

BOARD OF ZONING ADJUSTMENT MINUTES
MEETING OF JANUARY 8, 2007 - 2:00 P.M.
MOBILE GOVERNMENT PLAZA, MULTI-PURPOSE ROOM

MEMBERS PRESENT

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

MEMBERS ABSENT

STAFF PRESENT

Frank Palombo, Planner II
Caldwell Whistler, Planner I
David Daughenbaugh, Urban Forestry Coordinator
Mae Sciple, Secretary II

OTHERS PRESENT

John Lawler, Assistant City Attorney

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

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

APPROVAL OF MINUTES:

A motion was made by Mr. Davitt and seconded by Mr. Davis to approve the minutes of the meeting of November 6, 2006, as submitted. The motion carried unanimously.

HOLDOVERS:

#5384

(Case #ZON2006-01651)

Cathy Humber-Barfield

1216 Government Street

(Northeast corner of Government Street and South Georgia Avenue).

Use and Off-Site Parking Variances to allow the bottom floor of an existing single-family dwelling to be used for receptions in an R-1, Single-Family Residential District, and to allow off-site parking; the Zoning Ordinance requires a minimum of B-2, Neighborhood Business for receptions, and all required parking be located on the site of the activity.

The site plan illustrates existing buildings, drives, sidewalks, and landscaping.

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Michael Box was present representing the applicant/owner in this matter. Mr. Box noted that the applicant had submitted an amended application, which clearly states that only the first floor of the building would be used for receptions. They anticipate groups no larger than 50, which would require parking for approximately 25 cars. Mr. Box pointed out that the applicants were in the process of purchasing the property at the northwest corner of Government Street and South Georgia Avenue for off-site parking. He felt they had answered every legitimate concern that was brought up last month, and he was anxious to hear what the neighbors had to say.

Mr. Cummings asked if there was anyone else present who wished to speak in favor of the application.

Betty Champion, a resident of 116 South Georgia Avenue, stated that her property was directly behind the proposed parking area, and she was in favor of this proposal. She did not feel it would cause undue noise in the neighborhood, as long as the size of the gatherings were limited.

Darryl Anthony, a resident of 1212 Government Street which was immediately east of the subject property, stated his support for the proposed use. Mr. Anthony said he had been a resident of this property for almost six years. He said the former owner of the subject property had almost monthly receptions or activities of the same size as proposed, and it never posed any problem for him. He felt it actually added a very positive vibrancy to the neighborhood, and was in support of the application as proposed.

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

Greg Buffalow, attorney with Miller-Hamilton law firm, stated that he was assisting Pat Guyton and a number of neighbors who were in opposition to this request. Mr. Buffalow said he had submitted a letter dated December 29, 2006 stating their objections and would try not to re-state too much of what was in the letter. He wanted to speak to some legal objections and then various neighbors had some factual material about traffic and parking and difficulties they perceive in the neighborhood. Mr. Buffalow stated that in the 1970's or 1980's an attempt was made to preserve in an R-1 state the homes in this area along Government Street. He said it was their position that there had not been a proper legal showing of unnecessary hardship to justify this substantial zoning change. He said the other legal issue was that the use of a variance to change the use of the property was essentially use of a variance to change zoning from R-1 to a commercial zoning, and this was not the proper procedure. He understood that the home was purchased as a residence, so there would be no showing of the required type of hardship necessary to change its use from residential to commercial. He cited one type of situation that might allow such a substantial zoning change was if the applicant could claim that it would be necessary to spend a lot of money to improve the house in order for it to be livable. The applicant bought the house as a residence, however, and its current use was acceptable as a residence, so there was no showing of a major hardship to permit an economic use in order to preserve this mansion. The proposed use as a wedding reception parlor and a place to have parties was clearly commercial. He said the case law he cited in his letter indicates self-imposed economic hardship is not the type condition that will allow this change in zoning. He contended that if the zoning had changed to commercial after they bought the property then that might be considered a hardship, but that was not the situation here. Mr. Buffalow also stated that he had submitted a copy of the web site information for the Tacon-Barfield mansion, and some of the

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statements in their marketing materials indicated that the intended use was a bit broader than what the amended application materials showed. The information on the web site indicated that the number of persons who could attend a reception was more extensive, the use would involve overnight lodging and the use of all the floors. He felt it would be much more burdensome than what was described as a maximum of 25 vehicles. Mr. Buffalow noted that the Code section indicates that the literal enforcement of the Zoning Ordinance can be gotten around only in case of unnecessary hardship, and legally they had demonstrated that it was a beautiful home, and there was no showing of hardship to permit such an economic use. He said this was just a summary of some of the legal issues, and some of the neighbors had some more factual material. He also had some extra copies of cases and materials identified in his letter if the Board needed them.

Annette Nolan, a resident of 104 South Georgia Avenue, five doors down from the subject property, addressed the issue of traffic on Georgia Avenue and parking issues, and the fact that they were talking about a minimal number of people for a reception. Ms. Nolan said right now they had traffic from the Bay Haas building, a 36-unit Section 8 apartment complex, as well as the Mobile Boys and Girls Club dumping onto their street via Montauk Avenue. Ms. Nolan also noted the fact that on Ann Street traffic cannot turn east onto Dauphin or onto Government, which means they are turning onto Carolina and cutting through Georgia Avenue. She said there was already a parking dilemma on their street, because with parking on both sides of the street - with 22 driveways on the street - the residents cannot pull out in case of an emergency, or for whatever reason. Ms. Nolan said she had talked to the fire chief at the fire station on Lafayette Street about this request, and he said that if this passes, they would put "no parking" signs down one entire side of South Georgia Avenue, as they have on Montauk and on Brown Street, because the fire truck would not be able to access the street and it would be a security issue. Ms. Nolan said some of the residents of the street do not have enough parking in their driveways or back yards, and "no parking" signs down one whole side of the street would hamper them. Another issue was the number of people that would come to a reception hall. Ms. Nolan said that years ago her parents owned a commercial piece of property on Government Street and had a reception hall in it, and she had a floral business and had been an event planner for 25 years. She knew from experience that you could not control the number of people that come to a reception hall. She was concerned because the Barfields had been advertising and promoting this property on the web site of Alabama Bridal.com since September 11th. They have been sending out brochures and advertising through the Bragg-Mitchell Home and on Mobile, Alabama Portal. Ms. Nolan said she had received one phone call and one e-mail recently from people asking for accommodations at the Barfield house for 150-200 people, and in both instances the Barfields said that they could accommodate them. This was a much greater number than the Barfields had indicated in their application, and the fire marshal also said they would be allowed no more than 50 people. Also, she expressed concern about the noise this use would create, noting that the noise from one party they held could be heard five doors down inside the people's house. In conclusion, Ms. Nolan said the Barfields bought the house as a residence and it should stay a residence.

Jaime Betbeze, a resident of 1210 Selma Street in the Oakleigh Historic District, stated that he was one of Oakleigh's representatives to the Mobile Historic Development Commission, and currently served as vice-president of that Commission. He had been asked to speak on behalf of the Oakleigh Historic District in opposition to this application. He also noted that Allen Gustin,

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president of the Historic District, as well as several other residents of the Oakleigh Historic District were present, and Mr. Gustin had submitted a letter to the Board last week. Mr. Betbeze said they had been asked to express the overwhelming opposition of the residents of the Oakleigh Historic District to this application, and they had a petition in opposition signed by about 73 residents in the Oakleigh Garden District, copies of which had been made available to the Board. Mr. Betbeze noted that the subject property was within the boundaries of the Oakleigh Historic District, and it abuts on the boundary of the Old Dauphin Way Historic District, which would also be detrimentally affected by this application if it was approved. As noted by Mr. Buffalow earlier, Mr. Betbeze said this application simply does not meet the criteria for obtaining a variance, and all of the restrictions the Barfields have put on it with their revised application do not address that simple fact. For that reason he felt the residents who would be affected by the approval of this request should not have to be put into a position where they are asked to compromise their rights as property owners, or where they become the de-facto police of whether or not there are 50 attendees at these receptions, or whether or not the parking is legal, or whether there is sufficient parking in the unimproved lot, the sale of which the Barfields had not even closed on. Mr. Betbeze noted that the staff report indicated that the proposed parking area would not provide adequate parking anyway. With all due respect to Mr. Box and his efforts to address the concerns of the neighbors, Mr. Betbeze contended they simply do not address the bottom line, which was that the Barfields have not shown that they meet the criteria for receiving a variance, and therefore this request should be denied.

Marsena Walsh, a resident of 103 South Georgia Avenue, stated that he had resided at this location since August of 1979. The residents told him that one of the most exciting things they had achieved prior to him becoming a resident there was that they had the zoning changed from multi-family to single-family. Mr. Walsh said that in the 28 years he had been there, that one change had significantly changed the character of the neighborhood to a significant residential neighborhood. He noted that Gordon Moulton, a resident of Government Street in this vicinity, told him that the block in which the subject property was located was the only block from downtown to the Loop that was totally residential. Regarding the property that the Barfields were in the process of purchasing across the street from the subject property for parking, Mr. Walsh said that in 1993 that site was purchased by Randy Jones, now deceased, because apparently he had heard that someone wanted to put a fast food restaurant on the site and he did not want that to happen because traffic would be dumping onto South Georgia Avenue. Mr. Walsh said there were driveways on this street that were really alleyways, and there were some driveways that have no turnarounds. There were doctors in the neighborhood who had to get out, as well as other professionals, and they had to park on the street. There were also craftsmen in the neighborhood with trailers on their cars who had to park on the street. He also pointed out that they were bounded by Montauk that was used by traffic coming from the Bay Haas building, and the situation was going to get worse if they were not allowed to park on one side of the street. They would have to pay the price 24/7 for a few weekends of somebody else's benefit. Mr. Walsh said they did not want to be negative to their neighbors, but they had to maintain the residential character of their neighborhood so they can progress in midtown Mobile. They were concerned about the common good of the neighborhood, not the advantage of any one particular person. He asked the Board to take their concerns into consideration.

Pat Guyton, a resident of 100 South Georgia Avenue, stated that he was also present to urge the Board to reject this application for a variance. He submitted a petition signed by 31 people

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representing 22 property owners on their side of Government Street going north. Mr. Guyton said he had just learned today that the majority of the Board of Directors of the Old Dauphin Way Association were opposed to this variance as well. He said those residents who lived on the north side of South Georgia Avenue would be most directly impacted by this and were very much opposed to it. Mr. Guyton contended that there was no hardship in the current use of this property, as the current owners purchased it as a single-family residence and were aware that it was in a historic district and signed papers acknowledging that. He noted that most of the residents of South Georgia Avenue were opposed to this, and a large number of them were present today. Mr. Guyton said he also spoke for those men and women who formed the Oakleigh Garden District back in 1959, and those who formed the Old Dauphin Way District back in the 1980s to preserve these homes as residences. He urged the Board to deny this request. Mr. Guyton also noted that the neighbors had nothing personal against the Barfields. They welcomed them to the neighborhood and looked forward to them being good neighbors.

Joan Daugherty stated that she had been a business owner in Mobile for over 30 years. She also owned property in the immediate area. Ms. Daugherty said she was present today on behalf of the First Christian Church at 1419 Government Street, of which she was the Chairman of the Board. She said they were in favor of the Barfield's request for a variance because it would actually help their neighborhood and help their church because they have very many small weddings in their church and many of the brides want to go to a mansion to have their receptions. That was the reason they were supporting this application. The church had a huge reception hall, but it was just not that cozy. With regard to parking, Ms. Daugherty said the church had offered the Barfields their facilities, which would not interfere with the small weddings they have. If this variance is approved, Ms. Daugherty said many of the weddings the church had would go to the Barfields for the reception. They people would leave their cars at the church and they would arrange for people to be transported to the reception and so they would not need a lot of parking area there. In closing, Ms. Daugherty said the Barfields were very fine, upstanding people and they would not do anything to hurt the neighborhood.

Van Morgan stated that she was the secretary and wedding director at the First Christian Church on Government Street. She knew the Barfields and said they were very civic-minded and historically-minded. Ms. Morgan said she had been talking to Mrs. Barfield and trying to coordinate some receptions with them. She understood the neighbors' concerns about parking, but said they had assigned parking spots for them at the church. If it looked like there was going to be a problem, however, they would get the trolley to pick the people up at the church. She felt people were misinformed if they thought they would be hosting huge wedding receptions there. Ms. Morgan said the Barfields were very nice, Christian people and she felt they would follow the rules.

Blye Tissington Jones stated that she was the former owner of the subject home and sold it to the Barfields. She now resided at 111 South Georgia Avenue, one house over from them. Ms. Jones said all the neighbors were fine, outstanding people. She also appreciated the improvements the Barfields had made to the home. She felt this home was one of the favorite houses in all of Mobile, and everyone wanted to go in and see it and have some memory of that, and she felt that was the reason the Barfields had graciously opened it up for receptions and weddings. Ms. Jones said she had her own wedding there and her daughter's, and felt this was a good use of the home. When shed resided in this house she said she had parties monthly. It was a big house and could

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hold a lot of people. Ms. Tissington said she did not have the same concerns that some of the neighbors had about the traffic because she knew that they had accommodated that many people and many more, and it was not a hardship on the neighborhood. She said she appreciated the limitations the Barfields had put on themselves, and hoped the Board would agree to grant this variance.

Mr. Cummings asked Mr. Box if he would like to say anything in rebuttal.

Mr. Box said he would like to address some of the comments that were made. With regard to Pat Guyton stating that he spoke for the people from 1959 who established the neighborhood, Mr. Box said he was five years old in 1959 and he and Mr. Guyton were classmates, so he doubted that he was too intimately involved in what was going on back then. With reference to his statement that the Old Dauphin Way Association was opposed to this variance, he said he had not seen any documentation of that. Mr. Box pointed out that the house was on the corner of Government Street and Georgia Avenue, but it faced Government Street and the address was on Government Street. He noted that all of the opposition had been from people off of Government Street, and he felt that was significant. With reference to Mr. Betbeze's statement that Oakleigh was against the application, Mr. Box said he failed to point out that Oakleigh endorses receptions and functions of this sort at Blacksher Hall, which is just down the street, and it was similarly situated to the Tacon House. He also noted that Oakleigh itself was used for receptions. Mr. Box noted that those who would be most affected by this use variance were the adjoining property owners, and they had spoken in favor of it. Mr. Box said those who had spoken against this request were not residents of Government Street where the Tacon House was located, but lived in the neighborhood, down Georgia Avenue away from Government Street and away from where the functions would take place. He contended that zoning on South Georgia Avenue would not be affected by the Board's decision in this case. Regarding the e-mails Ms. Nolan mentioned, Mr. Box said he found an e-mail from Annette@carteblanche.bus, which he thought was Annette Nolan. He contended that she used a fictitious name and went through Alabama Bridal.com and submitted an application like she wanted to have a reception at the Barfield's home and have overnight guests, but the response to her e-mail was that they did not accommodate overnight guests. Mr. Box said he had a copy of the web site printout where it clearly stated that the Tacon House does not accommodate overnight guests. He felt there had been a lot of misinformation that had been circulated among the neighbors and presented as evidence to the Board. He recognized this was an emotional issue, but they needed to try to separate the emotions from the reality and what was fair and what was right. Mr. Box said he understood the concerns raised by the neighbors, but he did not understand using fictitious things and misinformation. He contended there would be no increase in traffic on South Georgia Avenue caused by functions at the Barfield's home on Government Street. There would be no need for any increase in traffic going north on South Georgia Avenue, and any concerns about increased traffic as a result of the proposed use of this property were misplaced and not founded. Parking has been arranged either on Government Street or on the soon-to-be-improved vacant lot, also on Government Street and Georgia Avenue. There would be no on-street parking. This is stated in the amended application as well as the original application. Regarding Ms. Nolan's remarks that the fire marshal said that if this use was approved, they would have to put of "no parking" signs on one side of South Georgia Avenue, Mr. Box said that was not correct. At the time of an inspection of the Tacon House by the fire marshal, he indicated they would not be putting up "no parking" signs on this street.

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Mr. Box noted that Mr. uffalow had submitted a list of objections to the Board, and the Board should have received the applicant's response to those objections this morning. He wanted to emphasize again that the web site does not indicate that guests could stay overnight at Tacon House. He felt this use would not be a substantial change if you take into context everything that was happening on Government Street. He said Mr. Buffalow completely ignored the statements in the amended application dealing with hardship. Mr. Box contended there were different types of hardship. It was not just economic, and property owners should be allowed to use their property in a manner as others who are similarly situated. He noted that the application indicated that when the Barfield's purchased this property the pre-sale inspection indicated that everything was in good working order. After the sale and after they moved in and started living in the house, they found out that there were some problems that were omitted from that pre-sale inspection. They have incurred substantial unanticipated expenses, which they could not have foreseen because they were led to believe that everything was in good working order. Mr. Box contended that this was indeed a hardship. It was not the only hardship, but it was noted in their application that they had made a showing that there was a justifiable reason for them to be seeking some other way to cover the cost of preserving this stately mansion. Mr. Box felt it was important to note that there were numerous buildings of this nature on Government Street. Within three blocks in either direction there were similar stately mansion that are referred to as "old Mobile" homes, and which were not solely residential but were used for a multitude of purposes. He pointed out that Blacksher Hall itself was a mixed use, with the owners residing on the third floor and renting out the lower floor. It was only a block and a half from the Barfield's home. In the same neighborhood there was a law office in the same type of residential structure. There were other such homes on the east side of Government from Ann Street back to Kearney Antiques. Just on the east side of Government, Mr. Box said he counted four dozen properties, 24 of which were visibly non-residential. Of the other 23, some of those were probably mixed. Going west from Georgia Avenue the property was zoned commercial. The Tacon House was in the center between an area that was purely commercial, and an area of Government Street that was mixed residential and commercial. He felt it was a hardship to impose a different standard and different requirements and different restrictions on a property owner from those that are imposed on other property owners who are similarly situated. He contended that that was a legal standard for hardship. Mr. Box further noted that the immediate neighbors - those who would be most immediately affected by the use of this property - had spoken in favor of the variance. He felt that was a mitigating point that the Board should consider in granting this request. Mr. Box further stated that everyone was interested in historic preservation, the Barfields especially, and one of the ways property owners in Mobile have found to preserve the history of the area is to promote it through opening their doors to others to have an opportunity to see the heritage, the history, the flavor of old Mobile. That is what the Barfields were proposing to do, and they were proposing to do it in a manner that would cause no inconvenience to any of their neighbors, and would guarantee that their neighbors would have peaceable enjoyment of their properties as well. Mr. Box noted that the application and the amended application stated what limitations the Barfields would impose on this site, and if the Board had any doubt about the honesty of the applicant, they could impose those conditions on the granting of this request. Mr. Box contended that this application was reasonable and fair if taken in an impartial light. Neighborhoods change and Government Street has changed, and Mr. Box felt that was a legitimate hardship on these property owners. He said they should be treated the same as

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everyone else on Government Street. He asked the Board to recognize also that they had offered to protect the residents off of Government Street.

Mr. Cummings asked Ms. Nolan if she would like to comment.

Ms. Nolan said she would like to clear her name. She said she did not use a fictitious name on the web site. Her business web site is Annette@carteblanch.bus. She uses her maiden name - Annette Antoine - however, the two accounts she made reference to were from two other people. One was from Kay Truttles and one was from Dolores Patrazio. Both of those accounts talked about over 150 people utilizing the Barfield's property. Ms. Nolan contended that the approval of this variance would create a terrible inconvenience and problem for their street. The parking mentioned at the church was four blocks away, and she contended that no one in Mobile was going to walk four blocks when they could park on their street.

Mr. Cummings asked Ms. Nolan about her earlier comments concerning a conversation with the fire marshal, who stated that if this use variance was approved that he would remove parking on one side of South Georgia Avenue. He asked if Ms. Nolan had that statement in writing.

Ms. Nolan said she did not have it in writing, but she talked to a fire marshal from the Lafayette Street Fire Department. He stated that because of Greekfest - a three-day event each year - they had to have no parking down one entire side of Brown Street, which was seven blocks. He indicated that if this variance were allowed, they would not allow parking down one side of South Georgia Avenue because fire trucks could not get down the street.

Mr. Buffalow asked if he could respond to one point on the issue of hardship. He noted that the staff report indicated that there was an insufficient showing of hardship, and in the materials he presented, an economic hardship alone was insufficient.

Ken Barfield stated that he would like to address the hardship issue. He noted that Mr. Buffalow stated that the hardship was "self-imposed", insinuating that when they bought their home they knew the condition of it.

Mr. Cummings said he understood Mr. Buffalow to say that the applicant knew that it was zoned R-1.

Mr. Barfield said Mr. Buffalow also stated that they knew the condition of the home and that the hardship was self-imposed.

Mr. Cummings asked Mr. Barfield if he had anything new to add.

Mr. Barfield said yes. He said it was unforeseen, and referred to page 2 (did not identify document) regarding the need to replace the entire HVAC system, which caused water damage. Just last week he said there was a problem with the beams in the house. They had approximately \$250,000 worth of unforeseen expenses. This was not normal wear and tear. Had they not relied on the inspector's report, Mr. Barfield said it would have been a different issue.

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Hays Holmes, a resident of 908 Augusta Street in the Oakleigh Garden District, said he had lived in his home for four years. He commented that there were a lot of people who had done a lot of work and put a lot of time in old homes. The property values from Oakleigh to Dauphin Way to downtown had been rising. He asked at what point do they say, no steps backward. He said they had to maintain the residential character. They were not complaining about any hardships. He contended that if you move into an old home, you know that you are going to have unexpected expenses. He did not feel they could allow everyone to change the zoning or the use to make up for unexpected expenses. He felt there was no hardship in this case. This was self-imposed.

Mr. Cummings asked Mr. Box if he had any further response.

Mr. Box said he just wanted to point out again that there was more than economic hardship involved here. He said he could not over-stress that the subject property was on Government Street. It was not on Selma or next to Oakleigh or down Georgia Avenue. It was on Government Street and must be compared to the other properties on Government Street. Mr. Box said they had presented evidence to the Board, and it was common knowledge to anyone that drove up and down the street, that Government Street was not residential. It was mixed. The applicants want to preserve the house and keep it residential, and they want to open it up so that others can see this type of home and what old Mobile was like, and do it in a way that will help them to continue to preserve the residential nature of that property, thereby contributing to the preservation of the neighborhood.

Mr. Cummings asked the staff to comment regarding traffic. Concern was expressed about the Fire Department's ability to deliver services on South Georgia Avenue with parking on both sides of the street.

Mr. Whistler said the staff had received limited input from Traffic Engineering regarding this application because of their vacation schedules and whatnot. Basically, their comments were focused on the development of the vacant lot for a parking lot that had to meet the standard traffic condition standards, etc. There were no comments concerning off-street parking or anything along South Georgia Avenue.

Mr. Cummings asked the members of the Board if they had any questions to ask anyone that offered comments today, or questions that needed clarification from any members of the staff regarding the information presented in the application.

Mr. Coleman had a question about a comment made by one of the residents that they currently had to park on the street at night because there was not enough room to park in their driveways. He did not understand what difference it made if the fire truck needed to come at night.

One resident explained that they were trying to point out that South Georgia Avenue was a very narrow street, and some of the residents do use the street for parking. If parking were not allowed on one side of the street, there would not be enough places for everyone to park.

Another resident said they lived in an older home and did not have a driveway. They had three small children and if they were prohibited from parking on their side of the street they would have to park on the other side and cross the street to get to their car.

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Mr. Coleman said he understood, but he wanted to know if they were parking on both sides of the street now.

The resident replied that they were not. Others in the audience said they were parking on both sides now.

Mr. Guess noted that Blacksher Hall was mentioned in the discussion. He asked if they had off-street parking, or did they have parking on site.

One resident replied that they had parking on the site.

With regard to the vacant lot that was proposed for parking, Mr. Guess asked if access would be off of South Georgia Avenue or off of Government Street.

Mr. Palombo said the parking would have to be approved by the Planning Commission, but it was proposed to be off of Government Street.

At the time the property was inspected by the fire marshal, Mr. Guess asked what the occupancy was set at.

Mr. Barfield said he thought the occupancy was set at 100 people. He said it was capable of that, but if you had more than 50, you would have to apply the exit signs.

Mr. Guess asked if he understood that there would be fire code upgrades to accommodate more people.

Mr. Barfield said that as noted that on their application for the parking, they would have a Mobile City policeman there to insure that there was no on-street parking, as they did when the Historic Commission had their event at the Tacon House several weeks ago.

Mr. Davitt asked if Blacksher Hall was zoned B-1 or B-2.

The staff could not answer the question.

Mr. Davitt asked the staff find out what the zoning was.

Regarding the questions about the assembly, Mr. Palombo said that if the Board approved this application, it would still have to go to the Plan Review stage. Site plans have to be submitted to Building Code, Mechanical Code, Fire Code, etc. Before they were allowed to operate, all of that would have to be approved.

There being no further questions or comments from the audience, the Board went into deliberations session.

Mr. Cummings stated that there was no doubt that the applicant had spent a great deal of money, and he could understand their wanting to make economics a reason for hardship, but economics

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alone could not be the reason for hardship. As a rule, for the past 10 or 12 years that he had served on this Board, Mr. Cummings said they had been instructed and advised by counsel to ignore the economic impact of a situation. He noted that there seemed to be some disagreement about whether the property was being marketed for use in an overnight situation, and they would have to leave that issue alone for now. The key was, can the property be used for what it was zoned for? Was there a reason other than the fact that they had spent a great deal of money trying to get the property up to satisfactory physical conditions? Mr. Cummings said that may be "a" reason, or "the" reason. There was no question that the property was zoned R-1, and it does front on Government Street and it does have a residential character to it. Mr. Box stated that he had counted some 47 pieces of property, 24 of which were commercial, but they did not know how many of those were commercial because they were zoned that way, or how many were commercial being used as such because they got a variance approved, or that they were that way before the Ordinance was instituted some 40 years ago.

Mr. Lawler clarified that "economic hardship", was a kind different from other property owners up and down the street. It does not say "any" hardship. The rule is, not "any" economic hardship can be considered. It was an economic hardship that was of the kind that was similar to that suffered by other properties up and down the street. Mr. Lawler said that, obviously, there had been an effort made to preserve the historic character of Government Street and maintain the residential character of the street. Those efforts have been successful in some places. It had been a difficult thing for the people in that historic district. Mr. Lawler related that at one time there was an old hotel in that neighborhood that was torn down. Then there was a proposal to put the hotel back and the neighborhood was very upset about that. A compromise was finally worked out and now there was a storage facility there, but it was at least of a character that was acceptable to the neighbors. In this case, Mr. Lawler said he did not know whether the purposes for which the City had been trying to preserve this historic district would be promoted, or detracted from, by this facility. Obviously, it could still be used as a house, but it had been difficult to maintain a strictly residential character of areas up and down Dauphin Street and up and down Government Street. Mr. Lawler said he did not disagree with anything that either Mr. Buffalow or Mr. Box said in advancing their arguments. He said it comes down to a judgement call by the Board. They needed to try to preserve the Ordinance and only grant variances in limited cases.

Mr. Davis stated that he was concerned about the fact that they had been asked by one counsel to make their decision based upon the fact that they are similarly situated to other situations and to base their decision on the fact that this property was on Government Street. The other side of the argument comes from people who are not on Government Street, with an argument that it will affect them and this will cause a hardship. Mr. Davis said he needed to know where the Board stood with that.

Mr. Lawler stated that one of the tests in determining whether or not a variance should be granted, was whether or not it would have a negative impact on surrounding properties. In this case, that can include people on South Georgia Avenue. Mr. Lawler said they were going to be impacted by it, and in a real negative way. That was one factor the Board could consider. He said that if you read the cases in Alabama on variances, you can find them all over. If you have a strict construction of the rules, then Mr. Buffalow was correct. For instance, he cited a case on Dauphin Street - the law offices of Cunningham, Bounds, and Byrd - that used to be a residence.

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That case went to the supreme court twice, and finally the variance was granted, and it was granted on the basis that there was so much traffic going up and down Dauphin Street that it was not likely that the house was going to be preserved or used residentially. Mr. Lawler said that in his opinion, that was a very weak basis for a variance, but nevertheless the case was there. He said he was not suggesting that the Board just generally adopt that as a policy. In this case, they had just the contrary. There was an activist group trying to preserve these houses. Would they be able to do it strictly as a single-family residence, or would it be helpful achieving the end of the Ordinance to allow this kind of an operation, which preserves the character of the house, has someone living in it, but has somewhat of a commercial use too? In considering all of that, Mr. Lawler said you had to look at the zoning map. It was a fact that there were mixed uses up and down Government Street. The Board also had to consider the recommendations made by the staff. In this case where the applicant says he has an economic problem, Mr. Lawler said he did not know. There was not any evidence about whether or not other people up and down the street had a similar problem. Arguably, with \$150,000 worth of work being done to the house, you could say that this case was a bit unique.

Mr. Davitt commented that even though this property faces onto Government Street, it does have a material impact, in his opinion, on the neighbors up and down South Georgia Avenue, other than the two immediately to the north of the property. It has no parking on site. The applicants do have a contract to purchase the property on the northwest corner for parking, but the Board cannot be assured of that. Arguments have been made from both sides that the area is changing, but Mr. Davitt said that in this block it still looked substantially residential to him. He said he admired the Barfields for what they had done and the commitment they had made, but he felt that ultimately what it was boiling down to was the economic hardship. He felt the Board was being asked to spot zone, and he was not inclined to vote in favor of that.

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

There being no further discussion, a motion was made by Mr. Davitt to deny this request for Use and Off-Site Parking Variances to allow the bottom floor of an existing single-family dwelling to be used for receptions in an R-1, Single-Family Residential District, and to allow off-site parking at the above referenced location.

Mr. Guess seconded the motion.

In further discussion, Mr. Cummings commented that there was a case before the Board eight months ago that had to do with the Zoghby house on Dauphin Street, which was also in a historic district. The applicant had tried unsuccessfully for several years to sell the house. No one wanted to live there. They had a contractor to sell the house and had a commercial use for it, and they wanted a variance so they could relieve themselves of the economic burden and get on with their lives. That was basically the argument, and the variance was denied. The Historic Commission made the same arguments that it was a creep kind of thing. Mr. Cummings said he recognized that there were areas of Government Street that were strictly commercial for commercial realty, where it seems to be going that direction. But he felt it was an overall little bit at a time, and all of a sudden you look up and it all happened. He felt that was the argument he was hearing from the Dauphin Way group and from the Oakleigh group, that if you do allow those little steps to be taken - at least from their standpoint in this way - the zoning is permanent.

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Mr. Cummings said he tended to agree with Mr. Davitt. He said he could not speak to the economic hardship. It was expensive to maintain an old house.

Mr. Coleman commented that the Ordinance says they were interested in preserving the residential character of the neighborhood, particularly in the historic district. But then he could not understand how they allowed this great big monstrosity called a storage area to be built on Government Street. He questioned whether they should deny something because they feel different about what was being used as opposed to what it was doing to the neighborhood. He asked if it really took away from the neighborhood by having a party at the house. He contended that if they had a party every week, it would be the same thing. Mr. Coleman felt the Board needed to consider whether actually having a commercial use in the house would actually detract from the neighborhood.

There being no further comments, Mr. Cummings call for a vote.

There were three votes in favor of the motion and two against. The motion carried. The variance was denied.

PUBLIC HEARINGS:

#5392

(Case #ZON2006-02297)

Tillie V. Warmack

501 Charleston Street

(Southwest corner of Charleston Street and South Lawrence Street).

Fence Height Variance to allow the construction of a 6' wooden privacy fence along a rear property line to the side street (South Lawrence Street) property line; a 20' setback is required for privacy fences over 3' high within a side street yard in an R-1, Single-Family Residential District.

The site plan illustrates the existing residence, concrete walks, drives, patio, existing chain link fence, and proposed wood fence.

Tillie Warmack, applicant, stated that she filed a variance so she would be allowed to keep her fence.

Mr. Cummings stated that the staff report said that she built a fence without a permit, and she was asking for a variance to keep the fence. The reason indicated for building the fence was that it would be a good buffer between the applicant and her neighbor to the rear with whom she was having some issues. Mr. Cummings asked Ms. Warmack if she had anything to add.

Ms. Warmack stated that the problem was that her house faces Charleston Street, and her neighbor's house was directly behind her house, facing her house. The back of her fence sits to the front of her neighbor's house, and the neighbors felt it was an eyesore. Ms. Warmack said she and her neighbor agreed that if she put three panels on the other side of the fence to make it look finished on the front of their house, then he would have no problem with it.

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

Leonard Payne stated that he was not in favor of the application. He said he did not have any issues with Ms. Warmack other than the fact that the fence goes from the front of his house to the sidewalk and it obstructs the view completely from the north side. He would also like to oppose a portion of this - from the sidewalk back to Ms. Warmack's garage, facing Charleston Street. Mr. Payne said if she would agree to that, then he would put a hedgerow of red top hedges from that point of the garage to the street, which would enhance both properties.

Ms. Warmack did not agree. She said that Mr. Payne came to her house a week ago and agreed that if she put three sections there, as stated, then it would be fine. Now he was changing his story and wanted to do something different.

Mr. Payne said what he was suggesting would enhance both properties.

Ms. Warmack said that was not what Mr. Payne agreed to earlier.

Mr. Cummings said he understood that Ms. Warmack and Mr. Payne had a discussion a week ago and agreed to something that was now being changed. Mr. Cummings said they could resolve this today, or they could do it next month, but the fact was that this fence as built goes all the way out to Lawrence Street.

Ms. Warmack said it did not go to the street.

Mr. Cummings asked how far out it went into the 20-foot setback.

Ms. Warmack said she had a picture of it.

Mr. Palombo said it should show on the site plan. It was close to the property line.

Mr. Cummings said a permit would not have been granted for this fence. That was the problem.

Ms. Warmack said Mr. Shirazi, the Zoning Inspector, told her that she would just have to file the variance and come and speak to the Board, and then would have to pay for a survey. He said that as long as the fence was not on her neighbor's property, it should not be a problem. She said it was clearly on her property, and in fact right now there were two fences. Ms. Warmack said she could not take down the chain link fence because she had to wait until she had a permit for her new fence. She had the bricks and was just waiting until this was cleared before she had the fence built. Ms. Warmack said that Mr. Payne clearly stated to her that it would be okay for her to put those other sections up and it would not be a problem. She did not know why it was a problem now. She asked if the Board had received her letter.

Mr. Cummings said the only information the Board had was the write-up from the staff.

Mr. Palombo said the letter was in the file.

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Ms. Warmack said the letter was submitted with her application. She said she needed a separation between her property and Mr. Payne's property because it had been a problem ever since she moved into the neighborhood. She said he did not want her living there, and if he had a problem with it she could turn her house into a Section 8 house and he would really have some problems.

Mr. Payne said he did not have any issues with Ms. Warmack.

Ms. Warmack said they had had issues ever since she moved there.

Mr. Cummings asked Ms. Warmack if she had anything new to add. She did not.

Mr. Cummings asked Mr. Payne if he had anything new to add. He did not.

Mrs. Tillie Mae Warmack was present and asked to speak. Mrs. Warmack said she was Ms. Tillie Warmack's mother. Her husband, Tillie's father, was also present. Mrs. Warmack said she and her husband gave their daughter the fence because she was having so many problems and altercations with Mr. Payne and his wife every time they came outside to sit in their yard. She said he daughter worked three jobs and it was night when she got home. Every now and then she liked to sit in her back yard with her daughter so she could play, but Mr. and Mrs. Payne were always causing problems for them. She said she did not know they needed a permit to put the picket fence up since the fence was on the back of Tillie's house and there was already a fence there. So they put the picket fence inside the existing fence. When she went downtown, Mrs. Warmack said the Permitting office was very busy and while she was waiting for someone to help her, she read all the brochures regarding building that were in the carousels but did not see any mention of a fence. She did read that if you were going to put up a building over a certain amount of money you would need a permit, but she saw nothing about a fence, so she left. Mrs. Warmack said she did call and talk with Mr. Roberts of the Traffic Division. Mr. Roberts came out and inspected the fence, and told her he did not see anything wrong with it. The only thing he saw that might be a problem was a tree that was planted right on the fence property line. She said the neighbors claim that they cannot see when they come out of their driveway, but that was not their driveway. She said their driveway was way on the other side, and they don't even use their carport. They don't ever open the door and she thinks they may use it for a room. So the tree would not hinder them coming out of their driveway. Mrs. Warmack said if that were the problem, then the chain link fence that was already there would have been a problem. Mr. Roberts said he could not see anything wrong with it. Mr. Shirazi also said he could not see anything wrong with it, but the Payne's had complained about the fence. They claimed they could not see down Lawrence Street. She said it was just a complication because of the way their house was made. She said her daughter had nothing to do with the way their house was made, and she felt like she should have the right to protect herself and her little girl from any man asking the child to come over the fence and come read to him. Mrs. Warmack said there were a lot of sexual predators and you never know who that might be. Her daughter just wanted to protect her child.

Mr. Cummings thanked Mrs. Warmack.

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Mr. Payne said he was sitting on the step and the child comes over there to tell him how she can read. He said he did not call her.

Mr. Cummings asked Mr. Payne to have a seat. He asked if the members of the Board had any questions.

Mr. Davitt asked if understood the issue here was the 20 feet or so from right here (indicating on the plat) to the setback.

Mr. Palombo said that was correct. He said a 311 call was made about the fence, and the complaint was assigned to a Zoning Inspector. The inspector investigated the complaint and discovered that a permit had not been issued for the fence. It was 6 feet high and was in the 20-foot setback.

Mr. Cummings noted that the bush at the end of the fence was as high as the fence itself. It could block the view as much as the fence.

Additional pictures of the fence were reviewed and discussed by the Board.

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

Mr. Guess said he felt the fence could be set back and re-established at the 20-foot setback line.

A motion was made by Mr. Guess to deny this request for a Fence Height Variance to allow the construction of a 6' wooden privacy fence along a rear property line to the side street (South Lawrence Street) property line at the above referenced location.

Mr. Cummings asked if there was a second to the motion.

There being no second, the motion failed. Mr. Cummings asked if there was another motion.

Mr. Davis made a motion to approve this request for a Fence Height Variance to allow the construction of a 6' wooden privacy fence along a rear property line to the side street (South Lawrence Street) property line at the above referenced location.

The motion was seconded by Mr. Coleman.

In further discussion Mr. Davitt asked if Mr. Davis would consider amending the motion to require that the fence within the 20-foot setback be cut down to three feet.

Mr. Palombo said there would be no need for a variance if the fence were only three feet high.

Mr. Coleman commented that if the fence were cut down to three feet, there would be no line-of-sight problem. Several of the members concurred.

Mr. Palombo said there was a standard 20-foot setback on the side. He asked if they wanted to cut the 20-foot setback to three feet, or 10 feet, or somewhere in between.

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Mr. Davis asked if that would satisfy the concern of the applicant.

Ms. Warmack stated that she felt having half the fence higher than the rest would be an eyesore. Also, the neighbors had some flowers planted along the fence in their yard that were going to grow even taller than the fence. She asked if her fence was a problem, how would the neighbors be allowed to keep their flowers, or trees, planted there, which would eventually start to grow in between the fence and knock it down? Ms. Warmack asked the Commission if someone was sexually harassing their child, would they want them to continue to be able to look at them in the face. She went on to discuss some of the problems she was having with her neighbors. Ms. Warmack said she did not come out of her house except in the summer time and on weekends because she works. But when she does come out in the back yard so her daughter can play, she was continually harassed by her neighbors. She felt it would not be fair if she had to take her fence down. If that happened, she would put her house under Section 8 and move into one of the other properties she owned. The neighbors would really have some problems then because the house was big enough to hold a family of eight children.

Mr. Davis asked that the Chairman call for a vote on the previous motion.

There were three votes in favor of the motion and two votes against the motion. The motion failed to carry. The variance was denied.

Ms. Warmack asked if she could appeal the decision of the Board.

Mr. Cummings explained that the applicant would have 15 days from the date of this hearing to file a motion in Circuit Court for appeal.

#5393

(Case #ZON2006-02389)

Arlo Investments, Inc.

3755 Sheips Lane

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

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

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

Mr. Cummings asked if the applicant or his representative was present. There was no response.

Mr. Cummings called for a motion to either hold over or deny this application for failure of the applicant to show.

A motion was made by Mr. Davitt and seconded by Mr. Guess to hold over this application for 30 days.

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The motion carried unanimously.

Mrs. Casolene Power, a resident of 3759 Sheeps Lane, was present in opposition.

Mr. Cummings explained to Mrs. Powe that since the applicant was not present, the application was being held over until the February meeting, at which time she would be allowed to speak.

#5394

(Case #ZON2006-02403)

Grant Harkness

1607 East I-65 Service Road South

(East side of East I-65 Service Road South, 950' ± North of I-65 Commerce Drive).

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

The site plan illustrates existing buildings, parking and proposed parking.

Doug Anderson, with the law firm of Bowron, Latta and Wasden, 41 W. I-65 Service Road, was present representing the applicant. Mr. Anderson indicated on the site plan the part of the property under discussion today. He said the proposed warehouse shown on the plan had been constructed. Immediately above the proposed warehouse the plat indicated an area for proposed asphalt over existing limestone. Mr. Anderson said that had been paved. He referred to a packet containing some pictures that were handed out to the members before the meeting. He described each picture, and said the property between the warehouse and the service road was where the limestone parking surface was currently existing, and was the part for which they were requesting a variance. The area was approximately 100' x 100'. Mr. Anderson said they were requesting a variance for two reasons. He explained that the limestone parking area as it exists today would be temporary. Mr. Anderson showed the Board the master plan for the entire buildout for their site location, which was prepared in 2003. He pointed out the existing warehouse, and west of that a proposed 5,000-square foot showroom. He explained that Mr. Harkness had to postpone the construction of the showroom and move part of his facilities to Baldwin County to help in the recovery effort between Hurricane Ivan and Hurricane Katrina. He plans to complete this master plan with the showroom, where the limestone parking was now, and the paved parking in front of that, within two years. For that reason he was requesting that this variance be granted for a two-year time period. Mr. Anderson explained that the second reason for requesting the variance was due to the deterioration factor. He noted that the staff report stated that surface deterioration due to parking on the site was not an issue in this case. He contended that it was an issue. Referring to the pictures he submitted, he pointed out that transporting the heavy construction equipment they used back and forth over the area that was required to be paved would tear up the asphalt, especially in the summer time when the asphalt gets hot. Mr. Harkness was requesting that he be allowed to keep the limestone parking area and not have to pave it at this time and then in two years have to tear it up. Mr. Anderson referred to the last three or four pictures submitted, which he said showed similar type businesses within the City limits that were zoned B-3 that had limestone surfaces for their storage areas. He named United Rentals on Montlimar, George's Water Sports, which was adjacent across Pleasant Valley

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Road from United Rentals, Gulf Coast Truck business on Pleasant Valley and Holcombe Avenue, and Thompson Rental, which was located on the service road between here and Prichard. He contended it was common in this type of business to store construction equipment on limestone because of the disruption factor of the pavement. Mr. Anderson again noted that this would be temporary, and within two years they would commence construction to complete their master plan. Mr. Anderson also pointed out that the staff recommendation stated that it was simply their desire to develop the site without complying with the parking and site requirements. He said that was not true. It was simply that the hurricane interrupted their construction. This business had been at this location since the 1960's. They had done the landscaping and final site plan in compliance with all the other ordinances, and Mr. Anderson contended that once completed, it would be a big improvement to the area.

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

Reggie Copeland, representing City Council District 5 in which this site was located, stated that he was very proud of what Mr. Harkness had done. Mr. Copeland said he knew the applicant's father so he had been in and out of the business several times. After he passed away his son, Grant, took over the business. Since then Mr. Copeland said the change and the beautification of that area was so pleasant. Mr. Copeland said he also represented the residents on Delmar Drive behind the subject property, and they were very pleased about the cleanup that had been done with some of the old equipment that was back there. He had also received compliments on the improvements to the site from Steve Robinson of Robinson Brothers Lincoln-Mercury, which adjoins the site. Mr. Copeland said Mr. Harkness had pledged to him that he was going to add that other building on that aggregate where his heavy equipment has been stored since 1960. He said it should be grandfathered-in. He agreed that you could not move heavy construction equipment around on asphalt. Mr. Copeland said he supported Mr. Harkness who had hired a number of people and was growing his business. He said he had a first-class business and it was even more first-class because of the expenditures he had put into improvements and beautification at this location. He felt it was outstanding and he should get some type of award. Mr. Copeland asked the Board to please work with Mr. Harkness in this request.

There being no one else who wished to speak, Mr. Cummings asked if the members of the Board had any further questions or comments. There being no further discussion, the Chair entertained a motion.

A motion was made by Mr. Davis and seconded by Mr. Guess to approve this request for Parking and Access/Maneuvering Surface Variances to allow aggregate parking and access/maneuvering areas in a B-3, Community Business District at the above referenced location.

In further discussion Mr. Davitt asked if the Board wanted to limit the variance to two years, since the applicant volunteered to do so.

After discussion Mr. Davis amended his motion to approve the variance as stated above, subject to the following condition:

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- 1) the variance is granted for a period of two years.

Mr. Guess seconded the amended motion.

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

The vote was unanimous in favor of the motion.

#5395

(Case #ZON2006-02432)

Steven A. & Beverly Pat Black

2100 Old Military Road

(West side of Old Military Road, 735'± North of its South terminus).

Fence Height Variances to allow the construction of a 6' fence (20" brick base and 4'4" high wrought iron) with 6'6" brick columns, 2' from the front property line and a 6' solid 4wooden fence along the side property line within the 25' building setback line; a 25' front yard setback from the front property line is required for a wall or fence higher than 3-feet in an R-1, Single-Family Residential District.

The site plan illustrates existing buildings, drive, and proposed fence.

Beverly and Steven Black, applicants, were present in this matter. Ms. Black explained that they lived on the curve on the right side of Old Military Road, which curves around and dead ends into Dog River. She said they put up a privacy fence, not knowing that they were required to have a permit. They then started to remodel their house and put up a brick fence. The City issued a Stop Work Order on the fence because they did not have a permit, and because it was two feet from the property line.

Mr. Palombo also noted that it was a 6-foot fence, which was in violation of the Ordinance.

Ms. Black said one reason they wanted a fence was because they had two very large dogs. They had moved to this location from Dauphin Island where they had lived for nine years, and the dogs were used to running free. Since they were now within the City limits of Mobile, the dogs would have to be penned up if they did not have a fence. Ms. Black said they were also in the process of remodeling their house and also had a permit to build a garage. If they had to move the fence back 25 feet, then they would not be able to have the fence because the garage was built off the front of the house and there would not be any place there for a fence. There would be no place to turn in because of the way the house was situated. Ms. Black explained that their lot was really long and deep, but they were trying not to do a whole lot with the back of it, other than they wanted to put in a swimming pool. She said they did not want to take the oak trees down and did not want to disturb the nature that was already there, so that was the reason they decided to come to the front of the property, especially for the garage. The fence was also for security reasons. Ms. Blacks said she did not think any of their neighbors objected to the fence, and in fact were excited that they were fixing up the place. She said the fence would not obstruct anyone's view, whether traveling up Old Military Road from the end of the street or coming down Old Military Road. Ms. Black said they had purchased all the brick for the fence, and the

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rest of the house was going to be re-bricked and the garage was going to be bricked to match the fence.

Mr. Steven Black said they had a limitation with the height and the elevation of their lot in the front, and then it sloped down a good bit going to the water. That was the reason they put the garage on the front of the property. Their home was small - only about 14,000 square feet - and they planned to add onto the back of it after they finished the garage. Mr. Black noted that part of the variance request was that they put the privacy fence all the way to the front. He said he had never lived in Mobile and was not aware that you had to taper the fence down. They were also requesting a variance to allow them to be able to keep the brick and wrought iron fence that they had partially constructed in the front. He said they had planned to put a gate across the front of it, and it was not unpleasant to the eyes. Mr. Black said all their neighbors had told them that they liked the fence and offered to come to the hearing today in support of it, but they told them they did not feel that was necessary because they were under the assumption that if no one sent a letter of opposition or came down and voiced opposition, that it would automatically be assumed that they were in favor of it. Mr. Black requested the Board grant this variance.

Mr. Cummings asked if there was anyone present who wished to speak either in favor or in opposition to this request. No one came forward.

Mr. Cummings asked if there were any further questions or comments from the members of the Board or from Traffic.

Mr. Whistler commented that he noted in his report that Traffic Engineering conducted the on-site review and determined that the privacy fence, and front fence columns, compromised line-of-sight for the neighbor to the north and posed a potential pedestrian traffic danger. Also, the neighbor's driveway directly to the north actually cuts across the northeast corner of the subject property. Traffic Engineering determined that the neighbor to the north would have a line-of-sight problem to the south and to Old Military Road.

Mr. Cummings asked if Traffic Engineering made any recommendations.

Mr. Whistler said they did not.

Mr. Black commented that he had talked with his neighbor to the north, Mark Wallace, and told him that his driveway did cut across his property. He had no intention, however, of asking Mr. Wallace to move that as long as he know it was on his property. Mr. Black noted that there was probably an area of about 20 feet from the end of that driveway that was open before he ever gets out onto the paved area of the road. Also, the road to the north was probably 30-40 feet away from the corner of his fence.

Mr. Cummings noted that, just as a technical issue, if Mr. Black ever sold his property, and/or Mr. Wallace sold his property, this friendly agreement that he had that Mr. Wallace acknowledges he encroaches with this driveway on his property, could become an issue down the road if some other neighbors got made at each other. Mr. Cummings said that if his neighbor had to exit his property lawfully and using his property to access their driveway, then at that point this fence was not approved and could cause a line-of-sight problem.

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Mr. Black stated that when they were buying the house and noticed on the survey that their property line actually extended over half of Mr. Wallace's driveway, they talked to him about it and had a verbal agreement that if he ever decided to sell his property, then they would move their privacy fence over to where it was supposed to be.

Mr. Palombo said that would be addressed in the subdivision matter.

Mr. Coleman asked if the column itself, or the privacy fence, would be an obstruction.

Mr. Palombo said he did not know what Traffic Engineering had decided in this case, but he would think that the columns and the fence would be a problem. The columns and the fence exceeded the three-foot limit and encroached into the 25-foot setback.

Mr. Davitt asked if understood correctly that the fence was iron grill.

Mr. Black said the privacy fence down each side was wood. Across the front it would be brick and wrought iron.

Mr. Coleman asked if it would solve the problem if the wrought iron fence was to extend around to the side for three feet.

Mr. Whistler replied that it probably could.

Mr. Coleman suggested that they could approve the fence with the condition that the line-of-sight be considered due to installing the wrought iron fence.

Mr. Whistler said the fence would have to be set back 25 feet from the front property line.

After further discussion a motion was made by Mr. Coleman and seconded by Mr. Davitt to approve this request for Fence Height Variances to allow the construction of a 6' fence (20" brick base and 4'4" high wrought iron) with 6'6" brick columns, 2' from the front property line and a 6' solid wooden fence along the side property line within the 25' building setback line at the above referenced location subject to the following conditions:

- 1) changing the existing fence where it sits from the setback to the street to wrought iron and brick;
- 2) coordinating with the Traffic Engineering Department on the line-of-sight problem; and
- 3) purchasing an after-the-fact fence permit.

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

The motion carried unanimously.

**#5396
(Case #ZON2006-02434)**

Shiloh Missionary Baptist Church
2756 Old Shell Road

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

Use, Off-Site Parking and Parking Surface Variances to allow a church to construct a 36' x 56' carport for 5 vehicles, temporary off-site parking spaces and an aggregate parking and maneuvering surface in an R-1, Single-Family Residential District; a church is allowed by right in an R-1, Single-Family Residential District with Planning Approval, the Zoning Ordinance requires all parking and structures to be located on-site; asphalt, concrete or an approved alternative paving surface is required for all parking and maneuvering areas.

The site plan illustrates existing buildings, parking, and proposed building, parking and drives.

Zelman Crenshaw, 9623 Boxwood Court, Mobile, stated that he was a trustee at the Shiloh Missionary Baptist Church. They were requesting permission for temporary off-site parking. Mr. Crenshaw said they planned to build a new sanctuary. Their architect was in the process of designing the plans, and work would begin as soon as the plans were completed. This was proposed to be a multi-million dollar church, which would be an improvement to the community and a beacon on this corner. They were trying to get traffic off of Old Shell Road, as well as off of Bay Shore Ave, by using other land that they have for parking, which they had covered with an aggregate material.

Mr. Cummings asked if there was anyone present who wished to speak either in favor or in opposition to this application.

There being no one else to speak, Mr. Cummings asked if anyone on the Board had any questions or comments. He noted that the staff had recommended approval of the variances for a period of one year. Within that time period the applicant should submit the required Planning Commission applications for the project.

There being no further discussion, the Chair entertained a motion.

A motion was made by Mr. Coleman and seconded by Mr. Davis to approve this request for Use, Off-Site Parking and Parking Surface Variances to allow a church to construct a 36' x 56' carport for 5 vehicles, temporary off-site parking spaces and an aggregate parking and maneuvering surface in an R-1, Single-Family Residential District at the above referenced location subject to the following condition:

- 1) the Variances are limited to one year, with the applicant to submit the required applications to be heard by the Planning Commission within that time period. Since construction will probably take more than one year, the Board can extend this time period if the proper Planning Commission approvals are received.

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

The motion carried unanimously.

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Mr. Crenshaw asked for clarification about what they would be required to submit to the Planning Commission.

Mr. Cummings said that applications for re-subdivision of the property, Planning Approval and Planned Unit Development approval would have to be submitted and approved by the Planning Commission. Mr. Palombo said their architect should be aware of that.

Mr. Crenshaw said that would not be a problem.

#5397/2755

(Case #ZON2006-02437)

David A. Shivers

3267 Stein Street

(South side of Stein Street, 115'± East of Batre Lane).

Side Yard Setback and Combined Side Yards Variances to allow the construction of a dwelling addition within 3.5' of a side property line with 18.9' total combined side yards; an 8' minimum side yard setback and a minimum combined side yards of 20' are required in an R-1, Single-Family Residential District.

The site plan illustrates the existing buildings, drive, and proposed building addition.

David Shivers, the applicant, stated that he was a resident of 3267 Stein Street and was requesting a variance which would allow him to complete construction on a very small addition - a half bath and a small breakfast nook - on the west side of his house. He said it sits back about 3 1/2 feet from an 8-foot fence, and was really the only place where they could add a half bath.

Mr. Cummings asked if there was anyone present who wished to speak either in favor or in opposition to this request.

Brad Green stated that he and his wife lived next door to the subject property at 3269 Stein Street. He felt their property would be most affected by the proposed addition, and they had no objections to it. Mr. Green said Mr. Shivers had made other improvements to the house which were aesthetically pleasing. He said he had also spoken with both the neighbors across the street who would have to look at the property, and they had no objections, and he was not aware of any objections from the other neighbors on the street.

There being no further questions from the audience, Mr. Cummings asked if anyone on the Board had any questions or comments.

Should the Board decide to grant this variance, Mr. Coleman asked the staff if they would recommend any conditions.

Mr. Palombo said the staff would recommend that gutters and downspouts be required.

Mr. Shivers said that would not be a problem.

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There being no further discussion, a motion was made by Mr. Coleman and seconded by Mr. Davitt to approve this request for Side Yard Setback and Combined Side Yards Variances to allow the construction of a dwelling addition within 3.5' of a side property line with 18.9' total combined side yards at the above referenced location subject to the following condition:

- 1) the provision of gutters and downspouts.

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

The motion carried unanimously.

#5398

(Case #ZON2006-02450)

American Tennis Courts

West side of Bolton's Branch Drive, 620'± South of Halls Mill Road.

Use, Parking Surface, Fence Type and Fence Height Variances to allow a contractor's storage yard with limestone parking, and chain link fencing over 8' high in a B-3, Community Business District; contractor's storage yards require a minimum I-1, Light Industry District, parking surfaces must be asphalt, concrete, or an approved alternative paving surface, fencing must be a wooden privacy fence, and 8' is the maximum fence height allowed in a B-3, Community Business District.

The site plan illustrates the proposed buildings, parking, fencing, and paved surfaces.

Don Williams, of Don Williams Engineering, was present on behalf of the applicant. Mr. Williams noted that the staff's report on this request suggested that the proposed use would require I-1 zoning. He noted that the applicant was not building tennis courts on this site, but would just be using it for storage of their construction equipment, which they felt would be appropriate in a B-3 district. The applicant was proposing to construct a 7,000-square foot building on the site, which would contain most of their equipment. In this type of business, however, they would have light poles and fencing and such as that stored outside. Mr. Williams said they had submitted pictures of the type of equipment they would be using. One would be a forklift, which would actually be moving materials around inside the building, and at times would also have to come outside to pick up materials to bring them inside. This was standard equipment for a B-3 type situation. They would also be using two tractors, which would come up about chest high on a man standing next to it, and an asphalt roller, which would also come up about chest high. Mr. Williams emphasized that this equipment would not be operated on the site, but would be located there between jobs. They would not even be cranked up on the site, but would be fueled there and the tractors would be loaded on what he would call landscape trailers, which would be connected to a pickup truck and taken to the work site. He referred to a similar application previously before the Board today in which the applicant indicated that Blue Rents, United Rentals, George's Water Sports, and Thompson Cat, all B-3 zoned properties, had aggregate surfacing in a permanent basis in their front yards to store their equipment and their trucks and such.

Mr. Williams stated that another issue that he thought influenced the staff to recommend I-1 zoning was that they wanted to have an above-ground, 500-gallon gasoline tank on the back of

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their site. The purpose of this was to control costs for the company. The equipment would be fueled on the site and taken to the actual construction site. Mr. Williams said he had sent a letter to Lavell Olhoft with the Fire Department as to the appropriateness of the above-ground tank, and Mr. Olhoft had in turn communicated with the staff. He noted that the proposed tank they would use would follow the particular NFPA rules in that regard. The tanks would be located 50 feet away from the property lines and from buildings, according to fire prevention standards. He also noted that there was a 50-foot vegetative buffer that separated them from the R-1 property at the rear of the site, and that buffer would remain in its current state. The residents behind them would not be able to see any vehicles or the gas tanks. In addition, they would construct a 6-foot high wood privacy fence. Mr. Williams felt that the vegetative buffer and the privacy fence, as well as the 10-foot buffers they had put on the sides of the site, were very appropriate. He felt this was very much a B-3 type operation and did not think they were starting a trend of I-1 in this situation.

Regarding the parking surface variance, Mr. Williams said they were requesting an aggregate surface for their back yard. He noted that the site plan showed asphalt parking spaces in front of the building, as well as around the building in the back yard. It would only be the last 50 feet or so at the rear of the property where they wanted a permanent limestone cover. That area would be for turning of the vehicles so they could be stored there, and for their fueling operations. He again noted that the limestone area would be totally obscured from view of anyone other than American Tennis Courts.

With regard to the fence type and fence height variances, Mr. Williams stated that originally they planned to have a 8-foot high chain link fence topped with razor wire on both sides of the property, which about B-3 properties. The razor wire on top, however, would make the fence taller than 8 feet. He said they would be willing to change that to a barbed wire topping on an 8-foot high chain link fence. They were also requesting that they be allowed to use tennis court screening on the chain link fence, which decrease visibility by about 80 percent. That would be in addition to a 10-foot vegetative buffer on the sides, which was over and above what they were required to do. He said, however, that after talking with the staff and going before the Planning Commission, they were dropping the request for a fence height variance.

Mr. Cummings asked Mr. Williams about the decision of the Planning Commission.

Mr. Williams said the issue about the above-ground storage tanks was discussed by the Planning Commission and one of the members asked for written documentation from the Fire Department that they had discussed this issue with them and had approved it. He said the Fire Department did not want to write a letter, so he wrote the letter and faxed it to Lavell Olhoft, and he verbally talked to Frank Palombo and gave his okay. The issue about the type of equipment and storage was also discussed by the Commission. Mr. Williams said at that time they did not have pictures of the type of equipment that would be stored on the site. Because the two issues of controversy seemed to be the above-ground storage tanks and the type of equipment to be stored in the back yard, Mr. Williams said they withdrew those requests for the time being, and just asked for approval of the subdivision. *(Note: At the December 7, 2006 Planning Commission meeting, the PUD was approved with conditions, including approval by the Board of Zoning Adjustment, and revision of the site plan to show no above-ground fuel storage tanks.)* Mr. Williams said they now had pictures, which he provided to the Board, of the type of equipment they would be

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storing on the site. If this Board ruled in their favor today, they would go back to the Planning Commission with the pictures of the equipment and request PUD approval.

Mr. Cummings asked if there was anyone present who wished to speak either in favor or in opposition to this request. No one came forward.

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

Mr. Guess asked if the screening material Mr. Williams referred to would be on the entire length of the fence, or just a certain section of it.

Mr. Williams said the green screening would be on the fence on both sides of the site, as well as the fence along the front.

Mr. Guess questioned why they would take the screening beyond the storage area - which is what they were trying to screen - all the way to the street.

Mr. Williams said the reason was for security, and because it looked better visually.

Mr. Guess asked if he understood that the storage area was to be from the back section of the parking area where the asphalt stopped.

Mr. Williams said they would have six or seven little pens - chain linked areas - for the storage of materials such as cement and sand for the different jobs, which would actually be on the asphalt. There would also be sort of a work area on the asphalt where they would lay out the poles, lay out fabric, cut fabric, etc.

Mr. Coleman asked if he understood the basis for recommending denial had to do with the gasoline storage area.

Mr. Palombo said it was due to the gasoline storage, the storage of vehicles, and because they would be mixing chemicals or paint.

Mr. Williams said they would have 55-gallon drums of latex paint on the site, which they would use for striping the tennis courts. He said they had discussed that at length with Lavell Olhoft who was in their technical review committee meeting when they first started discussing this project. Mr. Williams said Mr. Olhoft had no problem with it being latex paint.

Mr. Davitt asked the staff what made this stand out as I-1 versus B-3.

Mr. Palombo said it was due to the construction equipment. He said when the original application was submitted they did not have pictures of the type of equipment they would be storing on the site. The pictures presented today showed that it would be nothing more than landscaping tractors. The staff had also received a letter from Lavell Olhoft stating that the 500-gallon above-ground gasoline tank would not be a problem.

Mr. Davitt asked if they would build some kind of container around the tank.

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Mr. Williams said no. He explained that the tank to be used was called a 2080 tank, which was a fire-resistant, double wall type of tank, which does not need that type of a spill containment situation.

Mr. Coleman expressed concern about something bumping into the tank.

Mr. Williams said they planned to put bollards around the tank to keep anything from hitting it. He said that was required by the NFPA.

Mr. Davitt pointed out that the site plan showed McRae Avenue Extension, a planned major street, coming through the cul-de-sac at the end of Bolton's Branch Drive. He asked if that planned extension had been vacated.

Mr. Palombo so it had not been vacated. It was on the Major Street Plan, but he could not say how likely it was that it would ever be built.

Mr. Cummings noted that it was planned to go right through the wetlands, and did not think it would happen in his lifetime.

After discussion a motion was made by Mr. Davitt and seconded by Mr. Guess to approve this request for Use, Parking Surface, Fence Type and Fence Height Variances to allow a contractor's storage yard with limestone parking, and chain link fencing over 8' high in a B-3, Community Business District at the above referenced location subject to the following condition:

- 1) approval of the above-ground fuel tanks by the Planning Commission.

The motion was seconded by Mr. Guess.

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

The motion carried unanimously.

#5399

(Case #ZON2006-02451)

R. D. Lowe's Painting

3221 Halls Mill Road

(South side of Halls Mill Road, 120'± West of Darwood Drive).

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

The site plan illustrates the existing building and proposed parking.

Don Williams, Williams Engineering, was present representing the applicant. Mr. Williams said this property was the site of the old drive-in theater on Halls Mill Road. Most of that property

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was now the Christ Anglican Church, and the remainder of the property had been purchased by Mr. Lowe. Mr. Williams said he originally thought that Mr. Lowe had his office in the County, but as staff indicated in their report, Mr. Lowe was actually running the business from his home as a home occupation. As his business started to grow and he needed more room, Mr. Lowe purchased the subject property to be used as a staging area so the painters would not have to come to his house very morning. He noted that there was an existing metal building on the site, which he thought was the old maintenance building when it was a drive-in theater. He noted that there had never been any bathrooms in the building, but it did have electricity. Mr. Lowe did not intend to make it an office. Mr. Williams said they did not store paint on the site in great quantities, although they did have some. He explained that the painters come to this staging area every morning from 7:00-9:00 a.m. where they are assigned their jobs for the day. They leave their vehicles there during the day, and return to the site at the end of the day to pick up their vehicles and leave. There are no vehicles left there overnight. Mr. Williams said that Mr. Lowe was in the process of putting down Bohamian limestone in the parking area when he was stopped by the City Engineering Department. The issue for them was the storm water runoff, and the fact that when you start taking out grass and putting down limestone, you have increased the water flow and you have gone afoul of the City Stormwater Retention Ordinance. Also, he did not get the necessary permit to allow him to put the limestone down. There were also issues with trees and subdivision of the property. Mr. Williams said the case was in the court system right now, and getting a variance to allow the limestone to remain was one of the things necessary in order to comply with the City ordinances. Mr. Lowe was also proposing a subdivision of the property into two lots so he would not have to worry about the undeveloped part of the property, which was kind of low and marshy. Mr. Williams said they intend to comply with the Stormwater Retention Ordinance and the tree requirements of the Ordinance. He noted that this was in a B-3 district and precedent had been set in other places. The parking would be in the front yard though, and it would be visible from Halls Mill Road. Although they had not planned to fence the site, Mr. Lowe would comply with any requirements for fencing or buffering that may be required. Mr. Williams said they had no intentions of developing the property any further. They simply wanted to be allowed to keep the aggregate that had been put down.

Mr. Cummings asked if the subdivision of the property had been heard by the Planning Commission.

Mr. Palombo said the two-lot subdivision had been approved by the Planning Commission.

Mr. Coleman asked if this Board would deal with containment of the limestone.

Mr. Williams said it was really pretty contained now. The Bohamian based limestone was a little different than just the fresh stone. He said that once it gets down and gets rained on, it packs down pretty hard.

Mr. Guess asked how many vehicles they were talking about parking on the site.

Mr. Williams said he had noted about 70 vehicles parking there.

Mr. Palombo noted that Mr. Lowe had a crew of 20-25.

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Mr. Coleman asked if they were talking about trucks parking there overnight.

Mr. Williams said they were only talking about parking cars, not trucks, there during the day. There was no overnight parking, and there was really no storage and no deliveries to the site, as the painters go to the stores each day and buy the paint needed for a particular job.

Mr. Palombo said Mr. Lowe had 9 or 10 vans, and some of the vans remained on the site overnight.

Mr. Williams said he stood corrected. Some of the vans probably did remain overnight.

Mr. Davitt said he would like to see the first 50 feet or so into the property paved, and since the land slopes to the east, he would like to see some type of buffer to keep the gravel from spilling over

Mr. Palombo said curbing could be required.

Mr. Davitt also noted that coordination of the trees would be required by Urban Forestry.

After discussion a motion was made by Mr. Davitt and seconded by Mr. Coleman to approve this request for Parking and Access/Maneuvering Surface Variances to allow aggregate parking and access/maneuvering areas in a B-3, Community Business District at the above referenced location subject to the following conditions:

- 1) concrete/asphalt approved driveway a distance of 50 feet from Halls Mill Road;
- 2) full compliance with the landscaping and tree planting requirements of the Ordinance to be coordinated with Urban Forestry; and
- 3) no deliveries by 18-wheelers.

The motion carried unanimously.

#5400

(Case #ZON2006-02603)

Bill Cherry

3055 Yorkwood Road East

(East side of Yorkwood Road East, 120'± South of Highcrest Drive)

Side Yard Setback Variance to allow the construction of a 16.6' x 28' storage building setback 3.8' from a side property line; an 8' side yard setback is required for structures in an R-1, Single-Family Residential District.

The site plan illustrates existing buildings, parking, drives and building setback.

John Lassiter, attorney, 2500 Dauphin Street, was present representing the applicant. Mr. Lassiter said Mr. Cherry was rebuilding a structure 3 feet, 8 inches from the side property line. He stated that when he purchased the property in 1994, there was an existing slab where he wanted to build this structure. Subsequently, after 1994, Mr. Cherry did build a structure on the existing slab, but it was destroyed by Hurricane Katrina. In rebuilding the structure, Mr. Lassiter

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said he was issued a permit to rebuild the detached storage area. Subsequently, he was informed by the City inspector that it was not in compliance and that it was in violation of the setback requirements, and he was issued a ticket. At the time, the building was 85-90 percent complete. Mr. Lassiter said they were encouraged by the Environmental Court to seek a variance to resolve the situation. He noted that one of Mr. Cherry's neighbors was present earlier in support of this request, but due to an obligation had to leave. Mr. Cherry had spoken to his other neighbors and none of them had any objection to him completing the structure. Mr. Lassiter noted that they had submitted a picture showing that an adjoining neighbor had a building that was approximately four feet from the property line, and it had been there for quite some time. Mr. Cherry was requesting the Board's consideration in allowing the variance so he could complete the building.

Mr. Cummings asked if there was anyone else who wished to speak in this matter.

Mr. Cherry, applicant, stated that he was just trying to add another storage area, as well as maybe a hurricane shelter. He said the structure was built like a fortress, which he described, and was evident in the pictures submitted. Mr. Cherry said he had also submitted pictures of his existing yard, which was landscaped in detail and was probably the nicest landscaped place in the neighborhood. He said all 12 of his neighbors who received letters indicated to him that they would have come down today if it was not for their jobs. He said he would like to complete his building and asked for the Board's consideration.

There being no further comments from anyone in the audience, Mr. Cummings asked if any of the members of the Board had any questions or comments.

Mr. Davitt noted that there were five buildings on the property, one of which was his residence. He asked Mr. Cherry to explain what the other buildings were.

Mr. Cherry stated that the small structure in front of the proposed building was a little outside garage/storage building when he bought the property, and since then he had completely redone it. It had a mahogany door on it with leaded glass and side lights. He said it was sort of like his gun and hobby room. That was where he loaded his shells and kept his guns. The other building was a little greenhouse. He then pointed out a three-bay garage. Mr. Cherry said he remodeled and re-built old antique cars and this was set up as basically a car garage. It had a lift in it and all of his tools.

Mr. Lassiter noted that all of these buildings were permitted in compliance with the City.

Mr. Cherry said that was correct.

Mr. Palombo pointed out a particular building and asked if there was a bathroom or kitchen in it.

Mr. Cherry said there was no kitchen in the building.

Mr. Palombo asked Mr. Cherry if he had a woodworking business, and whether he was storing wood there.

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Mr. Cherry said he no longer had a woodworking business, and he did not store wood in the building.

Mr. Palombo asked if he understood that no one comes to house to pick up wood or anything, and he had no regular employees.

Mr. Cherry said that was correct.

Mr. Davitt noted that there were a number of buildings on the site, and it was a 250-foot deep lot.

Mr. Palombo said that the old aerial photos of the site taken in 2000 and 2004 showed a mass of buildings on the site.

Mr. Davitt also noted that the staff mentioned in their report that a land use aerial prior to 1994 did not indicate that there was a structure on the subject building site.

Mr. Cherry said that was correct. The concrete slab was there, and you could also see in the aerial photo that at one time he had a fifth-wheel travel trailer parked on that slab. After he got rid of that, he put a modular building on it for storage, and that was the one that was destroyed in the Hurricane Katrina.

Mr. Davitt noted that Hurricane Katrina was in August of 2005. If the aerial photos show there was no structure there as of 2002, it meant that sometime between 2002 and Katrina, a structure was built.

Mr. Davitt asked Mr. Cherry if he had gotten a permit for the building.

Mr. Cherry said he did not. It was a modular building that was put together in pieces.

Mr. Coleman asked the staff to clarify the basis for recommending denial.

Mr. Palombo stated that there was no record of any building being on the site. No permit was pulled when the modular building was put there. The City's aerials show there was no building or construction there pre-Katrina or after Katrina.

Mr. Cummings asked why a slab was there if there was no building. He suggested that at some point there was something there. He felt it was pretty far away from the house to have been used as a garage or even a carport.

Mr. Cherry said you could look at the slab from the inside and tell it was old. The bottom part of the block does seem as if it was pre-existing and had been there for years.

Mr. Guess noted that the other buildings on the site were smaller, and they appeared closer to the property line. He asked if they were permitted.

Mr. Palombo said none of the buildings meet the setback requirements, and there were no permits taken out for any of those buildings.

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There being no further discussion, Mr. Cummings entertained a motion.

Mr. Coleman made a motion to grant the variance.

Mr. Cummings asked if there was a second to the motion. There was no second. Motion died for lack of a second.

Mr. Cummings asked if there was another motion.

In further discussion Mr. Coleman asked what would happen if the variance were not granted. Would the building have to be torn down?

Mr. Palombo said it would have to be torn down.

Mr. Lassiter commented that it would be a tremendous hardship if the building had to be removed. This was a 16' x 28' cinder block building, which was 85-90 percent complete. Mr. Lassiter said they felt the building would fit in with the character of everything in the yard, and Mr. Cherry's neighbors had not voiced any objection to his completing the structure, and it would really be an equity to grant Mr. Cherry the variance. Regardless of what he had done in the past, he was trying to rectify the situation now.

Mr. Palombo pointed out a building on the site and asked Mr. Cherry what its purpose was.

Mr. Cherry said it was a hurricane shelter and a storage building.

Asked if he was going to have restroom facilities in the building, Mr. Cherry said no. It was just for storage, and it was built like a fortress.

Mr. Palombo asked how high the building was.

Mr. Cherry said it was 11 feet tall, 16 feet deep and 28 feet long.

Mr. Palombo asked if they were going to provide gutters and downspouts.

Mr. Lassiter said yes.

Mr. Palombo suggested that the Board could grant the variance with a condition of final approval by the zoning inspector before a C.O. is issued.

Mr. Davitt was concerned that a business would be run out of the building.

Mr. Cherry said he promised that there would not be a business run out of it.

After discussion a motion was made by Mr. Davitt and seconded by Mr. Coleman to approve this request for a Side Yard Setback Variance to allow the construction of a 16.6' x 28' storage

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building setback 3.8' from a side property line at the above referenced location subject to the following conditions:

- 1) the provision of gutters and downspouts; and
- 2) that a zoning inspection be done after the building has been completed.

There were four votes in favor of the motion and one opposed. The motion carried.

#5401/4974/4834

(Case #ZON2006-02622)

Celina Segura

1313 South Ann Street

(Northeast corner of Arlington Street and South Ann Street)

Use and Parking Variances to allow a beauty supply shop, and to allow parking and access/maneuvering in the public right-of-way in an R-1, Single-Family Residential District; the Zoning Ordinance requires a minimum B-2, Neighborhood Business for a beauty supply shop, and that parking and access/maneuvering areas be on site.

The site plan illustrates the existing building and parking.

Mr. Cummings noted that the staff had recommended approval subject to full compliance with the landscaping and tree planting requirements of the Ordinance, with the location, number and percentage subject to the approval of the Urban Forester and Planning staff; and that a sign be posted which states that parallel parking only would be allowed to prohibit cars from backing into the right-of-way.

The applicant was in agreement with the staff recommendations, but asked where they would put the tree.

Mr. Daughenbaugh said he would meet with the applicant on the site and determine what type of trees and what would actually fit based upon the existing green space.

Mr. Whistler noted that the recommendation was the same for the past two approvals of this very same site.

The being no further discussion, Mr. Cummings entertained a motion.

A motion was made by Mr. Coleman and seconded by Mr. Davitt to approve this request for Use and Parking Variances to allow a beauty supply shop, and to allow parking and access/maneuvering in the public right-of-way in an R-1, Single-Family Residential District at the above referenced location subject to the following conditions:

- 1) full compliance with the landscaping and tree planting requirements of the Ordinance; location, number and percentages subject to the approval of the Urban Forester and the Planning staff; and
- 2) that a sign be posted which states parallel parking only, to prohibit cars from backing into the right-of-way.

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Mr. Cummings asked if there was anyone present in opposition. There was no one. There being no further discussion, Mr. Cummings called for the vote. The motion carried unanimously.

#5402/4340

(Case #ZON2006-02635)

Pete J. Vallas, A.I.A., Architect

262 Dogwood Lane

(Southeast corner of Dogwood Lane and Stein Avenue)

Rear Yard Setback Variance to allow the construction of a 24' x 39' garage and guest bedroom within 5' of a rear property line; an 8' rear yard setback is required for structures in an R-1, Single-Family Residential District.

The site plan illustrates the existing building, proposed building, paving, and setbacks.

Mr. Cummings asked the applicant if he had seen the staff recommendation.

Mr. Vallas said he had seen the staff recommendations and he concurred with them.

After discussion a motion was made by Mr. Davitt and seconded by Mr. Coleman to approve this request for a Rear Yard Setback Variance to allow the construction of a 24' x 39' garage and guest bedroom within 5' of a rear property line at the above referenced location subject to the following condition:

- 1) the provision of gutters and downspouts on the East side.

The motion carried unanimously.

#5403

(Case #ZON2006-02639)

Corinthis Thomas

1358 Antwerp Street

(Northwest corner of Antwerp Street and Robert E. Lee Street)

Side (Street) Yard Setback Variance to allow construction of an addition to a single-family residence within 11' of the side (Robert E. Lee Street) property line; a 20' side street yard setback is required in an R-1, Single-Family Residential District.

The site plan illustrates the existing building, proposed addition, and building setbacks.

Don Williams, Williams Engineering, was present on behalf of the applicant and concurred with the staff recommendations.

Mr. Cummings asked if there was anyone who wished to speak either in favor or in opposition. There was no one.

There being no further discussion, Mr. Cummings entertained a motion.

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A motion was made by Mr. Guess and seconded by Mr. Davitt to approve this request for a Side (Street) Yard Setback Variance to allow construction of an addition to a single-family residence within 11' of the side (Robert E. Lee Street) property line at the above referenced location.

The motion carried unanimously.

#5404

(Case #ZON2006-02646)

Ashland Place, L.L.C.

2518, 2530, 2534, and 2540 Old Shell Road

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

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

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

A motion was made by Mr. Davitt and seconded by Mr. Guess to holdover this application until the February 5, 2007 meeting.

The motion carried unanimously.

OTHER BUSINESS

Mr. Cummings stated for the record that he had discussed the issue about the supernumerary members with John Lawler. Mr. Lawler said that, technically, five people make a quorum. Four out of those five are required to approve a variance. Only if there is an absence or a recusal amongst the five people would a supernumerary member take their place. Mr. Cummings said he was going to bring this to the City Council's attention. It would have to be changed statutorily in the legislature.

There being no further business, the meeting was adjourned.

APPROVED: March 5, 2007

Reid Cummings, Chairman