

BOARD OF ZONING ADJUSTMENT MINUTES
MEETING OF MARCH 7, 2005 - 2:00 P.M.
MOBILE GOVERNMENT PLAZA, MULTI-PURPOSE ROOM

MEMBERS PRESENT

Reid Cummings, Chairman
Stephen J. Davitt, Jr., Vice-Chair
William Guess
H. Lamar Lee
Vernon Coleman

MEMBERS ABSENT

Rev. Clarence Cooke
Martha Collier

STAFF PRESENT

Margaret Pappas, Planner II
Frank Palombo, Planner I
Mae Sciple, Secretary II

OTHERS PRESENT

David Roberts, Traffic Engineering
David Daughenbaugh, Urban Forestry
Wanda Cochran, 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.

APPROVAL OF MINUTES:

A motion was made by Mr. Lee and seconded by Mr. Davitt to approve the minutes of the meeting of January 10, 2005, as submitted.

The motion carried unanimously.

HOLDOVERS

#5291

(Case #ZON2004-02669)

NAPMAR, LLC

652 Western Drive

(East side of Western Drive, 60'± North of Cotton Street)

Use, Parking Surface and Access/Maneuvering Variances to allow a barber shop in a B-1, Buffer Business district with aggregate parking and access, and a 10' wide one-way drive; the Zoning Ordinance requires a minimum of a B-2, Neighborhood Business District, asphalt, concrete of an approved alternative paving surface with a 24' wide drive is required for two-way traffic in a commercial district.

Jim Fernandez, attorney, representing NAPMAR, stated that this application was held over from the last meeting to allow the applicant to meet with the staff regarding parking. Mr. Fernandez said the subject property was zoned B-1, but according to the Zoning Ordinance there was nothing they could do with it at all except use it for storage. The building was built before the

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Zoning Ordinance went into effect, so it was overbuilt. The area on the land would simply not allow them to meet the criteria required. They felt that really created the unnecessary hardship they were facing.

Mr. Fernandez explained that this was a square building that was divided straight down the middle. There was a real estate company on one side of it, in which there was one realtor who did not usually have clients at his office. He said his client wanted to put a barbershop with one chair on the other side of the building. There was a whole list of things they could use the property for in a B-1 district if they had the parking associated with it. Mr. Fernandez said that if you look at the overall impact on the neighborhood, they felt using the other side as a barbershop would be in accordance with the concept of the Zoning Ordinance. He further stated that the Zoning Ordinance states that economics should not be the sole criteria for a variance. He contended that a barbershop would serve the entire residential neighborhood behind it and therefore would be totally in the spirit of the Ordinance.

Mr. Cummings noted that the addendum to the application mentioned that this building was built a long time ago and at that time the site was accessed via a shared driveway.

Mr. Fernandez said that was correct. He said he did not know in detail the history of the shared driveway, but the applicant did not have title to it. He said the owners of that property had recently erected a fence so they could no longer use the shared driveway.

Asked when the shared parking ceased, the applicant said it was four or five months ago. They had used the driveway for about nine years. Mr. Fernandez said they had an unwritten, unrecorded shared arrangement, and any use would have been strictly by adverse possession, and there had not been a sufficient length of time to make that claim. He said the fence went up because the northern property started encroaching, storing things on the back end of their property. Before that there had never really been a parking problem, even when it was used as a church.

Mr. Cummings asked how many parking spaces would be required for 2400 square feet.

Ms. Pappas said that for 2400 square feet, eight spaces would be required.

Mr. Fernandez said they only needed four or five spaces for a barber shop and one realtor.

Mr. Cummings said the fact that they had less than the required number of parking spaces probably predated the Ordinance. That was the hardship. He asked if they had parking spaces in the back that they used now.

Mr. Fernandez said the design that was on the plat now did not meet the criteria of the Traffic requirements because of the flow and the width. They simply could not meet the requirements.

Asked about the previous use of the building, Mr. Fernandez said up until four or five months ago it had been used as a church.

In discussion it was asked what the staff recommended in this case.

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Ms. Pappas stated that in terms of parking issues, she could see a hardship. The staff, however, did not feel there was a technical hardship associated with the property in terms of use. They did not recommend the use variance aspect, thus the parking, access and maneuvering were essentially moot.

There was further discussion about the number of parking spaces required. Ms. Pappas said if the Board were inclined to approve the variance, they could reduce the number of spaces on the site to get better access and maneuverability. They may also consider designating the rear parking area for employees only and that way they could control it better.

Mr. Cummings said if the Board approved a variance, perhaps fewer parking spaces may be in order. That could be worked out with the staff.

After discussion a motion was made by Mr. Lee and seconded by Mr. Coleman to approve Use, Parking Surface and Access/Maneuvering Variances at the above referenced location.

In further discussion Mr. Cummings said that apparently there was some concern that they try to overkill the site to achieve parking spaces, and it may be another look was necessary. It may turn out that fewer parking spaces were actually required. He suggested that if the variance were granted, it be on the condition that it be coordinated with Traffic Engineering so as to provide the correct number of spaces that the site can safely accommodate, as well as the access in and out of the site.

Mr. Daughenbaugh noted that this site had very limited green space. He asked if the Board would entertain a motion of one frontage tree.

Mr. Lee amended his motion and Mr. Coleman his second to approve the Use, Parking Surface and Access/Maneuvering Variances at the above referenced location subject to the following conditions:

- 1) parking spaces and design to be coordinated with and approved by Traffic Engineering; and
- 2) provision of one frontage tree, the location and species to be coordinated with Urban Forestry.

The motion carried unanimously.

#5268/5294

(Case #ZON2005-00025)

Robert S. Moore

4213 Halls Mill Road

(East side of Halls Mill Road, 410'± North of Alden Drive)

Parking and Access/Maneuvering Surface Variances to allow aggregate parking and access/maneuvering areas in an B-3, Community Business District; parking and access/maneuvering areas must be asphalt, concrete or an approved alternative paving surfaces in B-3, Community Business Districts.

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Ben Brooks, City Councilman for this district, was present on behalf of Robert Moore, who could not be present due to illness. Mr. Brooks said this was a revised site plan from the plat submitted at the February meeting. He felt it would be in the best interest of the business as well as the district as a whole to grant this variance.

Mr. Cummings noted that the size of the proposed building had changed from 40' x 35' to 32' x 30'. The other variance requests to allow aggregate parking and access/maneuvering areas were still in place.

Larry Herd, co-owner in the business, said at this stage all they wanted to do was put in a gravel drive. At some point in time they may want to asphalt it, and would request a permit at that time.

After discussion a motion was made by Mr. Lee and seconded by Mr. Davitt to approve this request for Parking and Access/Maneuvering Surface Variances at the above referenced location.

The motion carried unanimously.

EXTENSIONS

#5246

(Case #ZON2004-01241)

Delaware Street Missionary Baptist Church

701 South Lawrence Street

(Northeast corner of South Lawrence Street and Delaware Court)

Side Yard Setback Variance to allow the addition of a 18.5' x 24.75' open carport to be constructed 11' from a side (South) street property line in an R-1, Single-Family Residential District; a 20-foot side yard setback is required along a side street in an R-1, Single-Family Residential District.

A representative of the church was present and requested an extension of the previously approved variance. He said their plans were delayed, as they had considerable damage from Hurricane Ivan. They were now at a point where they could go ahead with the carport, which had been put out for bid.

After discussion a motion was made by Mr. Coleman and seconded by Mr. Guess to approve this request for a six-month extension of a Side Yard Setback Variance at the above referenced location.

#5256

(Case #ZON2004-01546)

Tom & Donna Henderson

4257 Stein Avenue

(Southeast corner of Stein Avenue and Dilston)

Side Yard Setback Variance to allow a 34' 6" x 32' garage 16' from the side (west) street property line; a 20' side yard setback is required for a corner lot than is 60' or wider in a R-1, Single-Family Residential District.

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Don Williams, Williams Engineering, was present representing the applicants. Mr. Williams said his clients' plans had been delayed due to personal reasons, but they were now actively engaged in finalizing the plans within the footprint that was previously approved. As a condition of the previous approval, they met with Traffic Engineering to insure that the structure and the driveway would not pose a line of sight hazard. They had met the approval of Traffic Engineering.

After discussion a motion was made by Mr. Davitt and seconded by Mr. Lee to approve a six-month extension of a Side Yard Setback Variance at the above referenced location.

The motion carried unanimously.

PUBLIC HEARINGS

#5295

(Case #ZON205-00120)

Mary Parker (CN/IC Railroad Company, Owner)

(Southwest corner of Government Street and Dauphin Island Parkway, 30'± Northeast of the centerline of the Railroad right-of-way)

Sign Variance to allow a 40 square foot, double-sided, non-illuminated, freestanding off-site sign located in the right-of-way; all signs must be located on-site (private property).

Mary Parker, applicant, stated that there had been a sign at Government and Dauphin Island Parkway advertising her antique shop for 20 years. The sign was on property rented from the railroad. Ms. Parker said she had been at this location for five years, and a year ago she purchased the property. Soon after that the hurricane came and destroyed the face of the sign. She said the sign was very essential to her business, which had suffered without it. She had a friend design the new sign and they decided to lower it. It was an attractive sign on the same pole it was on with two more poles on each side. Ms. Parker said her shop benefited the whole Loop area. The sign attracted tourists who come through town. She said this was her only income and she was just trying to keep a roof over her head. She enjoyed the customers, the tourists coming in, and would hate to lose her business.

Ms. Cochran asked Ms. Parker if the sign was located in the railroad right-of-way or the City right-of-way.

Ms. Parker said she had been renting the property from the railroad for 20 years.

Mr. Cummings said this was private property, so this was an off-premise sign. He asked Ms. Parker if she had any pictures of the previous sign. She said she had provided pictures with her application.

Mr. Cummings asked if the Board needed to hear this, since the sign was not on public property.

Ms. Pappas said that it was off-site, and once an off-premise sign comes down, it is down.

Mr. Lee noted that in the staff report they showed public right-of-way.

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Ms. Pappas said that the staff had not determined if it was public or railroad right-of-way but that the off-site sign still required a variance.

Mr. Cummings noted that there was an instance in the past where a sign at a gas station on the Interstate was damaged by a hurricane. The owner had to take it down to repair it and he had to get a variance. It was the same kind of situation as this. The variance was granted even though it was hurricane damaged, but that sign was on site.

Mr. Cummings asked Ms. Parker how long she was without a sign before she decided to get a new one.

Ms. Parker said it was a couple of months.

Mr. Cummings asked if there was any problem when a permit for the sign was issued.

Ms. Parker said no. She said she was a new business owner and had a lot going on and she figured the man who did the sign would get the permit. She failed to get a permit.

Mr. Guess asked if Ms. Parker had signs on her current building.

Ms. Parker said she did, because the name changed from the Red Barn to Mary Parker Antiques.

Mr. Guess asked if Traffic had looked at this from a safety standpoint. Was the sign in anybody's way or cause visibility problems?

Mr. Roberts replied that it did not cause any problems.

Ms. Cochran said that the Ordinance says that in the event of a natural disaster, replacement of an outdoor, off-premise advertising structure with damage not exceeding 75 percent of the sign's total value, will be permitted in B-2, B-3, B-5, I-1 and I-2 districts, subject to compliance with all other provisions of the Ordinance.

Mr. Cummings asked what the Ordinance said about an off-premise sign in a railroad right-of-way.

Ms. Pappas said it was off-premise. It does not matter where it is.

Ms. Cochran said the issue was the percent of damage too.

Ms. Cummings asked Ms. Parker what percentage of the previous sign had been damaged.

Ms. Parker said in her opinion it would probably be 50 percent. It was the face that was damaged. The supports were solid as a rock.

After discussion a motion was made by Mr. Lee and seconded by Mr. Coleman to approve this request for a Sign Variance at the above referenced location.

The motion carried unanimously.

#5296

(Case #ZON205-00238)

Alan R. & Janis Bishop

1958 College Court

(North side of College Court, 200'± West of Tuscaloosa Street)

Administrative Appeal to determine if a carport is a legal nonconforming structure

Doug Anderson, attorney, representing Mr. and Mrs. Bishop, stated that this was an Administrative Appeal to determine if their carport located at 1958 College Court was a nonconforming structure. Mr. Anderson said a variance application to allow the carport was heard by the Board in January and was denied. He said there were some legal issues that were not presented to the Board at that time. After the Board turned the variance down, the Bishops spoke with the staff who recommended that they file for an Administrative Appeal based on legal nonconforming status due to the fact that the applicant could prove that the carport in question was in existence prior to 1967 when the Zoning Ordinance went into effect. Mr. Anderson provided each of the Board members with a handout containing photographs of the property in question. The first was a picture taken in 1988 when the house was listed for sale at the time his clients purchased it. The carport could be seen in that picture. The next picture was taken on January 31, 2004, showing the carport as it was today, in the same place as the carport in the first picture. He then presented an affidavit signed by Mr. Donald Turner. Mr. Turner's parents were the individuals who lived in this house in the '60s and '50s and sold it to the Bishops. The affidavit stated that his parents lived in that house, and that the carport in question was in existence in 1967. Another affidavit signed by a neighbor, Mr. Frank Andrade, stated that the carport in question was in place in 1967. A 1979 tax assessment of the subject property was also presented which showed that the carport was there in 1979.

The next two pages of the handout showed a survey from 1988 done by Mosely Surveying Company, which showed the carport in the same location as it was today. The last page showed two pictures, the top one being from April of 1992, in which the carport could be seen. In the bottom photo could be seen the actual slab of the carport that had been in existence for all these years. The wooden posts there were the new posts that were constructed approximately a year ago. Shown circled on the picture were the holes in the foundation where the old wrought iron posts were removed and the wooden posts were placed. Mr. Anderson said no new foundation was added. It was not enlarged. The roof and the posts were replaced but the slab that was in existence for many, many years remained untouched. He felt that was sufficient evidence that the structure was in existence at the time the Zoning Ordinance was established in 1967. Mr. Anderson referred to a letter from the neighbor, Mr. Bru, which the Board had in their file at the last hearing. He said the letter had a lot of information in it, some of which they didn't agree with, and most of it totally irrelevant to the issue at hand. He referenced two different places in the letter where he said Mr. Bru admitted that the carport had been there quite some time. Mr. Anderson submitted that the evidence presented showed that the carport had been there since the adoption of the Zoning Ordinance and had a legal nonconforming status.

Mr. Lee pointed out that in one photo the carport had a completely flat roof, and in a photo of the replaced carport it showed that it had a sloped roof. He asked if the dimensions remained the same.

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Mr. Anderson answered yes. There was no enlargement of the carport. He said the slope of the roof apparently created some problems to the neighbor, Mr. Bru. In Mr. Bru's letter to the Board, Mr. Anderson said he asked that a gutter be put on the garage. As can be seen in the recent picture submitted to the Board, a very strong gutter system had been installed on that side of the carport to retain and divert the water from going onto Mr. Bru's property.

Wanda Cochran, Assistant City Attorney, said she had additional information. She said there was a case from the Alabama Supreme Court which was directly on point in this matter ex parte City of Fairhope. The issue in that case was whether a nonconforming garage structure could be rebuilt larger than the nonconforming use, and vertically larger. The Supreme Court reviewed the Fairhope Ordinance and determined that as long as the setbacks were the same, an increase in height did not change the nonconforming status and allowed the garage to go forward. Here, Ms. Cochran said she understood that there were some allegations that this structure may have been altered from its original state. She looked at Mobile's Ordinance, and while it was not identical to the Fairhope Ordinance, it was virtually identical. It says that when a building is extended, a nonconforming use, when it is extended or altered, that the building shall conform to the height, building site area coverage, and setback requirements. Then it mentions something about off-street parking that deals with use. So to the extent that there is an alteration, as long as it conforms with the pre-existing setback, then that takes care of that issue.

Mr. Cummings asked if everyone understood that the Bishops could have gone up another two feet, even on slope, and it wouldn't necessarily matter.

Mr. Bishop said he just wanted to confirm what Mr. Anderson relayed to the Board, and to apologize for having to take up the Board's time twice for not knowing what to present the first time concerning the legality of the nonconforming structure. He thanked the Board for giving them this opportunity today.

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

George Bru was present in opposition and said Mr. Bishop had told him personally that he built the old carport himself. He wanted to ask Mr. Bishop if he did build it, or if it was already there.

Mr. Cummings asked why that mattered.

Mr. Bru said because if he built it after 1967, it should have been under the Code.

Ms. Pappas stated that nonconforming status can extend forever as long as the structure is rebuilt to the same dimensions, in the same location, within two years, regardless of who does it.

Mr. Cummings said with all due respect he would not allow Mr. Bru's question because the Board had heard on two different points from the staff that if the roof were built at a slope that might have been slightly different from the original, or if it had been rebuilt more than one time, it did not matter, as long as the reconstruction each time occurred within less than two years prior to the reason that made the reconstruction necessary.

Mr. Bru said he would like to say then that the carport was much larger, not just in height but in length and width, than the old carport. He submitted his pictures of the carport to the Board.

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Mr. Cummings stated that the applicant had submitted a lot of verifiable information in the form of two affidavits and some other information, including pictures. He said while he would be happy to look at Mr. Bru's pictures, unless they had some dimensions on them they were not going to do a whole lot of good.

Mr. Bru said his problem with the carport was that it extended much further than the old one, in length and width, not just height. The old carport was not near as close as the new carport. All he was asking was that the new carport be moved back two or three feet so it would not be so obviously overbearing on his property. He said that was obvious in one of the pictures. He said he would not have any problem with Mr. Bishop having a carport that was 8-10 feet. But this was 13'7" and it hangs over within a foot of his property line. He felt Mr. Bishop would maintain the gutter, but he couldn't count on that from the next person that lived there. Mr. Bru said the carport comes right toward his house and dumps right where he gets out of his truck to go into his house. With the heavy rains Mobile has, he felt like the gutter would not hold the water. Regarding Mr. Anderson's statement that in his letter he had asked Mr. Bishop to put a gutter on the garage, Mr. Bru said he was not referring to the carport, but to the old garage that had been there for 40 years. He said the carport was just too close to his property. He asked the Board to consider him having to live right next door to Mr. Bishop.

Mr. Cummings asked Mr. Bru if the previous structure had a gutter.

Mr. Bru said he did not remember.

Mr. Cummings said in one of the pictures there appeared to be a gutter on the structure. He asked Mr. Bru if the previous structure caused him a problem with the water runoff.

Mr. Bru replied that it did.

Joe Ellsworth stated that he was a friend of Mr. Bru's and would like to address the Board. He said he and his wife had visited Mr. Bru many times and when it was raining they could not get out of the car. If he pulled closer to the house then his wife couldn't get out. The hedges were also protruding over Mr. Bru's driveway. He said the roof of the carport comes just a few inches from the property line. The fence there now was 12 inches inside Mr. Bru's property, and you could not open the door of the car. The structure was right on the line, and the fence was a foot and a half on Mr. Bru's line.

Mr. Cummings asked Mr. Bishop if he put the carport back in the same place that it was before.

Mr. Bishop replied that he did, and the survey showed it.

Ms. Pappas provided the Chairman with a copy of the survey dated 1988, which was submitted with the prior application. It did not show a setback, but it showed everything in line as is on the current survey.

Mr. Cummings stated that in a case like this carport, the relationship of the support for it is what was going to determine its position, not necessarily the overhang.

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Ms. Pappas said the allowance if this were a conforming structure would be an overhang up to two feet. The situation with nonconforming, we would be looking at everything.

In executive session Mr. Cummings said all the Board could go on was the property owner himself, along with the affidavits saying that that structure was rebuilt where it originally was when he first took to have it rebuilt.

Mr. Bru interjected and further stated that when Mr. Bishop decided to build the carport he was told he needed a permit. He contended that he did not get a permit because he had something to hide.

Mr. Cummings reminded Mr. Bru that the Board was in executive session and asked him to be seated or leave the room.

Mr. Cummings continued, saying that the Board, to the best of their ability, had to determine based on the evidence they had been given, whether the structure that was there today was in the same place as the structure that was there previously.

Mr. Lee asked Ms. Cochran if the carport were oversized, larger, or if it was too close to Mr. Bru's property line, would that not have any bearing on this.

Ms. Cochran stated that as long as the setbacks were the same it didn't matter whether it was larger. She referred to the Fairhope case as an example. She said the issue here was not whether the carport was any bigger, but whether it was within the same footprint that the old one was.

Mr. Lee asked if it made any difference if it had a larger overhang.

Ms. Cochran said if the overhang exceeded the requirements of the current Ordinance, then it did matter. The Ordinance allows a two-foot deviation. It has to be determined as a matter of fact whether the overhang exceeds the two-foot allowance.

Mr. Cummings said the Board had to determine if the carport was a legal nonconforming structure. He called for a motion.

A motion was made by Mr. Coleman and seconded by Mr. Lee that the carport at the above referenced location was a legal nonconforming structure.

The motion carried unanimously.

#5297

(Case #ZON2005-00289

Greg Murphy

60 North Sage Avenue

(East side of North Sage Avenue, 150'+ South of Ishee Street)

Use and Access/Maneuvering Variances to allow a plumbing company office, with a 10.9-foot wide, two-way driveway, in a R-1, Single-Family Residential District; only single-family residences are allowed in a R-1, Single-Family Residential District, and a 24-foot wide driveway is required for two-way traffic

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Don Williams, Williams Engineering, was present in this matter along with Greg Murphy, the applicant. He said he had recently come before the Board and was granted a use variance for a B-1 use, a tax preparation office, three doors down from the subject property. He pointed out that of the nine properties on this side of Sage Avenue in the next block from the armory up to Ishee Street, there were four that were commercial uses. There was the tax preparation office, a beauty salon, an office for Greg Murphy's home inspection business, and a small retail business. That leaves five more sites, two of which were rental houses. Across the street were the Junior League and another office, and an entire B-3 district, Dauphin Square Connector. Mr. Murphy would like to operate a plumbing repair business that would do residential and commercial plumbing. There would be three employees, a secretary who would be there during the day, and a master plumber and his assistant who would be out making service calls all day. Mr. Williams submitted it would operate very similar to a residential structure, with someone there during the day and activity in the morning and afternoon. He said the driveway would remain the same. There would be no parking in the front yard. The residential structure would continue to look residential and would blend in with all the other businesses along that stretch. He noted that there was no opposition present, and he felt people were recognizing that the trend of that stretch of Sage Avenue had gone toward commercial and they were accepting it.

Mr. Cummings asked if this would be a plumbing supply house also.

Mr. Williams said it would be a plumbing repair business. He was not sure about stocking items that someone could come in and buy. He tended to think that they would stop by the supply house when they needed something and pick it up for a particular job.

Mr. Cummings noted that the site plan indicated four parking spaces in the back, and asked if they were to be paved.

Mr. Williams said it was pretty much gravel now, but an asphalt drive would not be a problem if required.

Mr. Cummings asked about the possibility down the road of putting some kind of storage building on the back of the property.

Mr. Williams said there would be no room. He said it was also pretty flat so if you had a handicap or disability it would not be a difficulty either. You could actually get access right up to the back of the building.

Mr. Cummings asked if there were any requirements regarding trees.

Mr. Daughenbaugh said Forestry would request that the site be brought into compliance with the landscaping and tree planting requirements of the Ordinance. He noted that this was required of the site to the South which had complied.

Mr. Williams noted that there were existing trees, which they would get credit for, and they would turn in an application in that regard.

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Greg Murphy, applicant, commented that they would not store materials on the site and they do not order excess materials. They have an off-site storeroom for any excess to be stored.

Mr. Guess asked how many company vehicles they would have.

Mr. Murphy said they would have one truck.

Mr. Lee asked how many parking spaces were required for an office building.

Mr. Pappas said it was one to 300 square feet. The building was 900 square feet, which would require three spaces.

Mr. Guess expressed concern about overflow parking to the front. He noted that the tax preparation office that was recently approved had an issue with parking in the front yard. He said that had occurred on that site, and he would like to make sure, if this application were approved, that they require some landscaping to prevent parking in the front.

Ms. Pappas stated that Urban Development would send an inspector out to check on the office parking violation referred to.

Ms. Pappas said the Board may also want to ask for buffering, especially around the rear of the property. She noted that on the tax preparation office, the fence was stopped at the front of the house.

After discussion a motion was made by Mr. Guess and seconded by Mr. Davitt to approve this request for Use and Access/Maneuvering Variances at the above referenced location subject to the following conditions:

- 1) provision of a wooden privacy fence along the side and rear property lines (no fence along the sides from the front of the building to the front property line);
- 2) full compliance with the landscaping and tree planting requirements of the Ordinance; and
- 3) provision of paved parking and driveway as depicted on the site plan submitted.

The motion carried unanimously.

#5298

(Case #ZON2005-00293

Pete J. Vallas (Dr. Helen H. Rogers, Owner)

1 Country Club Road

(West side of Country Club Road at the North Terminus of Hillwood Road)

Side Yard Setback and Total Combined Side Yard Setback Variances to allow additions and renovations to a residential structure within three-feet of the side (North) property line, and total combined side yard of 11-feet; an eight-foot setback is required from a side property line, a total combined side yard of 20-feet is required for residential structures on a lot 60 feet wide or wider is required in an R-1, Single-Family Residential District

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Pete Vallas, architect, was present on behalf of Dr. Helen Rogers, owner. Mr. Vallas said their hardship was that they had a historic structure in Spring Hill that had been added onto several times over the years, and it was never added onto very sympathetically. Ms. Rogers would like to upgrade the property and remove these additions. They have a problem, however, in that one of these additions was over the property line. A storage shed in the back corner of the property extended 2 ½ feet over the property line. Mr. Vallas pointed out on the site plan a flat-roofed carport that comes within 2' of the property line on one point, and 1.7' on another point. They would like to correct all those nonconformities and add a double garage out front, and a family room and master bedroom. He said the problem with their proposed plan was that this involves coming within 3' of the property line on the north side at one point, where before they were within 2' at one point and over the line 2 ½'. Mr. Vallas said this was a historic home and they were trying to preserve the historic integrity of the house by not adding anything out front. The house dated from the 1920's. He submitted photos of the house showing the additions. The area of the property was just under 15,000 square feet, so the allowable site coverage would be 35 percent, or 5,000 square feet. Their project, with all the additions, would still be about 3700 square feet, or just under 25 percent. Mr. Vallas said that the odd location of the house back from the setback caused them to build closer to the line than allowable.

Ms. Cochran asked if the house had an individual listing on the National Register, or was it just an MHDC designation.

Mr. Vallas said he did not know, but it did have a banner and shield.

There was discussion about the site plan and the additions and their proximity to the property lines. Mr. Cummings noted that the neighbor to the north more or less would get the benefit of having that structure off his property if this were approved.

After discussion a motion was made by Mr. Davitt and seconded by Mr. Guess to approve this request for Side Yard Setback and Total Combined Side Yard Setback Variances at the above referenced location.

The motion carried unanimously.

#5299

(Case #ZON2005-00311)

Persons Development, LLC

(Southwest corner of Cottage Hill Road and Grant Street)

Side Yard (Street) Setback Variance to allow the construction of a single-family residence within 12' from the East (street) side property line; a minimum side yard setback of 20' is required for residential structures on a lot 60 feet wide or wider, along a side street in an R-1, Single-Family Residential District.

Buddy Persons, owner of Persons Development, was present and said he had purchased YNG Place, which was a subdivision approved years ago on Grant Street at the bottom of Cottage Hill Road. He recently got approval and permits to build a 7' masonry wall around the property. It comes up and borders Cottage Hill Road two inches inside the property line. It blocks off the lot in question, lot 6. Mr. Persons said that his problem and hardship was that with a 20' setback inside the wall that's now built, and the 25' front setback, as well as the 25' radius that was

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donated to the City because of the intersection, his buildable area on lot 6 on which he was attempting to build a home would be significantly reduced. The biggest problem was the angle of the lots. He said it was hard to find a plan that would fit inside there when the corners of the house will form an irregular shape. Essentially, it was causing him to have to build an even smaller house than the allowable buildable area. He said he was trying to do something a little bit more upscale than Grant Park down the street. In sticking with the covenants he was going to build from 2,000-2,500 square feet. He had built a house on lot 1 with normal setbacks of 8', 12' and 25' in the front, and it was extremely difficult to get it to fit. With the wall that was approved, there would be no visual impact between 12' and 20'. He was asking for the 12' instead of the 20', which would be inside the wall and give him some room to position the house. The positioning of the driveway was another problem. With the 20' setback he could not put a driveway on the right side because it would be at the intersection of Grant Street and Cottage Hill Road. So that whole 20' becomes almost unusable for him. He would have to put the driveway on the other side, pushing him off 12' on that side, giving him a pretty small area in which to build a house.

At this point, Mr. Cummings stated that he had an economic interest in a piece of property around the corner from this site, and he thought it best to recuse himself from any further discussion in this matter. He asked Mr. Davitt, Vice-Chairman, to chair this portion of the hearing.

Mr. Davitt asked if anyone on the Board had any questions.

Mr. Lee asked Mr. Persons if he had seen the staff recommendation about making a reapplication to the Planning Commission to remove the existing 25' side street side yard setback in order to permit development on the site utilizing the 20' side street side yard setback for lots abutting side streets.

Mr. Persons said he had read the recommendation and that the 5 feet would not really do much good. He said he needed the extra 8 feet so he could position the house inside the wall.

Mr. Lee asked what conflicts he had with lots 2, 3, 4 and 5. Mr. Persons said none.

Asked about the dimensions of the proposed house, Mr. Persons said it would be roughly 45' wide by 60'.

Mr. Daughenbaugh pointed out that there was a Live Oak tree in the City right-of-way and it could have an impact on where the applicant placed his driveway. He asked Mr. Persons if he knew how close the proposed driveway would be to the tree.

Mr. Persons said he did not know, and discussed how he planned to fit the driveway in. Mr. Daughenbaugh said that depending on the location from the trunk of the tree, it may be that the applicant would have to make an application to the Mobile Tree Commission. That was something they could work out during the right-of-way permitting.

Mr. Persons said the covenants would not allow him to enter the property from Cottage Hill Road where the wall had been put up, and according to Frank Dagley he was not allowed to put a driveway directly off the intersection.

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Mr. Guess asked what the minimum square footage was required by the covenants. Mr. Persons said 2000 square feet were required, and he planned to build 2400 square feet.

Mr. Coleman asked if this would be a problem if it were not for the wall.

Ms. Pappas said that the Board did grant a variance for the wall to be on the property line.

Asked about the reason for requiring a 20' setback, Ms. Pappas said that it was (1) due to the visibility at the intersection, and (2) to maintain a fairly consistent streetscape.

After discussion a motion was made by Mr. Coleman and seconded by Mr. Guess to approve a Side Yard (Street) Setback Variance at the above referenced location.

The motion carried unanimously.

OTHER BUSINESS:

Resignation

Ms. Pappas stated that the staff had received word that Rev. Cooke would be resigning his position on the Board. She had notified Council Member Richardson and felt he would be diligent in appointing a new member.

Attorney General's Opinion

Ms. Pappas provided the Board with copies of the Attorney General's Opinion on recusals, which was discussed at the last meeting.

There being no further business, the meeting was adjourned.

APPROVED: April 4, 2005

/s/ Chairman of the Board

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