

**BOARD OF ZONING ADJUSTMENT MINUTES**  
**MEETING OF FEBRUARY 5, 2007 - 2:00 P.M.**  
**AUDITORIUM - MOBILE GOVERNMENT PLAZA**

**MEMBERS PRESENT**

Reid Cummings, Chairman  
Stephen J. Davitt, Jr.  
William Guess  
Martha Collier  
Vernon Coleman  
Sanford Davis

**MEMBERS ABSENT**

J. Tyler Turner

**STAFF PRESENT**

Frank Palombo, Planner II  
Caldwell Whistler, Planner I  
Mae Sciple, Secretary II

**OTHERS PRESENT**

John Lawler, Assistant City Attorney

Chairman Cummings noted the number of members present constituted a quorum and called the meeting to order.

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

**HOLDOVERS**

**#5393**

**(Case #ZON2006-02389)**

**Arlo Investments, Inc.**

**3755 Sheips Lane**

(South side of Sheips Lane, 535' ± East of North McGregor Avenue).

**Front Yard Setback and Site Coverage Variances to allow the expansion of an existing single-family dwelling within 7' of the front property line and to allow 40% site coverage; a 25' front yard setback and a maximum site coverage of 35% are allowed in an R-1, Single-Family Residential District.**

*The site plan illustrates the proposed building, drive, and setbacks.*

Briley Shirah, a resident of 915 Palmetto Street, stated that he was one of the owners of Arlo Investments, Inc. He said he was in agreement with the recommendations of the staff for approval. Mr. Shirah also submitted a petition signed by ten homeowners on Sheips Lane who were in support of this application.

Mr. Cummings asked if there was anyone else who wished to speak in favor of this application. There was no one who wished to speak.

Mr. Cummings asked if there was anyone who wished to speak in opposition to this proposal.

Henry H. Caddell, attorney, 911 Government Street, stated that he was present on behalf of a number of residents of Sheips Lane, approximately 12 of whom were present. Mr. Caddell submitted a list of points, as well as photographs, to the Board. He also submitted a petition signed by 15 neighbors who were very much opposed to this proposal, as they submit that the project would not be in keeping with the aesthetic quality of the property and the neighborhood, and would not do substantial justice to the surrounding neighbors. To the contrary, it would mar the appearance of the neighborhood. Mr. Caddell passed around a large photo showing that the proposed project would basically jut out tremendously close to Sheips Lane, and submitted the photo to the Board. He noted that the subject property was very small. It was an anachronism from the time before zoning. The subject lot was only 4300 square feet, rather than the minimum 7200 square feet as required by the Regulations, and the applicant still wanted to cover 40 percent of the site with a structure. He contended this would be a condo or townhouse type development in the middle of a nice subdivision with flowing lawns and houses that were set back further from the street. Mr. Caddell pointed out the Mrs. Powe's house, which was next door and immediately behind the subject property, was set back 80 feet from Sheips Lane. He submitted additional photos which showed the streetscape of Sheips Lane, showing that all the houses were set back at least 25 feet from the right-of-way. The one exception was the house on the corner that really did not face Sheips Lane, but it was heavily shielded with plantings and very tall bushes. The residents felt to allow the proposed home as submitted would be out of character with the neighborhood. Mrs. Powe had been in the neighborhood for 35 years, and others had also been there for similar amounts of time. They had worked hard beautifying Sheips Lane over the years. Mr. Caddell also stated that the staff report was incorrect in stating there there was an existing garage on the property. He said it was not a garage and had never been a garage. It was just an old block building dating from maybe 50 or 60 years ago, and it had never been attached to a home. He understood that there may be a certain amount of grandfathering that takes place when you have a very small lot that pre-dates the subdivision. He felt, however, that the Board should hold the applicant to the basic restrictions and not allow them to put such a large structure so close to the street. Further, Mr. Caddell felt that from all appearance Arlo Investments, Inc., was building this as a spec house. He felt it was not an undue hardship on the developer to require them to stay within the zoning restrictions. If they built a smaller structure they would just have a smaller return on their investment. He pointed out that the staff report stated that economic factors may not be considered as part of an undue hardship. Mr. Caddell said some of the residents of Sheips Lane would also like to speak.

Charlie Wilcox stated that he owned property on Mordecai Lane one lot down to the east behind the subject property. This property had been in his family for over 50 years. Also, he and his brother owned a lot and a house on Sheips Lane east of the subject property. Mr. Wilcox wanted to give a little history of this property, which he said was formerly known as Sandtown. He said he recalled his aunt buying him an ice cream cone in this little concrete block house on the subject property. He said it housed a business at one time, and later a barber shop, and had been there probably 60 years. Mr. Wilcox said he understood that the building was not in the city limits when it was built and was probably subject to very few restrictions. In 2007, however, this neighborhood had changed drastically and was very upscale in character. The subject property was very small - 70' x 62' - containing approximately 4300 square feet, which he contended was not big enough for a lot in these days and times. Mr. Wilcox said he objected to

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the staff's recommendation that this application be approved. He felt it would compound a mistake made many years ago, even though mistakes then were not under the current restrictions. He felt there was no reason why the developer could not creatively build some kind of structure that would be suitable for this neighborhood and abide by the present City setback rules and coverage percentages. Mr. Wilcox asked that the Board consider his remarks as those of a long-standing interested property owner in this area.

Ernestine Phifer, a resident of 3758 Sheips Lane, stated that she grew up on Mordecai, and finally bought the little house on Sheips Lane. Mrs. Phifer said she opposed the structure they wanted to build across the street from her. She felt the lot was not large enough for a house, and if they went straight up with it, it would be right over the Powe's bedroom. She also stated that the structure referred to as a garage was not a garage. It was a three-room structure that was built for the father of the previous owners of the property. Mrs. Phifer said she was bitterly against the proposal, and said that most everything stated in the application was in error.

Howard Leroy Davis, a resident of 3765 Sheips Lane since 1970, stated that he was opposed to this proposal. Mr. Davis stated that when he got ready to build in 1969, he was required to set back 25 feet from the street, and everybody that had built since that time had to set back 25 feet. There was nothing they could do about the existing structure on the subject property since it was there prior to the City taking that portion of property into the City of Mobile. Mr. Davis also complained about the existing problem they were having with traffic cutting through Sheips Lane from McGregor Avenue to get to Dilston Lane. They were concerned about the safety of the residents, especially the children, and had tried unsuccessfully to get speed bumps installed. He said that four and five generations of residents in this area formerly known as Sandtown had children who attended St. Ignatius and Mary B. Austin Schools. Mr. Davis noted that for some strange reason in the last four or five years the dedicated right-of-way on Mordecai Lane had been closed off, and now people could not go from Sheips Lane to Mordecai, or from Mordecai back to Sheips. The dedicated right-of-way that went from Springhill Avenue to Sheips Lane had also been closed. Regarding the subject property, Mr. Davis also noted that there was no garage on the property. It was just a little house. He was concerned that whatever was put on the property would be an investment for rental property. He said the residents and their forefathers had worked hard over the years trying to get Sheips Lane paved with curb and gutters, and he was opposed to anything that would change the street as it exists. Mr. Davis presented a petition in opposition signed by 15 property owners who were not able to attend the meeting, and who had asked him to speak on their behalf.

Jacqueline Edwards, a resident of 3768 Sheips Lane, said that when she was born in 1958 her family lived at 3758 Sheips Lane where Mrs. Phifer now lives, across the street from the subject property. She said there had been a little 3-room house on the subject property since that time, and there had never been anything resembling a garage there. There was a little storage house in the back, but that was it. She said the proposed structure would overshadow the Powe's property. Mrs. Edwards said the whole community had worked together to improve their properties over the years and to keep the community in accordance with what they had done from generation to generation. She was the fourth generation in her family to live on Sheips Lane. She felt the developers were not looking to increase family and community, but were only trying to increase their wealth, and the property owners were opposed.

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Caselene Powe, a resident of 3759 Sheips Lane, stated that she had lived at this address for a number of years and had worked hard to improve and beautify her property. Mrs. Powe said when she moved to this house, Sheips Lane was just a little pig trail. She was a part of helping to make it what it was today, and was opposed to a building going up that would destroy the rest of the houses on the street. Regarding the existing structure referred to as a garage, Mrs. Powe said it was true that it was not a garage. It was a house where a family once lived, and she had been there many times. She said one of the residents died, and when the lady moved out she gave her permission to come on the property and do whatever she wanted. Mrs. Powe said she had a tree surgeon come in and cut some trees back. She also said the structure behind the little house was a storage room, which she had been in many times. She was strongly opposed to the proposed house being built on this site and asked that the Board take into consideration that it would not benefit the total picture of the neighborhood.

Gina Gregory, City Councilperson representing District 7 in which this site was located, stated that while she had not spoken with the applicant, she had been contacted by several of the residents of Sheips Lane and had a copy of the petition signed by 15 or so residents in opposition. Ms. Gregory said that while she supported a property owner's right to build and renovate as they see fit, she also supported her residents and how they felt and wanted to make sure the Board listened to their concerns about the compatibility of whatever the new construction would be in this neighborhood. She noted that the proposed structure would be quite different from the existing residences on Sheips Lane. The residents were well established, having lived there for many years. They have lived under certain guidelines that someone is now trying to come in and change, and that was really her opposition in this matter. She was not opposed to someone doing something with their property. Ms. Gregory asked that the Board consider what these residents were concerned about and how they felt, and weigh the matter on that side of it as well. They agree that the property owner can still build a house and can still renovate it, but they felt it should be compatible with what was there. Ms. Gregory said she understood their concerns and supported their efforts.

Mr. Cummings asked if the applicant would like to address any of the concerns expressed by the residents.

Mr. Shirah said he would like to note that the street was somewhat in transition. It was closer to McGregor and there were older houses. Further east of the site there were newer houses, and there were more two-story houses going that direction. He thought most, if not all, of the houses to the west were single-story residences and were older. Two doors down from the proposed site, however, he noted a very large two-story house that almost looked three stories because of the way it sits on the property and the sloping of the lot. Mr. Shirah felt the house they proposed was a nice house and was designed to house a family and would not be rented. With regard to the existing dwelling on the site, he said most of it was designed to be used as a garage.

Before asking for questions from the Board, Mr. Cummings said he wanted to point out - and noted that he was not sure when this lot was created as a lot of record - that this was a rather small lot, from his calculations probably a little less than 4300 square feet. The standard city size lot today was 7,200 square feet. If this lot, therefore, were applied for today to be subdivided in this size, it would likely not be approved by the Planning Commission. Mr. Cummings said that is what he saw as the hardship of the property itself - the fact that it was

very small. He further stated that, by right, if you looked at a 35 percent site coverage ratio based on 4300 square feet, a structure could be built in the 1,000-1,100 square foot range. The applicant was requesting of 40 percent site coverage. With the site being a little less than 4300 square feet, it was just under 1500 square feet. Again, Mr. Cummings said he did not know the history of how the lot was created, but just looking at it and looking at the surrounding property, he thought the major argument was that the lot was rather small, and he felt that was what the staff was pointing out in their write-up for a hardship of the property.

Mr. Cummings asked the members of the Board if they had any questions of either the applicant or any of the residents who spoke today.

Mr. Davitt asked Mr. Caddell if the concern was based on the size of the house, or that the structure was 7 feet from the street.

Mr. Caddell said they were concerned about both the request to put a larger house on the site with 40 percent site coverage, and the proposal to enlarge what was there to make it into a garage that was 7 feet from the street.

Mr. Davitt said he agreed with Mr. Cummings calculations. He said he calculated that the applicant could build a house with 1520 square feet and be within 35 percent.

Mr. Palombo also advised the Board that if there were no addition to the existing building, the enlargement of the proposed garage, the applicant could go ahead and add on to meet those requirements of 35 percent site coverage, and the rear and side setbacks, because that was an existing structure and it was going to remain.

Mr. Davitt said that was his point. The applicant could build a 1520 square foot house on this property, with no addition to the garage, or the property closest to the street, and be in compliance. This was the reason he asked if the objections were to the size of the house. He said if he were a resident of the immediate area, he would be a little concerned about how it looked himself. If it was a garage or a house that would be proposed to be converted to a garage, short of him tearing it down, he said he would probably be okay with him adding on the additional square footage and building a house there. He felt it was in keeping with the neighborhood in that sense.

To elaborate on Mr. Davitt's point, Mr. Cummings said if the applicant attempted to add a structure to the rear of the existing property, if he reduced the square footage of the proposed addition to the proportion that he would add to the rear of the property by approximately 4000 square feet, he could do it with a permit because the structure that is there now that is 7 feet from the front right-of-way is an existing structure. So by right, he could do that. What the applicant was really seeking to do was to enlarge that structure, which was one reason for the variance request. The other reason was because his coverage would exceed 35 percent of the small lot. Mr. Cummings noted that if the Board denied this variance, the applicant could very well do what he wanted to do with a permit if he reduce the size of the house in the rear by 300 or so feet.

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Mr. Caddell said the residents would not be objecting if they felt it was appropriate to have a larger house that was going to be more of a protuberance into the streetscape.

Mr. Cummings said he respected what Mr. Caddell was saying. Again, he pointed out that the applicant could add a two-story structure, or for that matter a 2 1/2 story structure, because there was a maximum height requirement of 35 feet in an R-1 district, and he could really end up with 3000-4000 square feet if that as what he wanted to do, without even getting a variance approved.

Mr. Caddell said that may be his choice. On the other hand, however, not getting exactly what he wants may kill the project. But the residents certainly do not think a variance is appropriate.

Mr. Cummings said he appreciated Mr. Caddell's point, but, again, they were looking at hardship for the property. The fact was that this property was very small and it was a lot of record. It as 35-40 percent smaller than any standard R-1 lot that would be approved by the City of Mobile's Planning Commission today.

Mr. Caddell contended that if compared to the other lots on the street, it would be hugely more developed in terms of square footage. None of the other lots even come close to 35 percent coverage, so they would actually be putting a condo style development into the middle of an ordinary subdivision.

Mr. Cummings said he was not going to characterize this as a condo style residence. This was R-1 property. He said the arguments Mr. Caddell made were erroneous because this was not a condo, and it was not a townhome, and he asked that Mr. Caddell not characterize it in such a manner.

Mr. Caddell said he just meant that from the visual appearance it looked like a condo or townhome because there was practically no yard. They go straight up, and that was not the streetscape in this case.

Mr. Davitt suggested Mr. Caddell was thinking more of a zero-lot-line house than a condo or townhome.

Mr. Caddell said that was correct.

Mr. Davitt further stated that the residents needed to take into consideration the size of the lot. There were approximately 4400 square feet of space to build on, and the applicant wanted to build a 1700 square foot house and improve the structure adjoining the street. Mr. Davitt asked if the house was one-story or two-story.

The applicant said the house was two-story.

Mr. Cummings asked if any other Board member or any of the property owners had any comments.

One resident asked if he understood that if he wanted to add onto his housing fronting on Sheips Lane that he could do so.

Mr. Cummings explained that he could add onto his house, which would be an expansion of an existing structure, provided that the footprint of his house met the zoning requirements. To extend the house towards Sheips Lane into the 25-foot front yard setback would require a variance. The issue in the case at hand was that the structure existed long before the Zoning Ordinance took control of what happens to this property into the future. Also, if this property owner wanted to build yet a separate structure on his property, he would not be allowed to do so because that would be essentially two single-family homes on one single-family zoned lot.

Mr. Davitt asked if he understood that the new proposed structure would have a 25-foot setback.

Mr. Palombo said that was correct.

Mr. Cummings said it appeared from the drawing that the wider and deeper portion of the lot that would be farthest away from Sheips Lane was probably 2 1/2 to 3 feet inside the 25-foot front yard setback.

One property owner said that was not correct. He said the existing house was 7 feet back from Sheips Lane.

Mr. Cummings said the point he was trying to make was that the large body of building that was labeled "proposed building" was within and behind the front yard setback line itself. The very northern part of the existing structure that was closest to Sheips Lane does sit 7 feet from the right-of-way.

Mr. Guess asked if he understood correctly that the current structure was going to remain in its current state of remodeling for it to be a garage.

Mr. Shirah said there would be about four feet added to the east side to make it a full size. The back portion of the structure would be torn down.

Mr. Guess asked how long the structure had been vacant.

Mr. Shirah said it had been vacant for over a year.

One property owner said he understood what the developer just said, he was getting permission to do this by actually not leaving but one concrete block wall that the Board was saying grandfathers in the whole project. He was going to knock out the wall that was facing the new structure, and the wall facing Sheips Lane to get the cars in, and he was going to expand on the east wall. He was not leaving hardly anything of the 60-year old structure, and was talking the Board into approving the project.

Mr. Cummings stated that, for the record, the Board had not been talked into or out of anything. The Board was still discussing the case, trying to gather an understanding of what the applicant was proposing, and shortly would go into executive session and deliberate it. Mr. Cummings asked the applicant to come to the podium and walk through what was to be removed, what was to be altered, and what was to be added to clarify the proposal for everyone.

Based on the drawing, Mr. Shirah pointed out the existing driveway, which he said would be widened slightly, and the owner would enter the property in the same place and would turn into what was proposed to be the garage. The existing wall next to Sheips Lane would remain. The wall on the west side of the property would also remain. Mr. Shirah pointed out the dotted line within the proposed building that would be removed and expanded under the proposal to allow for a full-size car to fit underneath the house. Garage doors would be put in place of the opening. Where the main part of the proposed building was, the back portion of that concrete block dwelling that was there would be removed to attach to the new part of the garage. The house itself would be a two-story dwelling with a roughly French countryside look to it. There would be three bedrooms and two-and-a-half baths. All the living area would be upstairs. Mr. Shirah said the other dotted line that he was pointing to was just a shed of sorts that was in the back yard and would be removed. It was not a permanent structure on the property.

Mr. Davitt understood that the west wall, as well as the one that runs parallel to Sheips Lane, would remain.

Mr. Shirah said that as correct.

Mr. Davitt asked if the roofing, the trusses and everything would be demolished.

Mr. Shirah said they would certainly have to do some work to that to be able to cover the extension with a roof, so there would be some roofing that would have to be corrected.

Mr. Guess asked if the change in use of the structure - from an actual home to a garage or storage facility - have any bearing on its exemption from previous zoning setbacks.

Mr. Palombo said it would be attached, but even if it were detached, he would be allowed an accessory building to a residential dwelling.

Mr. Davis asked counsel's comments in this matter.

Mr. Lawler commented that this probably presented a case where the Board, if they found that this proposed project, with the exceptions, fit in with the surrounding neighborhood, they were really called on to balance it. The Board may say that because of the size of the lot, which was one of the things that was a traditional reason for a variance, that there was some kind of impediment to the development on the property itself by its size. He said certainly that was present in this case. Also, the Board has to consider the history of the property and what was there now and what you could expect some person to do with it. At the same time, it was whether or not the property suffers from an undue hardship. "Undue hardship" means, can it be developed within the rules? Can something be put there that meets the zoning requirements? Mr. Lawler said probably so, but also the Board could make the argument that you cannot do that without suffering hardship. The question was, was it really an undue hardship to make this property owner develop the house within the confines of the setbacks? The size of the lot, etc. has to be considered. But also, the Board has to consider the neighborhood. Mr. Lawler said it was really kind of a balancing act. It was not every time that someone has a hardship that they are just automatically entitled to a variance. You have to balance how it affects the



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neighborhood and the community too. All those factors go into it. Mr. Lawler said this was the kind of case that he could see being argued in court, but it certainly would not be one where the court would declare that an undue hardship exists and therefore the property owners are due for a judgement, period. Nor would it be a case where the court would say the other either. It was something that the Board was called upon to judge as a Board. They had to weigh the factors and come to a conclusion.

Mr. Davitt asked Mrs. Powe how many square feet were in her house.

Mrs. Powe said she did not remember, but someone in the audience said she had 2500 square feet.

Mr. Davitt asked several others the size of their homes.

Mrs. Edwards said she did not know, but another resident said Mrs. Edwards' house was about 2700 square feet. Another resident said his house was 3200 square feet.

Mr. Guess asked how many of the residents had covered parking; either a garage or carport. After a show of hands, Mr. Guess said it seemed common in this area to have a garage or carport.

There being no further questions or comments, Mr. Cummings said the Board would move into deliberations session on this issue. Mr. Cummings asked if there were any further questions, comments or discussion from the Board. There being no response, Mr. Cummings commented that in his opinion the main issue was the size of the lot. They were not sure when or how the lot came to be this size and of record, nonetheless it exists. Roughly speaking, the lot was probably close to 4200 square feet. It was indicated that the total square footage planned for the house, not including the garage area, was approximately 1700 square feet, less than the 2700 and 3200 and 2500 that he had heard. Regarding the response to the question of how many residents had a carport or garage, Mr. Cummings said he only saw several hands go up. Due to the size of the lot, he felt it would be difficult to be approved today if it were applied for.

There being no further discussion, Mr. Davis made a motion to deny this request.

Mr. Cummings asked if there was a second.

Mr. Guess seconded the motion.

There being no further discussion, Mr. Cummings called for the vote. The vote was three in favor of the motion and two opposed. The motion failed to carry.

Mr. Lawler interrupted, stating that Mr. Davis, a regular member, was not present at the start of the meeting when discussion of this matter first began, but came in a bit late. Ms. Collier, a supernumerary member, was present. Mr. Lawler felt that Ms. Collier should vote in this matter since Mr. Davis was not present when discussion started.

That being the case, Mr. Cummings said that Ms. Collier would vote in this matter, thus Mr. Davis' motion was not valid. He explained that this was a 7-member Board, two of whom were supernumerary members. That means that in the event of a recusal - a regular member could not vote because they had a conflict of interest - or in the absence of a regular member, a supernumerary member would step in and fill their place. Mr. Lawler said that since one of the regular members was a bit late in arriving and did not participate in discussion and hearing all the evidence in this case from the beginning, it would be appropriate that rather than that member voting, a supernumerary member should take that persons position on this issue. Ms. Collier, therefore, would vote in Mr. Davis' place.

Mr. Cummings called for a motion.

A motion was made by Mr. Davitt and seconded by Ms. Collier to approve **Front Yard Setback and Site Coverage Variances to allow the expansion of an existing single-family dwelling within 7' of the front property line, and to allow 40 percent site coverage at the above referenced location.**

The motion carried unanimously.

Note: Mr. Cummings said he wanted everyone to understand that, as talked about in the discussion, the applicant could have applied for a permit to expan, provided he had no more than 35 percent site coverage, and would not have required a variance. Effectively, the Board's decision was in line with what he could have done without having gone through this process.

**5404**

**(Case #ZON2006-02646)**

**Ashland Place, L.L.C.**

**2518, 2530, 2534, and 2540 Old Shell Road**

(Northeast corner of Old Shell Road and North Florida Street)

**Sign Variance to allow four off-premise freestanding signs, double-faced, 12' high with 3' wide address and tenant panels, in the public right-of-way for a multi-tenant site with less than 600' of linear street frontage; the Zoning Ordinance requires all signs to be on-premise and allows one freestanding sign on a multi-tenant site with less than 600' of street frontage.**

Mr. Cummings announced that Mr. Davis was back in the fold, and Ms. Collier was back in a supernumerary position.

*The site plan illustrates the existing development and proposed sign locations.*

John Vallas, 2308 Ashland Place Avenue, was present on behalf of the applicant, Ashland Place, L.L.C. Mr. Vallas stated that they were requesting a Sign Variance for four signs to serve each of the four building they recently renovated on Old Shell Road. This includes Naman's Market, Crown Colony Antiques, and Queen "G"'s. Since these were multiple buildings with multiple addresses, Mr. Vallas felt they should be entitled to have separate signs for each building. Currently the site was limited to one pylon sign. If the four buildings were still owned by four different entities, they would be allowed four signs. Since their group owned all four of the

renovated buildings, they were now only permitted on sign for the entire project, and this had created a hardship on the project. Mr. Vallas noted that the staff report indicated that the applicant refurbished all of the buildings into a retail center, which was basically a PUD. He did not see how refurbishing these properties, which was mostly cosmetic in nature, would now bring them under the scrutiny of a PUD. Mr. Vallas felt that that they were being penalized, not purposely, but by interpretation of the Ordinance by bringing these properties under one ownership. He felt this was a flaw in the Ordinance. He said if the four buildings owned by four different owners could have four signs, why should one common ownership be denied the same privilege. He said there was nowhere in the report, nor had anyone been able to explain to him why these properties were being judged differently. Mr. Vallas also pointed out that the report stated that they were "operated as one site". He noted that each building had its own address, multiple users, multiple tax bills, separate utility meters, etc., so the statement that they were operating as one site was not true. With regard to any concern the visibility and traffic these signs would create, Mr. Vallas said they would coordinate the exact location with the Traffic Engineering Department. They envision the signs as being located as far north against the former service road as possible, so this would not cause a site line issue with Old Shell Road. He noted that the existing telephone poles scattered through the area were closer to the current right-of-way. The sight line was not an issue when they coordinated with Traffic, the Right-of-Way Department, Keep Mobile Beautiful, and Urban Forestry. Mr. Vallas said they had landscaped the area with azaleas and numerous Live Oaks, which included large spans of asphalt that was not a requirement, but was desired by them to further improve the area. With regard to sign height, they were fine with 10 feet as opposed to 12 feet. In summary, Mr. Vallas said he felt the variance should be granted because of the flaw that exists in the Ordinance. The literal enforcement of the Ordinance had created a hardship. He also noted that the Board could grant variances where there were very unusual characteristics of the property. He contended that this site was unusual in terms that the former Old Shell Road Service Road runs through the parking lot. The staff report stated that the property in question consisted of four dilapidated commercial buildings spanning five metes and bounds parcels. Mr. Vallas again suggested that by them converting four dilapidated commercial buildings into a vibrant retail shopping district should not prevent them from having the same number of signs, had they not renovated the buildings before. He said they currently had a right-of-way permit, and they would certainly resubmit to allow signs within this right-of-way and would modify the signs. He submitted a sample of the proposed signs, which they felt were very tasteful and which they used on another project just to the east of this site. Although this site was not technically in a historic district, they had renovated this project being conscious of the neighbors' concerns.

Mr. Cummings said he understood that the four buildings were in common ownership, but asked if the property was ever subdivided into a one-lot subdivision.

Mr. Vallas said no. They remained four lots of record. He again pointed out that if he had asked each of the individual property owners to install a sign at their business before he bought the property, they could have done so. He could then have come in and contracted the property and put it under one ownership, and at that point those signs would have been grandfathered-in. It was the literal enforcement of the Ordinance that was causing the confusion here.

Mr. Cummings asked if anyone in the audience wished to speak either in favor of in opposition to this proposal. No one came forward.

Mr. Cummings asked if any of the Board members had any questions or comments.

Mr. Davitt asked if there was any problem with line-of-sight or anything of that nature.

David Roberts, representing Traffic Engineering, stated that they did have some problems with the height of the signs as specified in the staff report, as well as the placement of the signs. The fact that they were in the right-of-way was another issue, and there was a possibility of a line-of-situation. Mr. Roberts said this was a highly unusual situation, and if the Board did approve the variance, it would have to be coordinated with Traffic Engineering.

Mr. Cummings stated that it was unusual in the sense that the right-of-way actually encroaches into the back one foot of the 20-foot deep parking space that fronts most of this building.

Mr. Vallas added that the proposed signs would be located further north than the telephone poles. He said they had added 24-foot concrete aprons onto the site, which they were not required to do. When you pull out on those aprons you would actually be pulled out further than the signs, and then you could look in either direction beyond the signs and the telephone poles. You would not actually try to turn out onto Old Shell Road where the signs were.

Mr. Palombo noted that the applicant would have to receive a non-exclusive right-of-way use agreement for the placement of the signs, which Traffic Engineering would take a look at, as well as other departments.

Mr. Vallas said they had already discussed that with Mr. Metzger, the Traffic Engineer.

Mr. Guess asked if he understood that the applicant would put four signs of the type style submitted at each of the businesses.

Mr. Vallas explained that not everyone would have four signs. Naman's Market was free-standing, so it would have one medallion with their name and address. The next building had three tenants, so they would have three medallions. Queen "G" 's would have one sign.

Mr. Coleman asked if the Board denied the variance, would the applicant be allowed only one sign with seven medallions on it.

Mr. Palombo said the site would be allowed one free-standing sign with eight medallions on it.

Mr. Vallas commented that they had tried to maintain the identity of each building. They did not want this to look like a strip shopping center where there would be one sign for 7 or 10 tenants. They felt these individual signs would allow them to maintain their identity.

Mr. Palombo noted that the reductions in the size of the signs was also in play here. The applicant would be allowed a 350-square foot sign to advertise seven tenants.

Mr. Cummings said that if anyone had seen this project they would agree that the applicant had improved this corner in a nice way. The applicant also mentioned their attempt to maintain the

separate identity of each of the four structures, which they not only did by not connecting them, but also with the decorating or finishing of the exteriors in different fashions, colors, textures, as well as the roofing and canopies they had done. He noted that the total square footage of the surface of what they were proposing was a lot less than what they could have done if it was one free-standing sign.

Mr. Palombo said the proposed medallions were elliptical, 2' x 3'. Seven times that would be 42 square feet as opposed to 350 square feet.

Mr. Cummings noted that would be 12 percent or so of what they could have obtained if they just pulled a permit and did so.

After discussion a motion was made by Mr. Coleman and seconded by Mr. Cummings to approve this request for a **Sign Variance to allow four off-premise freestanding signs, double-faced, 12' high with 3' wide address and tenant panels, in the public right-of-way for a multi-tenant site with less than 600' of linear street frontage** at the above referenced location.

There being no further discussion, Mr. Cummings called for the vote.

The motion carried unanimously.

**PUBLIC HEARINGS:**

**#5405**

**(Case #ZON2006-02634)**

**Tyler L. Cox**

**804 Nassau Drive**

(Northeast corner of Nassau Drive and Gaillard Drive)

**Fence Height Variance to allow the construction of a 6' wooden privacy fence within 9.9' of a front property line and within 4.3' of a side street (Gaillard Drive) property line; a 25' front yard setback and a 20' side street yard setback are required for privacy fences over 3' high in an R-1, Single-Family Residential District.**

*The site plan illustrates the existing building and proposed fence.*

Tyler Cox of 804 Nassau Drive, applicant, was present in this matter. Mr. Cox said the fence was constructed in its present location because of a proposed addition to his house, which would make it virtually impossible to have much of a yard. Mr. Cox explained that when he purchased this property there was a kind of a vacant lot look to the corner of Nassau and Gaillard. There were beer bottles and golf balls from the neighboring golf course littering the yard, and joggers ran through the yard. There was also an issue with the headlights from cars turning the corner from Gaillard Drive shining into the master bedroom. Mr. Cox said the fence had been completed. He had, in good faith, contacted the City to see what the setbacks were, and was told the setback was 20 feet off of Gaillard and 25 feet off of Nassau. He said he measured from the end of the street, and granted, there was a setback from that. He said he did attempt in good faith to follow what the City ordinance required. He asked that this variance be granted.

Mr. Cummings asked if there was anyone who wished to speak in favor of this request.

Dr. Steven C. Rockwell, a resident of 806 Nassau Drive directly adjacent to the subject property, stated that the traffic on Gaillard Drive would be quite heavy at times, and since the fence had been there it had significantly cut down on traffic noise throughout the neighborhood. Dr. Rockwell said most importantly, the fence had increased the safety for his three young daughters, ranging in age from 6 to 12 years, who like to play in the front yard. They are now able to play in the yard and cars driving by are not able to see into his front yard as easily without turning their heads as they drive past. Dr. Rockwell said that their quality of life had significantly improved since the subject fence had been there, and he urged the Board to grant this variance.

John Maderia stated that he lived across Nassau Drive and back one house, and he had no problem with the fence. It did not block his view as far as traffic coming in and out of Nassau Drive, and he did not feel it was a safety hazard. Mr. Maderia said Mr. Cox's house was formerly rental property and the yard was a disaster. Mr. Cox had sodded the yard, and he commended him for improving the neighborhood. He also felt the fence added to the value of the neighborhood and he was in support of the requested variance.

Donald Smith stated that he was a resident of 803 Nassau Drive, which was directly across the street from the subject property. Mr. Smith said his wife, Jane H. Smith, could not be present because of a long-standing commitment, but she had written a letter in this regard and asked that it be read. The letter stated that they had lived across the street for 43 years and had watched the subject property deteriorate into a slum. They were therefore delighted when the owner sold the property to a young man with plans to restore it. His plans included a fence and shrubbery, which would mirror the fence and shrubbery that had long existed across the street where they lived, thereby creating an attractive entrance to the neighborhood. The letter further stated that Mrs. Smith had spoken with many of the neighbors about the fence and not only had no one complained, but they expressed delight, the same delight felt by she and her husband. The neighbors praised not only the improvements and aesthetic value, but felt the improvements had probably increased property values. The letter stated that since surely improvements in looks and value was one of the Commission's goals, she and her husband implore the Board to grant Mr. Cox's request. Mr. Smith added that he was overjoyed with the improvements to Mr. Cox's property and was in favor of the variance for the fence.

Ada Maderia, a resident of 805 Nassau Drive, which was next to Mr. Smith, stated that since Mr. Cox bought the subject property it had been a great improvement. Ms. Maderia explained that they had previously owned the house they were in now, but were transferred to New York and sold it. They really liked the neighborhood and after they moved back to Mobile and the house became available for sale they moved back into the neighborhood. She recalled that before University Boulevard was completed there was more traffic on Gaillard Drive. She said many times they met at one or two o'clock in the morning in Mr. Smith's yard because cars could not make the turn and ended up in his yard. When Mr. Cox put the fence up it greatly improved the look of the neighborhood. Ms. Maderia also agreed with Dr. Rockwell regarding the safety issue, as she had three grandchildren who liked to play with his children and she felt the fence afforded them some protection. She said she was in favor of the variance.

Brent Day, a resident of 5517 Nassau Drive, stated that he was also in a law practice with Mr. Cox. He stated that when Mr. Cox bought the subject property the neighborhood promoted his idea of putting up a fence. As Mr. Smith stated, there was a fence directly across the street from him and also on Gaillard Drive there was a fence on the corner. The fence Mr. Cox put up mirrored that fence, and actually created kind of an image for the entrance to the neighborhood which was aesthetically pleasing. Mr. Day said he traveled in and out of that entrance on a daily basis and the fence did not impede his vision in any way coming onto Gaillard Drive, either to turn left or right. Mr. Day said he had spoken to many neighbors who were in favor of the fence but could not attend the meeting today. He requested that the variance be granted.

Gina Gregory, Councilperson representing the district in which the subject property is located, stated that she would not repeat too much of what had already been said, but she said she had seen the fence and it was a good looking fence and she applauded Mr. Cox for building it. Ms. Gregory said the neighbors had contacted her and were in favor of the fence, and she had spoken with Mr. Cox about it. Although he may have been a little confused as to where to measure from, he did contact the City in good faith to do what he was supposed to do. She said the fence was there and it was an improvement to the neighborhood and the neighbors applauded his efforts. She also applauded his efforts because it really did make a difference, and she asked that the Board grant this variance and let the fence remain.

There being no further speakers from the audience, Mr. Cummings asked if anyone on the Board had any questions or comments for the applicant or for any of the neighbors who spoke.

Mr. Davitt asked if there was a line-of-sight problem or anything of that nature.

David Roberts, representing Traffic Engineering, stated that they had some differences in their interpretations on the line-of-sight issue. He explained that they go by standards that use a curb-to-curb measurement, meaning that it is a visibility triangle based on speed characteristics of the street, which he thought was 30 mph both on Gaillard and Nassau. Based on that, Mr. Roberts said they could not find a problem with visibility at this location. It said it was unusual because there was a lot of area between the property line and the curb, and the curb at this location was very unusual. They were therefore looking at several different aspects, plus the differences in how they take the visibility triangle. Based on that, they could not see a problem, visibility-wise, with the fence. They did find visibility problems, however, with the trees and a very large utility pole, but that did not enter into this situation.

Ms. Collier asked if Mr. Roberts was referring to any vegetation that had been planted outside the fence.

Mr. Roberts said he was referring to Oak trees.

Mr. Cox stated that the City planted the Oak trees there.

Mr. Davitt asked Mr. Cox if he had paid for a permit after he found out he was supposed to have gotten one.

Mr. Cox said he had.

After discussion a motion was made by Mr. Davitt and seconded by Mr. Coleman to approve this request for a **Fence Height Variance to allow the construction of a 6' wooden privacy fence within 9.9' of a front property line and within 4.3' of a side street (Gaillard Drive) property line** at the above referenced location.

There being no further discussion, Mr. Cummings called for the vote.

The motion carried unanimously.

**#5406**

**(Case #ZON2006-02729)**

**T-Mobile**

North side of State Street, 275'± West of North Broad Street.

**Setback and Buffer Separation Variances to allow the construction of a 150' Monopole Telecommunications Tower, setback 4' from a property line, and 224' from residentially zoned property; a 150' tower must be setback at least 150' from a property line, and a minimum separation of 225' (150% of the height of the tower or 200', whichever is greater) is required from residentially zoned property in a B-4, General Business District.**

*Note: Due to a prior commitment, Mr. Davitt said he would have to leave the meeting shortly and would therefore recuse himself from any further voting.*

*Mr. Cummings stated that Ms. Collier would vote in Mr. Davitt's absence.*

*The site plan illustrates the proposed tower location and improvements.*

David Wilkins, P.O. Box 1406, Mobile, was present on behalf of the applicant and said he concurred with the staff recommendations.

Mr. Cummings stated that the staff had recommend approval subject to: (1) full compliance with the landscaping and tree planting requirements of the Ordinance; (2) full compliance with all municipal codes and ordinances, including but not limited to the telecommunications towers and facilities section of the Zoning Ordinance; and (3) that the applicant submit a Certificate of Insurance naming the City of Mobile as an additional insured.

Mr. Cummings asked if there was anyone present who wished to speak in favor of this request. There was no one.

Mr. Cummings asked if there was anyone present who wished to speak in opposition.

Robert Battles, a resident of 2769 N. Broad Street, stated that the proposed tower would be right in his back yard. Mr. Battles said research he had done with regard to cell towers indicates that the tower would pose a significant threat to the citizens who live within this community. He said he had researched the City Ordinance adopted by the City of Mobile in regards to cell towers and where they could be placed. The Ordinance stated that there were some significant knowns and unknowns about the cell tower business. Mr. Battles said he further researched cell towers and



the dangers they posed on the internet. He learned that in two cities that had ordinances that related to cell tower placement, the ordinances stated that the towers should not be placed within five acres of a residential district because they could pose a significant threat to some people in the community because of radiation and microwaves. Mr. Battles expressed concern that T-Mobile had not gone into the community and informed the citizens of the proposed threat from the proposed tower. He also said that when he called Mr. Whistler regarding the notice of the hearing he had received, he was told that the staff had some problems with the request because it did not meet the setback requirements. Mr. Battles said he planned to go to the City Council and request that they re-address the Ordinance. He understood that in cities that had cell tower ordinances, the City Councils or those who made the ordinances were encouraged to hire cell tower experts. He did not think that was done in Mobile, and was concerned that the tower could pose a danger to the citizens of the community in which it was proposed. Mr. Battles said when he went to talk to the citizens in the community, they were not aware of the proposed tower. He wanted to make the Board aware that, even if they were naming the City as an additional insured, he felt the citizens should have a greater understanding as to any danger that might be posed by a cell tower right in their back yard.

Mr. Cummings thanked Mr. Battles for his comments. There being no one else to speak, Mr. Cummings asked the Board's counsel to address these concerns.

John Lawler stated that to his recollection, the issue about any kind of health threat posed by cell towers had been pretty well answered in the negative by the industry. He understood that what was emitted in the way of waves and that sort of thing was not supported by good science.

Mr. Battles requested that Mr. Lawler submit to him the recommendations made by the industry that state that cell towers pose no threat.

Mr. Cummings said that information could be provided.

Mr. Battles said he would appreciate it. He further stated that he was not against progress, but he felt it was incumbent upon the Board to make sure that the proposed tower would not pose a threat to anyone who may have a pacemaker. Regardless of what the industry said, because he understood that the industry wanted to sell their own products, the studies he had seen were done by professors who determined that cell towers pose an imminent threat and should not be within miles of residential districts. Some studies determined that microwaves and radiation from these cell towers could possibly cause sterility in young girls who are not of child-bearing age. Mr. Battles said he would not say another word if someone could show him an industry report that showed him something different from that. Further, he complimented Mr. Cummings, saying that he was a good Chairman, and he appreciated the way he handled this matter, and he appreciated the opportunity to be able to express his views. Mr. Battles said he was going to the City Council in this matter because he had recently obtained a copy of the ordinance on cell towers from the City Clerk's office, and he said there were a lot of gaping holes in it. Even though the City of Mobile was an additional insured, Mr. Battles said that T-Mobile had not come into their community to talk to the people about what they planned to do. He said that traditionally African-American communities had been dumping grounds for toxic waste, and he was currently involved in such a case. He said he was here today because he had young grandchildren and he was concerned about problems that could arise from cell towers.

Mr. Cummings thanked Mr. Battles for his comments. Although he was not an expert in the field, he said in the ten or so years he had sat on this Board, numerous times neighbors and other groups had expressed the same concerns as Mr. Battles. Mr. Cummings asked the staff about the proposed location of the tower four feet from the property line.

Mr. Lawler said the major issue was the height of the tower, and being so close to the property line, and whether there was any danger of it being blown over in a storm.

Mr. Cummings said the minutes over the years, as well as Mr. Lawler's comments, reflect the same thing being expressed today, and that is that there is no irrefutable evidence that a cell tower emits levels of radiation dangerous to the point that it could affect someone's health in the same manner as a large electrical supply line.

Mr. Battles said that was correct, so it was incumbent upon him to present that information, and that is what he would do. He again thanked Mr. Cummings for the opportunity to express his views. He further stated that he had a radio program and on Sunday he was going to address this matter and get the community aroused, unless T-Mobile could prove something different.

Mr. Lawler commented that the issue in most of these cases was the concern that the cell tower would be blown over in a storm and would affect the neighboring property.

Mr. Cummings said that was what bothered him in this particular case. They had talked about breakaway poles and collapsible poles and such, but this particular tower was proposed to be located four feet from the property line. He noted that in previous towers proposed by T-Mobile and others, typically they were dealing with a much larger piece of property and the proposed position of the pole was in the middle, or strategically close to the middle. In this case, however, this concerned him personally because of its location and proximity to the neighboring property.

Mr. Wilkins stated that the pole could be moved. He noted that Mr. Battles was on their north property line, farthest away from the street, and they could move it away from that property line some.

Mr. Cummings said it would then be getting closer to the residents that front on State Street, and that would not solve the issue. He said this may not be the place for a cell tower.

Mr. Guess noted that there appeared to be not too far from this site structures that T-Mobile could possibly co-locate, and asked if that had been considered.

Mr. Wilkins said they had an affidavit on file with the staff that they were trying to co-locate on a tower owned by Crown Castle that was on the north side of Congress Street and the east side of Broad Street, but that tower was already structurally overloaded. It was a free-standing, steel monopole tower, but it was not feasible for them to get on that tower.

Mr. Guess said he was asking if there was any other structural facility on which they could locate.

Mr. Wilkins said there were no tall buildings or water tanks or anything like that in the area.

Mr. Coleman noted that what used to be Creighton Towers was in that vicinity, at St. Michael and Scott Streets.

Mr. Wilkins said he was talking about the existing tower at Congress and Broad. They wanted to get as close to that as possible.

Mr. Coleman asked from where they were now - the proposed site - what was the radius of the area that they could go and still have the same level of coverage?

Mr. Wilkins said they could possibly go maybe a third of a mile in that direction. He said going back to the southern direction, or western direction, they did not have much wiggle room.

Mr. Coleman suggested that Creighton Towers, an 11-story building located to the west and south of the proposed site, close to the central fire station and across from a park, could possibly be a site for the tower.

Mr. Wilkins said that in the area they were looking at, the only thing that was tall that would work for them was the existing tower at Congress and Broad, but they could not get on that. So they were just limited to an area close to that, and he thought the 11-story building Mr. Coleman was talking about was too far away.

Mr. Guess asked if the site the existing tower occupied had room for an additional tower, or were there limitations on that.

Mr. Wilkins said he did not know.

Mr. Guess asked if this area was in the future deemed historical and T-Mobile had to apply, how would they approach coverage in that situation? Would they try to do some kind of stealth light pole?

Mr. Wilkins said yes. They had done one earlier in the year in a historic district.

Ms. Collier asked what it was that they did.

Mr. Wilkins said they did a stealth tower disguised as a light pole in the midtown area. It was shorter than a normal tower.

Asked if they could possibly do that somewhere in this proximity, Mr. Wilkins said one of their problems with the existing tower was, even if they had gotten it structurally capable, the available height was not high enough, and the light pole they did earlier was a 70-foot pole and they needed it to be 150 feet, or at least that was the design height. The lower from that height they get, the less effective the site would be for providing coverage.

Mr. Cummings commented that this was a difficult decision for the Board because they had done this many times before, and while the Telecommunications Act does not just willy-nilly allow

municipalities to say "no", the Board has to consider the welfare of the area and the residents who live there. He again said that his personal concern was the tower's proximity to the neighborhood. The site was just maybe 24 feet wide. Mr. Cummings said he realized the applicant was just trying to secure coverage in an area where they may not have adequate coverage, but that was their problem and not the Board's.

With regard to safety issues, Mr. Wilkins said he thought the staff had responded pretty well to the radiation issue. He this was very, very low wattage. It was not like a broadcast tower, and there were no microwaves. On being four feet from the north property line, Mr. Wilkins said their landlord, Mrs. Vanessa Malone Gill, owned the two houses west of the site. She lived in one and her aunt lived in one. He said it was possible that they could move the tower further away from that north property line.

Mr. Cummings noted that even if the tower fell due south, it was 150 feet tall and there was only 118 feet from the tower to the very north end of the site. The tower would therefore lie out in State Street.

Mr. Wilkins noted that they had never had a steel monopole tower, such as the one proposed, to fall. If there were some catastrophe, however, and the tower fell, it was designed to just fold over on itself, not lay down and hit the ground. So just to get it away from the north property line, they could move it a little further south. Also, regarding Mr. Battles' concerns, Mr. Wilkins said many times when they have questions and concerns from the neighboring property owners, they will take them safety information about the radio waves and about steel monopoles and the structural integrity and such as that. He said Mrs. Gill, the landlord for the property owner, called him over the weekend and said that she had had a note from Mr. Battles and she had talked to him. She wanted to attend the hearing today, but she works and had to be at work at 3:00 p.m.

Mr. Cummings asked if there were any other comments or questions from the Board.

Mr. Guess stated that he thought the initial City ordinance regarding cell towers had provisions for safety factors for setbacks for a reason, and he felt this case was probably one where it would most apply, especially when you have residential properties adjacent. Even if the applicant had made other efforts, he still did not feel it justified putting a tower this close to residential property. Even if it could be hidden in some kind of stealth fashion, Mr. Guess did not think it would be adequate based on the setback.

Mr. Wilkins commented that the property was zoned B-4, even though there were some residential structures in the area.

Mr. Cummings said it really did not matter what it was zoned. If the tower fell and did not collapse as it was designed to do, it could crush whatever was in its path. That was his concern, and that was what he had heard from Mr. Guess. He said he would like to hear from the other members of the Board.

Mr. Davis said he agreed with Mr. Cummings comments, and moved to deny this request for **Setback and Buffer Separation Variances to allow the construction of a 150' Monopole**

**Telecommunications Tower, setback 4' from a property line, and 224' from residentially zoned property** at the above referenced location.

Mr. Guess seconded the motion.

In further discussion, Mr. Cummings said he wanted Mr. Wilkins to understand that this was nothing against him or T-Mobile. He said that Mr. Wilkins had always done a great job in the past in representing T-Mobile and had always been very professional. The Board appreciated that and expected to see him in the future, and it did not affect their relationship if the variance request was not approved. But he wanted T-Mobile, and Mr. Wilkins as one of their representatives, to understand the tenor of the neighbors', and the Board's, concerns.

Mr. Wilkins asked if this matter could be held over so that the applicant could try to work something out that would alleviate their concerns.

Mr. Cummings said there was a motion on the floor and a second. He called for the vote.

The motion carried. The request was denied.

**#5407**

**(Case #ZON2007-00012)**

**American Distribution Co.**

**3140 Lees Lane**

(West side of Lees Lane, 530'± South of Gordon John Drive)

**Access/Maneuvering Variance to allow truck traffic to back into an off-street loading facility from the public right-of-way; off-street truck loading facilities must be so arranged that vehicles are not required to back from the street into an area.**

*The site plan illustrates building setbacks, drainage and utility easement, parking, existing buildings and proposed buildings.*

Frank Dagley, 717 Executive Park Drive, was present on behalf of the applicant. Mr. Dagley said they were requesting a variance to allow tractor-trailers to back in off the street in order to deliver products. They were proposing an addition to their existing building, and consequently with that addition, the only way to get trucks in there to unload them was to back in off the street. The Ordinance does not allow backing of semis off the street to serve a building. Mr. Dagley noted that Mr. Lawler had stated earlier concerning another application that, "just because a hardship exists, you must look at how it affects the neighborhood". The applicant felt this did create a hardship in that their business could not operate without truck deliveries. As to how it affects the neighborhood, Mr. Dagley noted that this business was located on a dead end street. There was one other business to the south of this site and three residences. There was probably one car an hour that passed this site, and they probably had less than one truck a week to come to the site, so they contended there would be no negative effect on the neighborhood. Mr. Dagley noted that this was not Lakeside Drive, but rather a very isolated area. Regarding a statement in the staff report that the expansion should have been designed with the proper allowances for maneuvering a truck, Mr. Dagley said it takes 100-112 feet for a truck to back up. With the addition, they would have maybe 75 feet behind the building. The setback line on the

south side, as well as on the east side, limits the use of the property, as a truck could not circle around. A driveway would not be allowed on the south side of the property where the turnout was, so they saw no other way to do it. Mr. Dagley also stated that the staff says that economics should not be a factor in granting a variance. He said he did not know how you would distinguish between economics and hardship. It had been suggested that the applicants buy the lot next door. He did not know if that property was for sale, and felt that was absurd. Someone also suggested that they could eliminate this problem by bringing their deliveries in pickup trucks. Mr. Dagley said that was not practical. They were on a dead end street, with one car per hour average traffic and one truck or less per week, which would probably block the road for 20 seconds. They contend, therefore, that a hardship did exist and the applicants would not be able to expand their business. Mr. Dagley noted that the applicants went to China about once a month to purchase goods that they sell and distribute. They had been in this business for two years and the business had grown tremendously and they needed to continue growing. Not allowing them this variance would certainly create a hardship. Mr. Dagley said the owners were present and would like to speak.

Mr. Cummings asked if he understood correctly that the Ordinance does not allow tractor-trailers to back into a site.

Mr. Palombo said that was correct. They could not back in from the fright-of-way.

Mr. Cummings noted that Gleem Color Design on Hillcrest Road backs right across the median. Also, recently he was on Lakeside Drive and had to wait for a tractor trailer type truck to back into a site.

Mr. Dagley said that this was not Lakeside Drive, and he understood that just because other people do it did not necessarily mean they should be granted permission. In this situation, however, he did not think it would create any hardship to the neighborhood.

Mr. Coleman asked where the truck well would be located.

Mr. Dagley pointed out the proposed addition on the site plan, indicating that the truck well would be recessed and the truck would be unloaded into that new addition.

Asked how many houses there were on Lees Lane, Mr. Dagley said there were three houses south of this site that would be affected, as well as one business.

Mr. Guess asked about the dead-end street on the south side of the building.

Mr. Dagley said he thought it was a dedicated utility easement, however, Mr. Palombo said it was a dedicated, unpaved right-of-way which would be needed for any expansion of the development to the west.

Allen Craig Raine, part owner of the subject property, as well as warehouse manager, stated that they were trying to grow their business. Mr. Raine said he was on the site quite a bit and very seldom does a vehicle even come past their building. There was maybe only one or two an hour. He said he had spoken with both neighbors on each side of them, and neither had any problem

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with trucks backing into the site to unload. Basically, he said their hardship was that they were growing. They were two years old and running out of space. They needed the extra space in order to continue to grow as they pick up customers and have a better in-stock ration with their items. As previously stated, they averaged one container a month. Last year, Mr. Raine said they sent four or five containers directly to the customer that did not even come to their facility, and they were wanting to move more in that direction where shipments straight from China would be sent directly to the customer. Mr. Raine stated that when they bought the warehouse it was in horrible condition with the lot completely overgrown in the front. They had invested a lot of time and money making improvements to the building, paving the parking lot and landscaping the front yard. They felt these improvements were a good faith gesture that contributed to the look of Lees Lane as well as the City of Mobile. Mr. Raine said they take pride in their property and business, which was the reason they hired Mr. Dagley, a professional engineer, to design a dock and addition. They had also talked with a construction company with over 40 years experience to build the addition if the plans are approved. Mr. Raine requested that the Board approve this request so they can grow their business in the City of Mobile.

Mr. Coleman asked the applicants if they had talked to the homeowners further down Lees Lane to explain their plans.

Mr. Raine said they had not spoken to any of the neighbors except for Wayne Connell, a resident of 2112 Lees Lane, who came to him when he received a notice of the hearing. He explained to Mr. Connell what they proposed and he had no objections. He said the other homes were maybe another 300-400 feet down Lees Lane.

Adam Dawe, the other partner in this business, stated that Mr. Dagley and Mr. Raine had really summed it up, and he would not take up any more of the Board's time. He just requested that they approve the variance.

Mr. Guess asked how trucks currently accessed the property.

Mr. Dawe said container trucks delivers goods to their business and they have a two-hour period in which to unload the truck, and then it leaves. It take about 20 seconds for the truck to pull up and back into the truck well, which was currently behind their building. He said they usually use AAA Cooper to ship out their products, or pickup trucks or other delivery trucks. They did not have any other employees, so there were no other cars other than their own on the site.

Mr. Palombo mentioned that if the Board were to approve this variance, Traffic Engineering may require that they increase the radius on the curb cut to allow the trucks to make that maneuver.

Looking at the pictures, Mr. Cummings pointed out that there were no curbs on Lees Lane. There was just a driveway.

Mr. Palombo said the driveway would have to be widened.

Concerning a suggestion that they buy the adjoining lot to their north, Mr. Dawe said they had made an offer on it, but the owners were unreasonable in what they wanted for it.

Mr. Roberts said Traffic Engineering agreed with Mr. Palombo about requiring the widening of the driveway if the variance were to be granted.

Mr. Coleman commented that he knew for a fact that some of the residents further down Lees Lane were ill and might have need to call an ambulance at some time. With this in mind, he made a motion to approve the **Access/Maneuvering Variances to allow truck traffic to back into an off-street loading facility from the public right-of-way** at the above referenced location subject to the following condition:

- 1) that the owners contact the residents who live on Lees Lane south of the site and inform them of the nature of their business and what they proposed to do.

The motion was seconded by Mr. Davis.

In further discussion Ms. Collier asked if she understood correctly that the building had not yet been built.

Mr. Cummings said there was an existing building/warehouse on the site, and they proposed an addition to the warehouse that would be located to the west of and behind the contiguously existing building. The only thing that would change is that they would end up with more room. Mr. Cummings further stated that he felt Mr. Coleman's concern was valid. The four residences at the end of Lees Lane, however, should be aware of this process today because the sign advertising the hearing had been in front of the subject property for a month now and they had to drive by it in order to get to their homes.

Ms. Collier said she was still concerned that there was some way to reconstruct their plans so that a truck could pull into the site in some other fashion than backing in. She asked if the tractor-trailer could circle the building.

Mr. Dagley said that would not be possible, as it takes a minimum of 125 feet to back up a tractor-trailer on a piece of property. The subject property was only 90 feet wide in the front and 155 feet in the back. It was not practical to drive around that building.

Mr. Cummings suggested that the motion be amended to incorporate the suggestion by Traffic Engineering that the asphalt apron opening off of the property onto Lees Lane be widened.

In further discussion Mr. Guess asked if this project required a certain number of parking spaces.

Mr. Palombo noted that the site plan did not show any office space. It was all warehousing, which requires one parking space for three employees. He asked Mr. Dagley if there was any office space.

Mr. Dagley said the applicants basically worked out of their homes, but there was a small 10' x 12' office in the existing building.

Mr. Palombo said a 10' x 12' office would require one parking space, but since there were two employees, they would need two parking spaces. There were four spaces shown on the site plan.



Their being no further discussion, Mr. Coleman amended his motion to include a second condition:

**(2) the widening of the apron within the right-of-way to allow proper maneuvering of truck traffic.**

Mr. Davis seconded the amended motion.

Mr. Cummings called for the vote.

The vote was four in favor of the motion and one against. The motion carried.

### **OTHER BUSINESS:**

#### Election of Officers

Mr. Cummings said he had been contacted by Councilman Copeland who asked if he would continue to serve for another four years. He also understood that Mr. Davitt was remaining. Technically, Ms. Collier's term would expire today, but she had not yet been contacted by Councilman Carroll.

Mr. Palombo said he did not know whether the Council had acted yet on the appointments, but the staff had not yet received a letter on Ms. Collier's appointment.

Mr. Guess asked if it was possible to postpone the election of officers until the next meeting since Mr. Davitt was not present.

Mr. Cummings said yes, and stated that the election of officers would be held over until the next meeting.

There being no further business, the meeting was adjourned.

**APPROVED:** April 2, 2007

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Reid Cummings, Chairman

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