

BOARD OF ZONING ADJUSTMENT MINUTES
MEETING OF JANUARY 10, 2005 - 2:00 P.M.
MOBILE GOVERNMENT PLAZA, MULTI-PURPOSE ROOM

MEMBERS PRESENT

Reid Cummings, Chairman
Stephen J. Davitt, Jr.
William Guess
Martha Collier
H. Lamar Lee

MEMBERS ABSENT

Horace Christian
Rev. Clarence Cooke

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.

HOLDOVERS:

#5283

(Case #ZON2004-02331)

Foresite LLC (Mobile County School Board, Owners)

(South side of Girby Road, ½ mile± East of Hillcrest Road)

Use, Height, Setback, and Separation Buffer Variances to allow the construction of a 160' Monopole Communication Tower in a R-1, Single-Family Residential District, towers are prohibited in R-1 Districts; to allow the tower to be 160' in height, the maximum height allowed in a R-1 District is 35'; to allow the construction of said tower to within 50' from a lease parcel line, a minimum setback of 160' is required; and to allow construction of the tower within 160' of residentially zoned property, a minimum separation buffer of 240' is required.

Paul Beasley, project manager for Foresite, LLC, was present in this matter. This request was to build a 160' monopole tower for Cellular South on this site near Cranford-Burns Middle School. He said they had located the site exactly where the School Board requested. The tower would hold up to four tenants. Cellular South would definitely locate on the tower, and Verizon had looked at co-locating there.

Mr. Cummings asked if the requisite insurance requirement was satisfied here.

Ms. Pappas said yes.

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Mr. Cummings asked if there was no problem of this pole tumbling down on other properties.

Ms. Pappas said no.

Mr. Cummings asked if the tower would be situated such that it would not pose a problem for the School Board.

Mr. Palombo said it would.

Mr. Guess asked if the tower had to be 160'. Could it not be under the 35' height restriction.

Mr. Beasley replied no. All the trees would be higher than a 35' tower and would block the signals.

Mr. Guess asked if there were any other structures anywhere within the zone that would satisfy the requirements, such as Knollwood Hospital.

Mr. Beasley said Knollwood Hospital had been utilized by a carrier. Also, it was not high enough to provide the same type of coverage this tower would. It was his belief that the tenants on Knollwood Hospital would actually prefer to move onto this tower once it was built.

Mr. Guess asked if Knollwood Hospital would actually serve as a source then.

Mr. Beasley said it would not provide the exact same source because this proposed tower would be taller than Knollwood Hospital.

Frank Nash, a resident of 3716 Pepper Ridge, stated that he was not speaking in opposition to this proposed tower, but only bringing up a point to make sure it had been covered. He asked if the FAA had been given this information, and did the applicant have in writing from them, that they had studied it and would guarantee that there would be no minimum altitude changes to the approach of a runway at Mobile Regional Airport. The description did not give him latitude and longitude, and he felt this needed to be checked out because he has known the FAA to approve a site, but once the structure was built they would come back and change the approach altitude for either precision approach or non-precision approach. He said if you extended the runway it would come right over this area.

Mr. Beasley said the first thing he did on all his cell towers was to get a C-2 letter, which gives him the accurate latitude, longitude and ground elevation. He said he did have an FAA determination that this site would not cause changes in anything. It was perfectly acceptable with no lighting. It did not specify a certain runway.

Mr. Nash said that the FAA might not have been given enough details to know what they were getting into. It might be all right, but when he sits down in his back yard and watches planes approaching, he knows they are coming close to this site.

Mr. Beasley said he files what is called a 7460-1, Notice of Proposed Construction. He follows C-2, which is basically a surveyors certified statement that the latitude and longitude have been

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checked to within 20', one way or the other. This way his elevations check within 5', up and down. Mr. Beasley said they were in full compliance with the FAA and FCC. He said if this was going to cause any kind of change to a runway, the FAA would publicize it for 45 days and ask for remarks, and they did not do that. If he were going to change any type of runway approach, he was confident they would at a minimum ask him to light his tower.

Mr. Nash said that from dealing with the FAA, his advice would be to get it in writing.

Mr. Palombo said his concern would be helicopter traffic to and from Knollwood Hospital. He asked Mr. Beasley if he was going to light this tower.

Mr. Beasley said the hospital had actually contacted him. The FAA ran it by the hospital and he was not required to light the tower. The hospital, however, has asked if they would consider lighting the tower. Mr. Beasley said he planned to ask the staff about putting a low intensity, pure red light on it at night.

Mr. Davitt expressed concern that a good strong wind would topple the tower and it would fall in the middle of Girby Road. He asked if it would be possible to move it back another 100'.

Mr. Beasley said it would get onto the school's soccer field if they moved it back. He said it would be built to completely satisfy the wind requirements. Also, what he had done in the past was put a break point 50' from the top of the tower. If it breaks it would hinge within the fall radius of the lease area. He said he would be perfectly willing to do that.

Mr. Davitt said he would ask for that. He also asked about ingress and egress.

Mr. Beasley said it would be paved with asphalt because of the slope.

In executive session Mr. Cummings noted that the staff recommendation was for approval subject to full compliance with the landscaping and tree planting requirements of the Ordinance, and that a Certificate of Insurance be requested naming the City of Mobile as additional insured.

After discussion a motion was made by Mr. Davitt and seconded by Ms. Collier to approve this request for Use, Height, Setback, and Separation Buffer Variances at this location subject to the following conditions:

1. full compliance with the landscaping and tree planting requirements of the Ordinance for the lease parcel (to be coordinated with and approved by Urban Forestry);
2. that the applicant submit a Certificate of Insurance naming the City of Mobile as an additional insured;
3. that the top of the pole be lighted; and
4. that the pole be engineered and built so that a stress point is 50' from the top.

The motion carried.

#5284

(Case #ZON2004-02338)

Foresite LLC (Mobile County School Board, Owners)

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(North side of Cottage Hill Road, ¼ mile± West of Azalea Road)

Use, Height, Setback, Separation Buffer and Access Variances to allow the construction of a 160' Monopole Communication Tower in an R-1, Single-Family Residential District, towers are prohibited in R-1 Districts; to allow the tower to be 160' in height, the maximum height allowed in a R-1 District is 35'; to allow the construction of said tower to within 40' from a lease parcel line, a minimum setback of 160' is required; to allow construction of the tower within 160' of residentially zoned property, a minimum separation buffer of 240' is required; and to allow unimproved parking and access to the site, paved parking and access is required for all towers except those located in I-2 Districts.

Paul Beasley, project manager with Foresite, LLC, said this tower was proposed to be located at the northwest corner of the Fonde School property. The tower would be specifically for Verizon, with T-Mobile also interested in it. The tower would be capable of holding four tenants. They have asked that they be allowed to use rock for the access road instead of paving it, due to its length and the School Board specially requested that they minimize the viewing possibility of the road.

Mr. Cummings noted that the site abutted some residences and asked how far it was from the property line. He was concerned about the tower tipping over.

Mr. Beasley said it was 160' from the property line.

Mr. Cummings asked Mr. Beasley if there were any other suitable sites in the area that he could make an arrangement on, and that would fill his coverage requirements.

Mr. Beasley said he did a search of the area and was not aware of any. He said he was naturally disposed to go toward the School Board property to try to give money back. As far as the size of the property, he said this was probably the biggest contiguous piece of property that was out there.

For the sake of some of the newer members of the Board, Mr. Cummings asked Wanda Cochran to elaborate on what the Board, or the City of Mobile, could say about federal law and the City's ability to regulate them.

Ms. Cochran stated that in 1996 Congress passed the Telecommunications Act of 1996, and as a part of that there were a number of regulations. In response the City adopted a new section of the Zoning Ordinance dealing with cell towers, which basically allows towers as a right in any industrially zoned area. In other areas Planning Approval is required. The policy as expressed in the Zoning Ordinance was to have towers hold more than one carrier. The Board has the authority to impose whatever other conditions that are related to the site that would promote these policies in terms of minimizing the visual impact, requiring monopoles, etc.

Mr. Cummings said he also understood that if another suitable site could not be located that would satisfy the engineering aspects of the design of their coverage, and this was the only one that was there, the Board could not say they do not want it there just because they do not like the way it looks or whatever.

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Ms. Cochran said that was not correct. She said providers do not have a right to a particular coverage. What the Telecommunications Act says is that cities cannot erect barriers to entry.

There was further discussion as to what the Board could consider in deciding whether or not to approve a tower. Ms. Cochran said financial reasons were not always justification. The hardship the Ordinance speaks of was related to the property.

Ms. Pappas commented that the applicant also had to prove that the tower was not just for one carrier, thus illustrating they were in compliance with the spirit of the telecommunications requirements, that is, putting up one taller tower and foregoing three shorter towers ringing around the same area trying to provide coverage.

Ms. Cochran said in talking about hardship, the Board can certainly consider his coverage issues in terms of making their decision.

Mr. Guess asked if Foresite's studies showed facilities or buildings or structure that may provide coverage location.

Mr. Beasley said they did not.

As a point of clarification, Ms. Pappas said that as part of their application process the applicant was only required to present documentation that there were no co-locatable structures within a half mile radius of the site.

Referring to Foresite's application on Girby Road, Mr. Guess said they did have a co-habitable site because it was less than a half mile from the Knollwood Hospital.

After discussion a motion was made by Mr. Davitt and seconded by Mr. Lee to approve this request for Use, Height, Setback, Separation Buffer and Access Variances at this location subject to the following conditions:

1. full compliance with the landscaping and tree planting requirements of the Ordinance for the lease parcel (to be coordinated with and approved by Urban Forestry);
2. that the applicant submit a Certificate of Insurance naming the City of Mobile as an additional insured;
3. that the top of the pole be lighted; and
4. that the pole be engineered and built so that a stress point is 50' from the top.

The motion carried unanimously.

PUBLIC HEARINGS:

#5285

(Case #ZON2004-02375)

Janis Bishop

1958 College Court

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

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Side Yard Setback Variance to allow an 13' x 21.9' carport 2.7' from the side (East) property; a minimum side yard setback of 8' is required for a lot that is 60' wide or wider at the minimum front building setback line in an R-1, Single-Family Residential District.

Linda Burkett, Marshall McLeod Professional Land Surveyors, was present representing the applicant. Ms. Burkett said the purpose of this application was to bring this property into compliance. The structures, which were built last March, were already in place. She provided the Board with photos of the old carport and the new one. They replaced the original carport. The metal poles were replaced with wood poles.

Mr. Palombo said the structure was not a new structure. It had been rebuilt to the same size.

Mr. Cummings asked if the original carport was non-conforming.

Mr. Palombo said it was, but they had no non-conforming documentation on this, hence the variance application. The applicant bought the property in 1988.

Ms. Burkett submitted a petition signed by some of the neighbors stating that they were not opposed to the new carport.

Mr. Davitt asked if Mr. Bru was on the side the carport was on. He indicated (in his letter to the Board) that his survey was different from the applicant's.

Ms. Burkett stated that actually the hearing today was not about where the property line was. It was about where these buildings were. She said they were not here to discuss Mr. Bru's property line.

Mr. Cummings asked if the carport was the only structure that was redone.

Ms. Burkett said there was a playhouse in the back that had been moved.

Going back to his original question, Mr. Davitt said Mr. Bru's survey showed one location, one property line, and it was different from the applicant's.

Ms. Burkett said with all due respect, he would have to talk to Jerry Byrd (the surveyor) about that. She said Marshall McLeod Professional Land Surveyors states, and has certified, that the applicant's survey was correct.

Ms. Pappas stated that if the Board were to approve this variance as presented it would not change the location of the building or the distance from the line. If the Board were to deny it and say that an 8' setback would have to be maintained, that is where it would get kind of tricky in determining where the 8' setback was located. Ms. Pappas said that they actually have documentation on the frame garage since 1950.

Mr. Palombo said the only building in question was the carport. The playhouse was moved two months ago to comply with the setbacks.

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Janis Bishop, applicant, stated that the original structure was falling down and that was the reason they wanted to replace it. To improve the property they went with a shingle roof and treated wood.

Mr. Cummings asked why this was an issue today if this carport was built in March 2004.

Mr. Palombo said it was due to a complaint made in October.

Mr. Guess said the fence seemed to be the generating point of the complaint more so than the carport.

Ms. Bishop said the fence had been there, which could be seen in the pictures submitted. It had been torn down and put back up with a building permit since the hurricane.

Mr. Cummings said the Board had received a five-page letter from Mr. Bru. He asked if there was anyone present who would like to speak in opposition.

George Bru, 1956 College Court, stated that the problem he had with the carport was that it was not the same size as the original carport and extended closer to the property line. He said he looked at the old carport for seven years and it was basically a flat roof shed and did not connect to the house. It was kind of built under the eave of the porch. He sent in a photo to Mr. Whistler showing this. That was not the photo the Board had today. He complained that all the water had been coming right under his fence exactly where he gets out of his car. He said his photo showed that the old carport was smaller than the new one.

Mr. Cummings asked to see the photo he was referring to.

Mr. Bru said he sent the pictures to Mr. Whistler.

Mr. Palombo said Mr. Whistler could not find the photos.

Mr. Cummings asked Mr. Bru if what was causing the major problem was the runoff of the water from the roof collected by the gutters and then distributed by the downspout system.

Mr. Bru said that was part of it. He said the structure was closer to his property than it was previously. It was built wider than the original carport. The original carport was 12 or 14' long. The new one was 21' long.

Mr. Cummings said the length shouldn't matter. It was the width that was the problem.

Mr. Bru said that was correct, but it did matter because that was right where he got out of his car. His kitchen window looked right at it, and where he stepped out of the door it hits him right in the face. Mr. Bru said he knew there was not a permit for the structure, but he had no idea that it was going to be that big and that was what he objected to. He also noted that his deed showed he had 55' across the front, and McLeod's survey only showed that he had 53'7". Mr. Bru said he hired Byrd Surveying to do a survey and it showed he had 55'.

Mr. Cummings asked Mr. Bru how far the carport was from his property when he moved there.

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Mr. Bru said it was four feet. It wasn't near as high a structure and it didn't tie in to the whole roof section.

Mr. Cummings asked Mr. Bru if the slope of the carport away from their house towards his property line was more severe with the new carport.

Mr. Bru said it was three times as severe.

Mr. Cummings asked Ms. Burkett where the downspout that comes off the new structure was pointed.

Ms. Burkett said the reason they were making this application was to bring the carport into compliance. She said it was an improved structure with an improved gutter system. They were certainly not trying to impair the neighbor's property. She said the fact was that the structure was there now and they had requested a variance. The alternative would be to tear it down and she did not think that was really a good action at this time. She asked that the Board vote and allow this variance.

Mr. Bru again stated that this was not an improved structure per se. The old structure was torn completely down and a new structure was built. New posts were set and new beams were set. Mr. Bru also noted that Mrs. Fields, a neighbor directly behind the Bishops refused to sign a petition that went around the neighborhood in support of this variance. Also, the neighbor directly behind his home was never contacted about a variance. The other neighbor not contacted was Mrs. Price who lived straight across from the structure.

Mr. Cummings noted that shortly after the variance was applied for a sign appeared in the front yard that said a variance was requested. This was the way the City advertised that a hearing was scheduled. Just because a person does not sign a petition does not mean they have given up any rights to come down here and speak, nor have they by refusing to sign it just implicitly stated or implied that they were not in favor of it. Mr. Cummings wanted to be sure that Mr. Bru understood that this Board did not do whatever the neighbors wanted.

Mr. Cummings asked Mr. Bru if, when the old structure was torn down and the new structure was built some eight or nine months ago, had he said anything to the Bishops at all about the location of the structure or the impact it might have on his property.

Mr. Bru said he did say that it was very close to his property line.

Mr. Guess asked that when the posts were going up, did Mr. Bru see a change in where they were located in relation to where they were before.

Mr. Bru said he could not really tell. But he could see that they were putting in a new foundation. They were setting 6 x 6 posts in the ground and they were closer to his property line than the old posts were. The whole structure was much wider than the old structure. It was connected to the house and it was not remodeled. It was torn completely down and rebuilt.

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In summary, Ms. Burkett stated that obviously this was a civil matter and a land dispute about the boundaries, and that was certainly not the purpose of today's variance application.

In executive session the Board discussed their options. Mr. Cummings said one reason he had asked the question about the direction of the water coming out of the downspout was to determine if it was simple enough to reposition the direction the water shoots out and maybe aim it down the driveway.

It was stated that the water already went down the driveway.

Mr. Lee also pointed out that with just the slope of the structure, even in heavy rain it was not always that the downspout was going to catch all the water.

After discussion a motion was made by Mr. Lee and seconded by Ms. Collier to deny this request for a Side Yard Variance.

The motion carried unanimously.

#5286

(Case #ZON2004-02549)

Max & Mandy Rogers

111 Myrtlewood Lane

(West side of Myrtlewood Lane, 170' ± North of Old Shell Road)

Side Yard Setback, Total Combined Side Yard Setback and Rear Yard Setback Variances to allow additions to a residential structure five-feet from a side property line, a total combined side yard of 16.6 feet, and five-foot from the rear property line; an eight-foot setback is required from a side property line, a total combined side yard of 20-feet is required on a lot 60 feet wide or wider, and an eight-foot rear yard setback is required in an R-1, Single-Family Residential District.

Max Rogers, applicant, was present in this matter. Mr. Rogers said he and his wife had purchased this property, the old Bealle-Gaillard home built in 1836, which was on the National Register of Historic Places. They were devoted to ensuring that they restore this home to its historical significance and architectural grandeur. Mr. Rogers said his architect, Lea Verneuille of Walcott, Adams and Verneuille, was present and he asked him to go over some of the issues and obstacles they have had to deal with that brought them to request this variance.

Before hearing Mr. Verneuille, Mr. Cummings wanted to point out that the staff had recommended approval of this request subject to the following conditions: (1) that it be subject to all necessary historic approvals; and (2) provision of gutters and downspouts on the addition so that runoff, stormwater, would not adversely affect the surrounding property. Mr. Cummings said the Board would be happy to hear from Mr. Rogers' representative, and perhaps he could address the requirements as stated.

Lea Verneuille, architect for Mr. Rogers, said he could assure the Board that meeting those conditions would not be a problem. He said they were bound by a façade easement that was provided by the previous owner regarding the historical accuracy and preservation. They were also bound by the Mobile Historic Development Commission (MHDC). As far as the gutters

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and downspouts, Mr. Verneuille said there would certainly be provisions to assure proper drainage away from all neighbors.

Mr. Palombo noted that they had received approval of the MHDC and the façade easement had been granted.

Mr. Rogers noted that there was one neighbor present who would like to speak.

Mr. Verneuille further stated that the home was listed on the National Register of Historic Places. The home was subject to an open scenic and architectural façade easement which was created in April of 2001 by the previous owner and the MHDC. This easement restricts what can be done to the exterior and also gives certain ownership rights, or the right to approve or deny the design to the MHDC. This requires them to work closely with the MHDC, and they were bound by a couple of items in the façade easement regarding any new additions or structures. Mr. Verneuille said they had several meetings with Devereaux Bemis of the MHDC and had submitted the design to the Properties Committee and received a letter of approval with two aesthetic conditions. The new owners wanted to make certain changes to the home to meet the needs of a large family. They would like to have a two-car garage and utility room. As a part of the façade easement they were very limited in what they could do to the exterior and where they choose to do anything. Mr. Verneuille said the MHDC would not look favorably on any addition in the front area of the house or anything that attached in a significant way to the main structure of the house. The staff also indicated that an attached enclosed garage structure in line with the current wings of the house would not be looked upon favorably. They were almost limited therefore to only one area upon which to put the garage, which was in the northwest corner of the property. They also added a small utility room of 8' in width that was in the one area where they were going to demolish part of a lean-to that was not original to the main house. He explained that there would be a roof break leading to a garage that was detached from the house. Mr. Verneuille said to locate the garage any closer to the original structure would create an uninterrupted plane of roofs with no clear distinction between the original and the new. In their opinion such structure would not receive approval from the Properties Committee of the MHDC, and they did ultimately approve their submittal with the break. The roof break was in his opinion a critical component of meeting the architectural façade easement. The 3-foot distance they were asking for was critical in achieving both a useable garage with a clear break between the roof designs of the original house and the more modern garage structure. Mr. Verneuille said the neighbors may have concerns. There was a garage on Ms. Witherington's property that appeared to be about 12' from the side property line where they were asking for the variance. He submitted photos, saying there did not seem to be a direct view from the living quarters of the neighbor's home back to where they were adding the garage.

Mr. Cummings asked about the size of the garage.

Mr. Verneuille said it would be 24' x 24', which would be a minimum.

Burke Witherington, 3447 Stein Avenue, said her property would be most affected by this variance. The garage would be very, very close to her property. The applicant was requesting a 5' variance and with the roof overhang it would approach almost 3'. She was concerned about the size of the structure, noting that her garage was 20', and two large vehicles fit nicely. The proposed garage would be 30' tall with a room above plus an attic and a breezeway. Runoff was

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also a concern. When they built their house Ms. Witherington said they spent over \$12,000 to install French drains to contain their water. She said she was in favor of the Gaillard house being restored, and she wanted to continue to be a good neighbor, but felt that the garage would just be too close for the size of the structure. She also had a letter from another neighbor who bordered the property expressing her concern. Ms. Witherington felt that some adjustments could be made so that maybe there could be a happy compromise.

Mr. Cummings asked Mr. Verneuille if he would care to address Ms. Witherington's comments.

Mr. Verneuille said he had done a lot of head scratching back and forth with the MHDC to avoid being here and trying to work something out. He regretted that Ms. Witherington was not in favor of what they were doing. With regard to the drainage, he said he had sloped all the roofs to the front and to the rear that he could gutter so no water would be draining toward Ms. Witherington's property. All the water from Mr. Rogers property runs down slope towards Myrtlewood.

Ms. Witherington said her water did not run down Myrtlewood. It ran into the catch basin.

Mr. Verneuille further stated that they did not have a lot of options about where they could place the garage. There was almost no room in the rear. He said if they pushed the garage any further to the south they would scrape the house coming out. It would also eliminate some of the breezeway area.

Mr. Cummings asked if there was some reluctance by the MHDC to perhaps move the structure a bit more to the south.

Mr. Verneuille said what they discussed at length with the Properties Committee was that an architectural break between the garage and the original house was very important. He said they had had a lot of discussion back and forth in trying to come up with the best solution to balance the concerns of property line setbacks and the requirements of the architectural façade easement.

Ms. Cochran stated that the Secretary of the Interior prescribes standards for work done on historic properties. She said the trick in adding to historic property was not to mimic the past or copy it, but rather to differentiate it so that a trained observer could tell what was the original house and what was added on. She felt that the Properties Committee would work with them, but they did have to keep that break.

There was further discussion about the possibility of sliding the whole structure a bit to the south. Mr. Verneuille explained why that would not be a solution.

Ms. Collier commended the Rogers for taking on this property. She said they had to remember, however, that when this property was built there was probably 20 acres on all four sides. They were now trying to put something within a city, developing, growing, and it does come with problems.

Mr. Rogers stated that he did not want to give the impression that they just came up with a plan and laid it out. They have owned the house for five months and they have yet to drive a nail or

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tear down a wall. They have been working very closely with their architect, as well as the MHDC. He said it was not just as simple as moving 3' southeast or west.

Mr. Cummings said he did not think anyone had that impression. It was obvious that they had given this matter a lot of thought and Mr. Verneuille had worked extremely hard from the beginning to make this design practical in today's time as well as meaningful in terms of this structure being 180 years old and was probably surrounded by woods or pasture at one time. There was no hardship then, and there may not be a hardship today. Mr. Cummings noted that Ms. Witherington's garage appeared to be less than 8' off the property line. He asked her if, when she built her house, she had to get a variance to be closer to the rear property line than 8'.

Ms. Witherington said she did not think so.

Mr. Palombo said 8' was the minimum.

Mr. Verneuille said that he stepped that off from the corner of the property and it appeared to be right at 12'. Also, he said he would have been happy to meet with Ms. Witherington. Mr. Rogers also said he would take the time to meet with her.

Mr. Cummings asked if anyone had anything else to add before they went into executive session.

Ms. Cochran said the legal question was, does a burdensome restrictive covenant or easement that burdens the property constitute a hardship? She said the façade easement on this property was unique. It derives from the property. On the other hand, she asked was not being able to construct a two-car garage as opposed to a one-car garage a hardship?

In further discussion it was suggested that if the variance were granted provision should be made for containment of water on the site through the implementation of French drains.

After discussion a motion was made by Mr. Guess and seconded by Mr. Davitt to approve this request for Side Yard Setback, Total Combined Side Yard Setback, and Rear Yard Setback Variances at this location subject to the following conditions:

1. subject to all necessary historic approvals; and
2. provision of gutters, downspouts and a drainage system designed so that stormwater is contained on the site until such time as it can be properly released into the City's drainage system.

The motion carrier unanimously.

#5287

(Case #ZON2004-02550)

Russell Adcock (John Bright, Owner)

2411 Government Street

(Southeast corner of Government Street and Pinehill Drive)

Use Variance to allow a tattoo parlor in a B-2, Neighborhood Business District; the Zoning Ordinance requires a minimum of a B-3, Community Business District.

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Linda Burkett, of Marshall McLeod Professional Surveyors, was present representing the applicant. She said the applicants recently moved to the old Colonial Photography building at Pinehill Drive and Government Boulevard for the purpose of opening a retail shop and also a tattoo area. They were requesting a use variance to accommodate the tattoo area, which was a B-3 use. They had been at this location for about a month and a half. The retail part of the business was a clothing store, specializing in clothes from California and New Jersey that could not be found in Mobile.

Ms. Collier said she visited the site and she could not see any display area. There was nothing to indicate they were selling clothing.

Amber Adcock, applicant, said they had a whole section that was nothing but clothing, but they did not have a separate display area. She said they advertise on the radio and have an advertisement in the "Lagniappe" and in the "Mobile Entertainment Guide". Their sign does not say specifically what they do and they would like to put up a sign indicating they offer tattooing.

Mr. Cummings asked the staff if there were any plans to look at rezoning more portions of this property to a more dense use. He pointed out several B-3 uses across the street and just down the street.

Ms. Pappas stated there were no plans at this time. She said, however, that there was a rezoning study about 14 years ago which rezoned a portion of this area. It ran from Airport Boulevard down to the creek, and entailed the block between Pinehill Drive and Morgan Avenue.

Mr. Cummings asked, if the variance was approved, did the site fit in terms of parking.

Mr. Palombo stated that this was a non-conforming building. Parking was not conforming, and there was one-way traffic circulation from the north of the site, and one-way traffic access exiting the back of the site onto the alley.

Mr. Guess asked about their hours of operation.

Ms. Adcock stated that their hours were 12:00 noon to 10:00 p.m., Monday through Thursday, and 12:00 noon to 12:00 p.m. Friday and Saturday.

John Bright, owner of the subject property, stated that he had operated a photography business at this location for 30 years. This was a B-3 use, and the property was eventually changed to a B-2 classification. Mr. Bright said when he leased the building to the applicant, one of the major requirements was parking, which was very limited. Even though it was zoned B-2, he said he tried to be considerate of the neighbors next door and in the commercial building behind it. He said he also leased the photography business behind it. He also had a B-2 business located at 2407 Government, but currently leased it out as a residence, as well as a house that was connected to that building. He said he was concerned with what was going to go in there so he checked it out very thoroughly. The parking situation as of today had not been a problem. There had not been any loitering or any problems with the police. The applicant had spent an awful lot of money fixing up the interior and had maintained the yard.

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There was discussion as to whether Mr. Bright operated his business as a non-conforming use or a variance.

Mr. Bright said that about 10-15 years ago the City of Mobile came in and reclassified all that property from Airport Boulevard all the way down Pinehill to the residential area at the drainage area to B-2. He said the parking situation worked very well there, and there was parking on the side, the front and in the back.

Mr. Cummings asked if parking was spilling over to the other lot, and how many cars were in and out during the day.

Ms. Adcock said parking did not spill over. At any given time, including her vehicle, there were an average of three to four vehicles in and out every day.

Mr. Cummings noted that the applicant was originally licensed with a zoning clearance because less than 50 percent of the business was going to be devoted to tattooing.

Ms. Burkett said they had a small space allocated for tattooing, but it had not been used yet.

Ms. Pappas also noted that with tattooing as an accessory use, it could not be advertised. It was not a permitted use in B-2.

Ms. Adcock said it would help their business if they could advertise more. Currently there was nothing on their signage to indicate what their business was. Their existing signs only indicated the name of the business, "Eye Scream".

Mr. Cummings asked Mr. Bright if he had gotten any complaints from his other tenants as to parking or other problems.

Mr. Bright said he had not. He said he did check out their hours of operation. Their hours were basically after hours for the photography business and everything else that went on around there.

In discussion it was understood that their basic need was that they wished to advertise the fact that they also offer tattooing.

Ms. Pappas noted that as an accessory use, the tattooing area had to be less than 50 percent of both their floor space and their revenue, and the applicant did not have to be concerned that they were staying under those ratios.

Mr. Guess said his only concern was the hours. Since they had already been operating, apparently it hadn't been an issue.

Ms. Collier said they could not be sure it was not an issue because they had only heard from one neighbor, the owner.

Mr. Cummings noted that there was a sign posted notifying the public of the hearing.

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After discussion a motion was made by Mr. Lee and seconded by Mr. Guess to grant this request for a Use Variance at this location.

In further discussion Mr. Cummings noted that the building sat pretty close to the street and compliance with the trees and landscaping requirements of the Ordinance, which was recommended by the staff, might be tough.

Mr. Daughenbaugh suggested possibly requiring planting frontage trees to be coordinated with Urban Forestry.

Mr. Bright stated that if they tried to do any landscaping of trees it would block the view for traffic trying to turn one way or the other because the building was so close to the street.

Mr. Roberts also asked that approval stipulate that Traffic Engineering be able to look at any landscaping done that might interfere with traffic.

Mr. Cummings asked Mr. Lee and Mr. Guess if they would agree to an amendment to the motion to reflect these requirements. Mr. Lee and Mr. Guess agreed. The final motion was to approve the Use Variance subject to coordination between Urban Forestry and Traffic Engineering for some reasonable application of the landscaping and tree planting requirements of the Ordinance, along with the practicality of not creating a traffic hazard.

Mr. Cummings called for a vote on the motion. There were two "ayes", Lee and Guess, and two "nays", Collier and Davitt. The motion failed to carry. The variance was denied.

#5288

(Case #ZON2004-02555)

John West

2670 Dauphin Island Parkway

(West side of Dauphin Island Parkway, 600'± North of Cedar Point Road)

Use, Parking Ratio and Parking Surface Variances to allow the construction of a second building (1,250 square foot pole barn) for a cabinet shop, to allow 3 on-site parking spaces, and an aggregate surface parking lot, in a R-1, Single-Family Residential District; the Zoning Ordinance requires B-3, Community Business zoning for a cabinet shop, eight on-site parking spaces, and that parking be asphalt, concrete or an approved alternative paving surface.

Don Williams, Williams Engineering, presented this application on behalf of the applicant. Mr. Williams said the applicant had been at this location for the last three years. He works alone about 20 hours a week in the afternoons, nights, and on weekends building residential cabinets. The building was destroyed by the hurricane and he would like to rebuild it and instead of 1100 sq. ft. he wants to put back 1250 sq. ft. This would be an additional 150 sq. ft. Mr. Williams pointed out several B-2 and B-3 uses across the street, and a B-2 property on the west side of Dauphin Island Parkway. He said the property to the north had been used as a welding shop for 34 years, and the lot to the south was currently used for a pawn shop, a florist, and an upholstery shop in an R-1, Single-Family Residential district. There were no residences near the site. It was bordered by wetlands to the rear. Regarding the staff recommendation for denial, Mr. Williams said he thought that was due to the fact that they wanted to put an addition on to the

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building. He also said that Mr. West had gone to both of his neighbors and asked them to participate with him in rezoning their property to either B-2 or B-3 since that was all around them. They did not want to participate. Regarding the parking ratio and parking surface variances, Mr. Williams said Mr. West wanted to add a little more gravel for the parking area. He really only used it to pull in and out of the property and to park himself, because he did not have any customers that came to the site. He goes to his customers' homes to measure for the cabinets. Mr. Williams said they were going to preserve all three Live Oaks on the site.

In discussion Ms. Collier asked why the applicant could not just rezone the property. She said she visited the site and did not see a house anywhere.

Mr. Cummings said that could not be done because it would be spot zoning.

Ms. Pappas explained that there were minimum guidelines set up in the Zoning Ordinance for creating a new commercial district. For B-2 it was either two or four acres. This site was one-half acre.

After discussion a motion was made by Mr. Lee and seconded by Mr. Davitt to approve this request for Use, Parking Ratio and Parking Surface Variances at this location.

In further discussion Ms. Pappas asked if the preservation of the three Live Oaks could be made a condition of approval, and the provision of frontage trees coordinated with Urban Forestry.

Mr. Williams said that would be no problem.

Mr. Guess asked if he needed the extra parking.

Mr. Williams said he was under the impression he had to have it. But he did not need it.

Ms. Pappas said that when an application comes in and is deficient in any way from the Zoning Ordinance requirements, they have to ask for a variance from that requirement. If the Board does want his existing unimproved area to remain as it is, they do not have to require it.

Mr. Lee amended his motion and Mr. Davitt his second to reflect approval subject to the following conditions:

- (1) the provision of frontage trees in compliance with the landscaping and tree planting requirements of the Ordinance, to be coordinated with Urban Forestry; and
- (2) maintenance of existing parking area and driveway (no additional parking is required).

The motion carrier unanimously.

#5289

(Case #ZON2004-02566)

Emma's Harvest Home (Martin J. Corbert, Owner)

770 & 772 Sullivan Avenue

(West side of Sullivan Avenue at the West terminus of Fairway Drive)

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Use Variance to allow Drug counseling, including in-residence services in a R-1, Single-Family Residential District; the Zoning Ordinance requires a minimum of a B-1, Buffer Business District

Doug Anderson, Attorney, was present representing the owner of the property, Martin Corbert, as well as the applicant, Ms. Emma Perryman. He said Ms. Perryman had an option to purchase this property. She would like to operate a counseling center for women. There would be eight individuals living in the facility overnight, and some individuals would come in during the day for counseling. Ms. Perryman has been in this business for over 25 years and had actually been operating Emma's Harvest Home for a little more than three years. Mr. Anderson noted that an application for the rezoning of this property had come before the Planning Commission and had been recommended to the City Council for approval. The City Council tabled the application and said the applicant should request a variance instead of having it rezoned, thus this application. Mr. Anderson said they did not feel the property and this area could continue to be used for R-1, Single-Family Residential. He referred to the vicinity map in the Board's packet of information received from the staff. He noted that all the property across Sullivan Avenue was zoned for commercial use. There were B-2 uses starting with the Colonel Dixie on the corner all the way up, both on Sullivan Avenue and Highway 90 Service Road. That continued all the way up to Mauvilla Drive. North of Mauvilla there was one residential property on the northwest corner of that block, and everything else in that block was zoned commercial. Two parcels below the subject property was a vacant property currently zoned B-2. Immediately adjacent to the north there was property which was labeled on the vicinity map as apartments. Mr. Anderson, however, said when this came before the City Council a petition against the rezoning was submitted by the residents living there, and the apartments were called Imperial Court Extended Stay. Mr. Anderson said his office checked into this and determined that these units were rented by the week. They did not even quote a monthly or annual rate. They contend, therefore, that this was an extended stay motel operating adjoining their property. Further, two parcels above the apartment complex there were medical offices that have operated under a variance since 1962. Mr. Anderson referred to a letter received by the staff from Mr. Farnell, a property owner in the neighborhood who received a notice of this hearing. His letter listed a number of complaints, which Mr. Anderson said were untrue and incorrect. His letter asked three basic questions. The first asked if the Zoning Ordinance was currently being violated by Dr. Corbert's use of the property. Mr. Anderson said the answer was no. The second question asked if they needed a Certificate of Need from the Board in Montgomery to operate medical facilities. Mr. Anderson said they did not, and would have a speaker to testify to that. The third question asked, if granted, the variance would depress the value of the surrounding property. Mr. Anderson pointed out that Mr. Farnell's property on Fairway Drive already had B-2 zoning, and he in fact lived in Birmingham. Mr. Anderson then referred to a letter from Vince Kilborn that he had provided the Board. Mr. Kilborn was an adjoining neighbor of Ms. Perryman's at her current location on Old Government Street in a historical area of the city surrounded by beautiful, historic homes. Mr. Kilborn had an office next door to Emma's Harvest Home for the last three years. His letter stated that during this time they had been splendid neighbors and he was happy to have them next door. He said that at all times the operation of Emma's Harvest Home was so quiet and unobtrusive that he did not even know they were there. Further, he said he could personally ensure the residents in the area of 770 Sullivan Avenue that they could not find a better neighbor than Emma's Harvest Home. In summary, Mr. Anderson said that it was their position that this property could not continue to be used as R-1 property. He said there were currently 20 parcels of property on Sullivan Avenue, east and west, and 13 of those were

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currently either zoned or were being used for commercial purposes. He did not think, based on this evidence, that this neighborhood could be considered such an R-1 residential district that you should keep Emma's Harvest Home from locating here.

Emma Perryman, founder and director of Emma's Harvest Home, stated that her business was currently located at 1806 Old Government Street. She explained that it was a residential treatment center for women who had problems with alcohol and other drugs. It was a non-profit charitable organization, incorporated pursuant to the laws of the State of Alabama. They were certified by the State Department of Mental Health, Mental Retardation, Substance Abuse Division to provide treatment. Ms. Perryman said their program was a year in length and was based on a 12-step model whereby they addressed the needs of a woman as it relates to her physical, mental, emotional and spiritual needs. The second phase of the program was by way of after care where they come back on an outpatient basis to strengthen their sobriety and strengthen the skills that are necessary for them to live lives free of alcohol and drugs, and to deal with the stresses that often times accompany day-to-day living. Ms. Perryman said when they designed their program they designed it with the hopes of lessening the stigma that is attached to women who use drugs. For that reason they do not advertise with a sign and they do not advertise on their transportation because they are guided by the laws of confidentiality as related to the care and the quality of services they provide. Ms. Perryman said there were many people who supported their program that were present today. She said they were State certified and subject to scheduled as well as random visits. They have a vendor's agreement with the Department of Health and Human Resources. They have a contract with the Department of Health and Human Services, specifically the Office of Women's Health, to provide services for women. The Junior League supported their program, some of whom were present today. The Drug Education Council supported their program. Ms. Perryman said they were truly grounded in the community of Mobile as evidenced by the support they had with them today, including the Home of Grace for Women, and The Shoulder. Judge Herman Thomas, a big supporter, was present today. Also, Billy Lyon with Lyon Properties was present in support. Finally, Ms. Perryman said she felt that the approval of this variance would result in breaking down some of the stereotypes that have stigmatized persons with addictions who had been unjustly excluded from the rest of society. It would also allow them to acknowledge their responsibility to promote the welfare of others, even when they were perceived to be a burden. Ms. Perryman noted that present today was their staff, some of the clients who had benefited from their programs, and family members who had benefited as a result of their loved one participating in their program. Also present were supporters from Christ United Methodist Church, Pleasant View and First Baptist churches, which have utilized their services and with whom they work to provide an umbrella of services for women would to get the help they need.

Mr. Cummings asked if, during any of their scheduled or random site visits, they had been cited for an unsanitary facility or a facility that did not seem to be a safe or congenial place for the use for which it was being used.

Ms. Perryman replied that they had not. The only thing they had been cited for was that they were asked to reduce their hot water temperature.

Malcolm Corbert, owner of the subject property, stated that he purchased the subject property in 1999. At the end of 2000 he had to move back to Europe and he rented the properties. At the end of 2003 he moved back to the states and found that the nature of the neighborhood had

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changed and what used to be an apartment complex had turned into a short-term rental facility. He said they have had problems with kids and young people in their yard. They had also had burglaries in the garage and in their houses. They decided to put the property up for sale in April 2004. Dr. Corbert said they had no firm offer until Ms. Perryman made them an offer for the property. He said it was beginning to look like it was going to be a very difficult property to dispose of, which caused he and his wife personal hardship because they wanted to move on. They were concerned about the deterioration of the neighborhood, and they were concerned about the possibility of violent crime as well. He said he had observed what he felt were drug deals on Fairway Drive. Mr. Corbert said he felt for someone to say that Ms. Perryman's proposed use would bring down the neighborhood was stretching a point more than a bit. Finally, Dr. Corbert said he supported Ms. Perryman's program, as he felt there was a strong social and spiritual need for such a program in the City of Mobile.

Mr. Davitt noted that Dr. Corbert said the property was on the market since about April of 2004. He asked if it was listed with a real estate firm.

Dr. Corbert said it was not. He put a notice at the front of the property that he wanted to sell. He had a few inquiries, but then in June or July Ms. Perryman approached him about the property.

Mr. Davitt asked if Dr. Corbert had a valuation for the property, and were the inquiries he received prior to Ms. Perryman's from individuals interested in single-family, or commercial.

Dr. Corbert said he did not have a recent valuation of the property, only the valuation he had when he purchased it. The inquiries were from a representative of a church across the road, and from someone who wanted it as a rental property.

Ms. Collier noted that the nature of the area seemed to be 22 residences bordered by some commercial pieces of property. She asked about the possibility of rezoning the area.

Mr. Cummings said they had attempted twice to get the property rezoned. The Planning Commission in fact did recommend it for rezoning.

Mr. Anderson said the applicant had been before the City Council two or three times trying to get it rezoned. The Council put it on hold so the applicant could submit a variance application.

Bill Layfield, a resident of 3767 Rhonda Drive, stated that he worked for the Drug Education Council and spoke on the need for this type of service and Ms. Perryman's qualifications. He said they had been referring people to Ms. Perryman for the last two or three years. Three years ago when Ms. Perryman applied for her permit to operate a home in this area, he was a member of the Board of Trustees of the State of Alabama Mental Health – Mental Retardation Commission. The Board was very delighted at that time to find that someone else in this area was operating a home for women because of the great need. He said they had an excellent service with the Home of Grace but they usually had a waiting list. They were present as supporters today because they know the need. Mr. Layfield said that a few years prior to opening Emma's Harvest House he and Ms. Perryman worked on a national initiative called Demand Treatment. The primary purpose of the initiative was to see what could be done to get more treatment where it is needed. Mobile was picked as one of those places that really needed some help in this way. From that Ms. Perryman got her start to open her home. Mr. Layfield

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further stated that recently Governor Riley appointed a Commission for the Prevention and Treatment of Substance Abuse. He said the primary purpose of this Commission was that in the State of Alabama there were 250,000 people who needed treatment every day, and that the public funds to help these people took care of less than 10 percent. Mr. Layfield said he had been in and out of her facility at least weekly, and you would never know that it was anything but a private home. He felt that this was something that was really needed in this area and expressed his support of the application.

Judge Herman Thomas, a resident of 2200 Rue de Lefleur, said it was his pleasure to come and speak on behalf of Ms. Perryman. Judge Thomas said he had known Ms. Perryman for 15 years and had worked hard with her in various capacities. He had always found her to be very thorough and very professional. When they came up with the idea of Emma's Harvest Home, he and his wife contributed personal funds to assist her in that endeavor. Judge Thomas said she was a very loving, caring person and would uplift the neighborhood as far as the beautification of the facility, and would also give the neighborhood a sense of pride. He encouraged the Board to please support Ms. Perryman in this endeavor, as this was something that was needed in the community.

John Howard stated that he had been a real estate broker, home builder and developer in Mobile for 35 years. He met Ms. Perryman through a church group and immediately fell in love with her because she had the spirit that if you were around her you felt blessed to be in her presence. Mr. Howard said when he first looked at this property he had questions about it, so he called in Angela Blum, who was familiar with Ms. Perryman, and who was a commercial real estate broker. Ms. Blum would have been present today except for an illness in the family. Mr. Howard said he also called in his son, John W. Howard, who was president-elect of the Mobile County Board of Realtors. He said the three of them agreed that this was an area that you could not reasonably expect to see as R-1 property. The neighborhood had already turned the other way; therefore, he felt there was a definite hardship there. Mr. Howard said he had talked to one of the neighbors who had some concerns, which he understood. He tried to explain that this place was very closed in, with shrubs and fences around it. He pointed out one area in the back that they don't own that does not have a fence, but said they would even fence that if they could, to help the situation. He said he had been in and out of this house many times. They had done repair work on the house and his construction company had donated quite a bit of time and money to the project to get where they were now. He said his company also raised about \$75,000 and was going to improve the property; their church groups were going to paint the inside of the house. He said he was not here for any economic reason other than to give away more money to this project. He asked that the Board approve this request.

Phillip Drane, Director of The Shoulder Drug and Alcohol Treatment Center, was also present in support of this application. Mr. Drane was also on the Board of the Alabama Department of Mental Health, and was Chairman of the Board. He said The Shoulder was also supported by the Alabama Department of Mental Health and had regular and unscheduled visits by the building unit. He would venture to say that Ms. Perryman's building, in terms of the physical and safety aspects, would probably be better than anyone in that neighborhood including the few residences that were still there. Mr. Drane said they had operated a women's treatment program for six years before they lost funding. A lot of the ideas they got were from Ms. Perryman and from the Home of Grace for Women. During this time they never had an instance where the police department had to be called to their facility. Mr. Drane said Ms. Perryman had been in the

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business for over 25 years and knew what she was doing, and would not do it unless it was done right. As a member of the Board of Mental Health, he said they have had nothing but compliments on her program in the Montgomery Office of the Department of Mental Health. Her site visits by the building people had all been excellent. Mr. Drane said Ms. Perryman would help the area and help the community as well, and he felt it would be a travesty for her not to get approval to operate this facility at this location.

David Sumrall, a resident of 807 Magnolia Road, stated that he was not really present in opposition to Ms. Perryman's request. He said he had met her and she seemed like a very nice person and this was certainly a worthy cause that he would support 100 percent. His concern, however, was that his residence was a half a lot behind the subject property. The neighbors had been very concerned with the commercial properties in the area. There was another house that he owned that his mother resided in, which was behind the site. Mr. Sumrall said everything behind the subject property was residential. Everything across Magnolia Road was also residential. His main concern was to put up a fence across the back to separate his property from the subject property. He said Mr. Howard spoke with him and gave him somewhat of an assurance that they would put an 8' wooden privacy fence across the property. Of course that would be something that would have to be okayed by the owner of that lot. Mr. Sumrall also asked if the residents of this facility would be there all day.

Mr. Cummings pointed out that when this went to the Planning Commission and the Planning Commission recommended approval, one of the conditions was that provision be made for a buffer where the site adjoins residential zoning. Typically that buffer would require some type of fence. Although he did not speak for the rest of the Board, Mr. Cummings said that when they granted variances for commercial uses to abut residential properties, this same type of buffer has been required. He asked Ms. Perryman if, in the entire time she had occupied the current residence, had she ever had any problems, complaints, or situations with the residential neighborhood that adjoined her current facility.

Ms. Perryman said absolutely not.

Mr. Sumrall asked if he could get an assurance that there would be a fence going across the back of the property.

Mr. Cummings assured him that there would be.

Mr. Anderson noted that Mr. Sumrall was talking about the adjoining property, not their property. Mr. Anderson said they would agree to that. They would also agree if they could get their neighbors permission, to extend their 8' privacy fence from their property line to Mr. Sumrall's property line. He said that could not be a condition because they did not own the property. They would stipulate, however, if they got that permission they would do it.

Ms. Perryman noted that David Koen, owner of the property at 810 and 812 Sullivan Avenue could not be here today but he was in support of the variance. Therefore, they should not have any problem getting the fence extended.

Mr. Anderson asked all those in favor of Ms. Perryman's application to stand.

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In executive session Mr. Cummings referred to Mr. Farnell's letter in which he stated that Dr. Corbert was not taking responsibility for the details to be included in the application. Mr. Cummings said that did not matter. Ms Perryman was the applicant. The letter further stated that it appeared that Doug Anderson was acting as the applicant, not Ms. Perryman. Mr. Cummings said there had been many instances where people come before the Board as an agent for the applicant. The letter further stated that the attachments to the variance application had no signatures. Mr. Cummings said these were attachments and signatures were not required on every single page attached to the application. Lastly, Mr. Farnell contended that the property had value as a residential property. Mr. Cummings said he was entitled to his opinion.

In summary, Mr. Cummings said this was a neighborhood that appeared over the last few years to be in transition. There were properties immediately to the west that were zoned residential, and up and down Sullivan Avenue there were various non-residential uses, notwithstanding the apartments located immediately next door. There was a medical office two parcels over that had been operating there for some 40 years under a use variance. Across the street all of that property was zoned B-2, and since the Planning Commission did recommend it for rezoning, apparently they saw it fitting that property directly across the street from B-2 property be recommended for rezoning. Their other conditions for approval were widening of the driveway to 24' to accommodate two-way traffic; full compliance with the landscaping and tree planting requirements of the Ordinance; the provision of a buffer, which in this case would mean an 8' fence; and full compliance with all municipal codes and ordinances.

In discussion Mr. Davitt noted that the diagram showed a Fairway Drive Major Road Plan, and asked if that was going to happen.

Ms. Pappas stated that that was on the City's Major Street Plan, which was adopted by the Planning Commission and the City Council. In the past three years there had been serious discussion about either deleting that from the Plan, or shifting it down to coincide with Pleasant Valley Road. Until a revised plan is adopted, it has to be referenced. Ms. Pappas said this road had been indicated on the Plan since its adoption back in the 1950s.

After discussion a motion was made by Mr. Davitt and seconded by Mr. Lee to approve this Use Variance subject to the following conditions:

1. full compliance with the landscaping and tree planting requirements of the Ordinance; and
2. provision of an 8' wooden privacy fence where the site adjoins residential property.

In further discussion Ms. Pappas said that since this was a variance and not a rezoning, the staff would recommend two additional conditions:

1. that no sign(s) be posted on the premises; and
2. that the exterior of the property retain its residential character.

Mr. Cummings asked Mr. Davitt and Mr. Lee if they would consider amending their motion as stated. They so agreed.

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In further discussion Ms. Cochran asked if a 25' driveway was consistent with residential character.

Ms. Pappas explained that the Zoning Ordinance requires the 24' drive for two-way traffic, and since the initial application was for commercial zoning, full compliance would be required. She said the Land Use staff, however, was perfectly agreeable to working with Traffic Engineering and the applicant if a lesser standard width driveway could accommodate the use. That way you would be maintaining more of a residential character rather than having a commercial driveway and parking.

Mr. Cummings asked if Mr. Davitt and Mr. Lee were agreeable to amending their motion to add the following condition:

1. that the design of the parking area and driveway be approved by Traffic Engineering.

Mr. Davitt and Mr. Lee were agreeable to the amendment as stated. The final motion was for approval of this request for a Use Variance at this location subject to the following conditions:

1. that the design of the parking area and driveway be approved by Traffic Engineering;
2. full compliance with the landscaping and tree planting requirements of the Ordinance;
3. provision of an 8' wooden privacy fence where the site adjoins residential property;
4. that no sign(s) be posted on the premises; and
5. that the exterior of the property retain its residential character.

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

The motion carried unanimously.

OTHER BUSINESS:

There being no further business, the meeting was adjourned.

APPROVED: March 7, 2005

/s/ Chairman of the Board

/ms