will be taken down.

Mr. Guess wanted to know if the proposed property would look very much like the property across the street from it (i.e. the UMS-Wright campus)? Would the two properties compliment each other?

Mr. Williams said yes, they would be copying much from that property, such as the iron fence.

With no further discussion, the chair called for a vote approving the motion as follows:

**Parking Ratio Variance to allow 171 parking spaces at a 750-seat church; the Zoning Ordinance requires 188 parking spaces (one per four seats) for a 750-seat church, subject to the conditions of approval of the Subdivision, Planned Unit Development, and Planning Approval by the Planning Commission.**

The motion carried unanimously.

**#5439**

**(Case #ZON2007-02283)**

**Ron & Co. (Ron Twilley)**

**211 West Drive**

(East side of West Drive at the East terminus of Northwoods Court, extending to the West side of Center Drive).

**Fence Height Variance to allow the construction of a 6' high privacy fence with brick columns setback a minimum of 6' from the West Drive (front street) property line; a 25' front yard setback is required in an R-3, Multi-Family Residential district.**

Don Williams, Williams Engineering, for the applicant, stated this variance was for a fence that had already been built. This fence was built without city building permits or city review of its construction. The property was developed by Ron and Darlene Twilley. Mr. Twilley also developed the adjacent property to the south, Ridgefield Commons, with his brother. This project was part of the Ridgefield Commons project, being condominium/townhouse properties, as opposed to those present in the Ridgefield Commons subdivision, which are single family homes. Ridgefield Commons has a very nice fence in place which is a brick columned, wood fence, approximately 6 feet high, that crosses the backyard of all of the residents of Ridgefield Commons. That fence is approximately 5 feet from the back to the sidewalk and is nicely landscaped. Mr. Williams went on to say that Mr. Twilley made the assumption when beginning the second project, Ridgefield Townhouses, it would be okay to simply extend that first fence and because Mr. Twilley was not involved in the creation of the fence at Ridgefield Commons, he just built the second fence, which blends nicely with the first fence. It, too, has a 5 feet setback from the sidewalk with brick columns, wood panels, and landscaping. At the middle of

the property, there is a divided median. This is not a city or public road. This is part of the PUD project with a split “one way in, one way out” median type of commons area in the middle that allows a further distancing between the properties north and south of each other. This created a “one way in” and “one way out” in regards to the driveway entrance with the proposed drive being 75 feet right of way, most of that being a green area with a single traffic, with some side parking there. Mr. Williams continued by stating that West Drive is the entrance way, and as one traveled to the middle of the property, at approximately the half way to two-thirds mark, the fence changes in character from wood to iron, picket type, eliminating a sight issue. Mr. Williams did inform the Board that in the middle of the green area there was a 5-6 feet high brick marker identifying the project. He stated this marker is not in the right of way, but within the 25 feet setback. The variance is a request for the marker, which is over 3 feet high, and for the fence, which due to its wood/brick nature is too high.

Mr. Williams directed the Board’s attention to a packet that had been created for their benefit containing information regarding this, including the comments from 12 to 14 of the 16 property owners who all cite the increased security benefits they feel come with the fence and marker. These owners feel good about the security this affords them. They also feel good about the sight distance. They feel it slows traffic. As the developers of the project, the Twilleys feel the same way, as well as see it as an enhancement to both the street and the neighborhood residents, and in as much, request that it be allowed to remain in its current condition.

Mr. Davitt asked if it were gated?

Mr. Williams stated it was, and that the gate is also iron and recessed.

Mr. Palombo asked if it was shown on the PUD.

Mr. Williams stated neither the gate nor the fence were ever shown on the original PUD.

Mr. Palombo asked if there was a plan to revise the original PUD to include these.

Mr. Williams stated they would be glad to because right now there is no easement as such and it was Mr. Williams understanding that the fence to the south does have an easement of 5 feet or so to allow it to go onto private properties.

Mr. Palombo advised Mr. Williams that there is also a “3 car stacking” requirement.

Mr. Williams stated it would be nearly impossible to comply with that at this point, due to the fact that the first building is 25 feet from the right of way line. If the gate were to be “pushed” further back into the property, the gate would swing over someone’s driveway, thereby blocking that person’s access/egress. This is not the case, he stated, with regards to the exit. It swings out, but not onto the right of way. He also advised the Board that this is a closed community, once past West Drive. This means this area has very low traffic, being either those living there or with business there. This makes the current “one car stacking” appropriate. To create the ability to “3 car stack” would require the removal of the gate.

Mr. Davitt addressed Mr Palombo with some questions. He asked for confirmation that neither the fence, nor the closed access to private property, were on the originally submitted PUD. Mr. Palombo confirmed that none of these were on the original PUD.

Mr. Davitt stated that Mr. Williams, regardless of what happened with the Board of Adjustment, would have to amend the PUD to the Planning Commission.

Mr. Davitt asked about the sidewalk being outside of the right of way.

Mr. Palombo stated that portions of the sidewalk are on private property but not all of it.

Mr. Williams responded that the sidewalk was not poured in the traditional location of a sidewalk for the City's purposes, and that it is a little too far out in the median area toward West Road, almost adjoining West Road. He went on to comment that the sidewalk is not in the proper relationship to the right of way line through out its entire length.

Mr. Turner asked if the road becomes private, then that means it becomes the property of the owners of the complex.

Mr. Williams responded that actually the road is already a private road and shown as such on the PUD, and that the gates and sidewalks on the property are already private, so they fall under common ownership in that regards.

Mr. Davitt asked about the location of the original fence. Mr. Palombo stated it was to the south and was also private.

Mr. Palombo questioned if there was a mail kiosk. Mr. Williams stated that mail service was to each individual house, that there was no mail building, no common little building there, so the only restriction of sight distance is actually the brick sign itself, which is within the 25 feet setback.

Mr. Davitt asked if this was all done without being shown on the PUD, without permits or any other time of official permission.

Mr. Williams responded in the affirmative.

Mr. Davitt asked if anyone else had anything to add regarding this matter and Mr. Ron Twilley, the developer, addressed the Board. He stated that he placed a fence on Bradford Place behind the properties of Ridgefield Commons and that the fence in question is identical to that fence. He stated that his partners and the engineers were supposed to have put all of this on the PUD when it was submitted. He was not aware that none of it had been placed on the PUD until Bijan Shirazi, city inspector, advised him of this, and that was approximately a year or more after the fact. Mr. Twilley accepted it as ultimately his responsibility for not recognizing that these things were not on the original PUD, but also stated that had it been included on the original PUD, it would have been a non-issue. Mr. Twilley reiterated Mr. Williams earlier statements that the residents and neighbors like the site as is. Mr. Twilley stated that in developing Ridgefield Commons, he went to the expense of resurfacing West Drive approximately 80 feet past the

property he owned at Bradford Place to city specifics. He said he did this because it made his property more appealing as the public road was “falling apart”.

Mr. Turner moved to approve the variance with the following conditions, with second by Mr. Guess:

**Fence Height Variance to allow the construction of a 6’ high privacy fence with brick columns setback a minimum of 6’ from the West Drive (front street) property line; a 25’ front yard setback is required in an R-3, Multi-Family Residential district, subject to the following conditions:**

- 1) subject to the approval of a revised Planned Unit Development to include the fence by the Planning Commission; and**
- 2) obtaining a permit for the fence.**

The motion carried unanimously.

Mr. Turner also went on record stating the Mr. Twilley had projects going on all over the county of Mobile, and that if he (Mr. Turner) had as much to do as Mr. Twilley, he (Mr. Turner) wouldn’t know what day it was, so there’s a chance that somewhere out there...he (Mr. Twilley) just “dropped the ball” one time.

**#5440**

**(Case #ZON2007-02284)**

**Christopher Schatzman**

Northwest corner of Old Shell Road and Austill Avenue.  
**Fence Height Variance to allow the construction of an 8’ high masonry wall along the Old Shell Road (side street) property line; a 20’ side yard setback is required along a side street (Old Shell Road) in an R-1, Single-Family Residential District.**

Don Williams, Williams Engineering, spoke on behalf of the applicant, advising the Board members regarding the location of this property. He stated that they should all be familiar with this lot. It is on Old Shell Road and Austil Avenue, just west of McGregor Avenue. It is the lot that is kind of in the hole on the right, generally across from Eaton Square. It is a very low lot and this creates the issue. This lot used to be part of a larger lot and was subdivided years ago. The lot to the north was constructed 5 or 6 years ago and the house to the west of this property was constructed about 7 or 8 years ago. At the time, that home owner had a fence placed 3 feet from the Old Shell Road property line, which is contrary to the requirements of the Board of Zoning Adjustment. The fence they constructed is picket metal with two brick columns with a driveway. They also planed palm trees in their front yard on the city right of way. In essence, these homeowners “hemmed” themselves in, with a self-imposed line of sight distance issue.

Mr. Williams went on to state that his clients, the Schatzmans, want to make a sideyard for their house on the corner, and in doing so, would like to put up a 6 to 8 feet high concrete block fence covered in stucco to block noise from Old Shell Road. Mr. Williams advised that the house is to be two story, with a “walk out” basement at the lower level. To have any kind of yard whatsoever, they need to “claim” the side yard, and in doing so are requesting the right to go all the way to the right of way on Old Shell Road. Mr. Williams noted that the staff recommendation is for a 6 feet set back from the Old Shell Road right of way. Mr. Williams



assumed most of this was for justification in regards to traffic engineering because of the sight distance issue for the persons to the west. Mr. Williams went on to state that this area already had a lot of vegetation on the right of way, as well as other fences, and that the area is already "very corridor-ish". As the neighbors' fence is already 2-3 feet from the setback, Mr. Williams felt comfortable requesting a variance that will put his clients' fence in line with that fence. Mr. Williams stated this will not impede the neighbors' line of sight, as it is already restricted by their own fence. Mr. Williams advised that as the property starts to drop off right at the road. Ultimately there is about a 9-10 feet drop from the road surface by the time one reaches the house, therefore, even with a 3 feet setback, the elevation drops pretty quickly. He added that though the staff report indicated a little flat area, in the field, it actually is not as flat as it would appear, this would mean that the fence would very quickly rise in height. Because of that, the owners are very receptive to a requirement of landscaping between the fence and the right of way line. It is their feeling that a stark 6-8 feet high fence would be very "out of character" for that area. Mr. Williams stated the owners would like to put nice pretty plants between the proposed 3 feet setback stucco'd fence and the road right of way. Mr. Williams went on to add that he felt it would create a safer traffic situation as well, due in part to the fact that if there were an accident in that area now, the risk of plunging into the ravine is high. By placing the fence there, it will act as a buffer for traffic and sound. Mr. Williams said it would add to the beautification of the area and give the Schatzmans a much better backyard.

Mr. Davitt, for clarification, stated he understood the request was for a 2-3 feet setback off the right of way and that the owners were willing to go ahead and put plants up, which will block traffic.

Mr. Williams responded by saying they would have to mound some dirt, too, for storm drainage, because immediately at the right of way line, drainage starts to head back toward the home. They will actually have to put dirt between the home and the fence to get storm water to go back onto the city right of way. At that time, they will begin planting in the 3 feet strip.

Mr. Davitt advised Mr. Williams that the staff had recommended a 6 feet setback.

Mr. Williams stated that the property owners would like to go with 2-3 feet, using the current fence line from the next door neighbors' property as the controlling point.

Mr. Palombo interjected by asking Mr. Williams if he was familiar with the "Village of Springhill" movement.

Mr. Williams advised that he was.

Mr. Palombo said that part of that project involved sidewalks in the area and that the "Village of Springhill" organizers had received ISTEAs money to build those. He also advised that the "Village of Springhill" organizers were trying to acquire land along Old Shell Road to make the area more "presentable" and that the intersection located just west of the proposed variance at Hillwood was an area targeted for such. In as much, Mr. Palombo stated that he didn't know if putting a wall 3 feet or less from the right of way would be in the best interest of all parties.

Mr. Williams expressed concern that due to the sharp decrease in elevation from the road to the home site, that being 6 feet in from the right of way would result in a fence wall that was approximately 12 feet high.

Mr. Palombo suggested that the wall might be tapered.

Mr. Williams responded that even with tapering, the wall height would rise quickly due to topography of the area. He also said that the owners were concerned with privacy as well as noise.

Mr. Palombo suggested that a 2 feet wall would buffer noise and due to the elevation drop, the second story of the home would be barely visible coming down Old Shell Road.

Mr. Williams felt that the 2 feet wall would not provide the privacy the owners were seeking.

Mr. Guess stated that several months before, there had been a variance request of the same nature across the street from this site, and that the Board had recommended it be put behind vegetation, giving it an 8 feet setback.

Mr. Palombo concurred adding that the address was the corner of Hillwood and Old Shell Road.

Mr. Roberts, the City Traffic engineer, interjected at this point. He brought up the oak tree mentioned earlier that is located in the right of way. He said it is at the very edge of the driveway of 4608 Old Shell Road. By his recollection, the homeowners at that address made an application to the tree commission to have that live oak removed because of a line of sight problem. The application was denied. Mr. Roberts stated it was from this history he reviewed the situation. He allowed that the homeowners themselves had been instrumental in creating the line of sight issue with the placement of their fence, landscaping, and trees. However, Mr. Roberts added, the City was on notice with regards to the live oak and the traffic issue.

Mr. Williams responded to that by saying if his clients were allowed to put their fence in line with the other homeowners' fence, it would not make the situation worse, as they would not be able to see the new fence from their driveway.

Ms. Collier spoke up to voice concern regarding Mr. Williams' earlier statement that the proposed fence would make Old Shell Road more "corridor-ish". This is something she has very strong negative feelings towards, and in as much, she moved to approve the application but with an 8 feet setback. Mr. Guess seconded the motion.

Mr. Davitt, hearing no more discussion, called the vote on the following:

**Fence Height Variance to allow the construction of an 8' high masonry wall along the Old Shell Road (side street) property line; a 8' side yard setback is required along a side street (Old Shell Road) in an R-1, Single-Family Residential District.**

The motion carried unanimously.

Board of Zoning Adjustment  
Oct. 1, 2007

There being no further business, the meeting was adjourned.