

BOARD OF ZONING ADJUSTMENT MINUTES
MEETING OF SEPTEMBER 11, 2006, 2:00 P.M.
MOBILE GOVERNMENT PLAZA, AUDITORIUM

MEMBERS PRESENT

Stephen J. Davitt, Jr., Vice-Chairman
William Guess
Martha Collier
Vernon Coleman
Sanford Davis
J. Tyler Turner, III

MEMBERS ABSENT

Reid Cummings, Chairman

STAFF PRESENT

Margaret Pappas, Deputy Director of
Permitting and Development
Caldwell Whistler, Planner I
David Daughenbaugh, Urban Forestry
Joel Potter, Urban Forestry
Mae Sciple, Secretary II

OTHERS PRESENT

David Roberts, Traffic Engineering
John Lawler, Assistant City Attorney

Vice-Chairman Davitt 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. Coleman and seconded by Mr. Turner to approve the minutes of the August 7, 2006, meeting as submitted. The motion carried unanimously.

HOLDOVERS:

#5368

(Case #ZON2006-01328)

T-Mobile (Messina & Harris, Inc., Owner)

South side of Government Street, 95' ± East of Park Terrace

Height, Setback, and Buffer Separation Variances to allow the construction of a 70' Monopole Telecommunications Tower, setback 6.89' from a lease parcel line, and 6.89' from residentially zoned property; the maximum allowable height is 45', a 70' tower must be setback at least 70' from a lease parcel line, and a minimum separation of 200' (150% of the height of the tower or 200', whichever is greater) is required from residentially zoned property in a B-1, Buffer Business District.

The site plan illustrates the proposed tower location, easement, and lease parcel.

September 11, 2006

David Wilkins, P.O. Box 1406, Mobile, Alabama, was present representing the applicant. Mr. Wilkins said they were in agreement with the staff recommendations.

There being no one else to speak for this application, Mr. Davitt asked if there was anyone present who wished to speak in opposition to this request.

There was no one present in opposition.

After discussion a motion was made by Mr. Coleman and seconded by Mr. Davis to approve this request for **Height, Setback, and Buffer Separation Variances to allow the construction of a 70' Monopole Telecommunications Tower, setback 6.89' from a lease parcel line, and 6.89' from residentially zoned property** at the above referenced location, subject to the following conditions:

- 1) the tower be relocated to the West side of the compound, exact location to be coordinated with the Architectural Review Board;
- 2) the tower not be illuminated;
- 3) the tower be painted in a color to be coordinated with the Architectural Review Board;
- 4) compliance with the Certificate of Appropriateness granted by the Architectural Review Board; and
- 5) full compliance with all municipal codes and ordinances.

The motion carried unanimously.

#5369

(Case #ZON2006-01329)

T-Mobile

2801 Knollwood Drive

(East side of Knollwood Drive, 575'± North of Brierfield Lane)

Use, Height, Setback, Buffer Separation, and Access/Maneuvering Surface Variances to allow the construction of a 150' Monopole Telecommunications Tower, setback 25' from a lease parcel line, setback 25' from residentially zoned property, with a gravel drive and parking; telecommunications towers are allowed only in commercial districts with Planning Approval or industrial districts by right, the maximum allowable height is 35', a 150' tower must be setback 150' from a lease parcel line, a minimum separation of 225' (150% of the height of the tower) is required from residentially zoned property, and access/maneuvering areas for towers must be asphalt, concrete, or an approved alternative paving surface, in an R-1, Single-Family Residential District.

The site plan illustrates the proposed tower location, easement, and lease parcel.

David Wilkins, P.O. Box 1406, Mobile, Alabama, was present representing the applicant. Mr. Wilkins stated that after last month's meeting they met with the property owner and they agreed to move the proposed site towards the middle part of the 5-acre parcel. They were waiting to get the revised site plan, and were in agreement with the recommendation of the staff to hold this matter over until the October meeting.

September 11, 2006

In discussion Mr. Guess asked Mr. Wilkins if the applicant currently had coverage in this area.

Mr. Wilkins said they did not. There was a significant hole in residential in-building coverage and also some along Knollwood Drive for in-vehicle coverage.

There being no one else to speak in favor of this application, Mr. Davitt asked if there was anyone opposed to holding this matter over until the next meeting.

There was no one opposed.

There being no further discussion, Mr. Davitt stated that the application would be held over to the October 2, 2006 meeting.

PUBLIC HEARINGS:

#/5370/5225

(Case #ZON2006-01471)

Bugmaster Exterminators

619 Azalea Road

(North side of Azalea Road, 1,060' ± West of Village Green Drive)

Use Variance to amend a previously approved Use Variance to allow the expansion of a Pest Control Service in a B-2, Neighborhood Business District; the Zoning Ordinance requires a minimum of B-3, Community Business District for a Pest Control Service.

The site plan illustrates the existing buildings, buildings to be removed, proposed building, proposed parking, and proposed retention area.

Frank Alardo, president of Bugmaster Exterminators, was present in this matter. Mr. Alardo said he was before the Board in February of 2004, at which time a Use Variance was approved. They were unable to obtain adequate financing at that time, but they were now ready to proceed.

There being no one else present to speak for this application, Mr. Davitt asked if there was anyone present who wished to speak in opposition.

There was no one present in opposition.

In discussion Mr. Davitt asked if this site was larger than the site that was previously granted a Use Variance.

Ms. Pappas said the site and the building were larger than the previous one.

Mr. Davitt pointed out that the applicant had been at this location for 23 years, and felt that was a pretty good history to support this request.

It was also noted that this was a B-3 use, and another B-3 use could come in later if Mr. Alardo left this location.

September 11, 2006

After discussion a motion was made by Mr. Turner and seconded by Ms. Collier to deny this request for a **Use Variance to amend a previously approved Use Variance to allow the expansion of a Pest Control Service in a B-2, Neighborhood Business District** at the above referenced location.

The vote was two in favor of the motion and four in opposition. The motion failed to carry.

A motion was then made by Mr. Davis and seconded by Mr. Coleman to approve this request for a **Use Variance to amend a previously approved Use Variance to allow the expansion of a Pest Control Service in a B-2, Neighborhood Business District** at the above referenced location.

The vote was four in favor of the motion and two in opposition. The motion carried.

#5371

(Case #ZON2006-01666)

Complete Signs

(North side of Airport Boulevard, 680'± East of East I-65 Service Road South)
Sign Variance to allow a third wall sign (87 square feet) for a business on a single tenant site; the Zoning Ordinance allows a maximum of two wall signs on a single tenant site.

The site plan illustrates the proposed building, parking, and drives.

Brian Lumbatis, with Complete Signs, was present in this matter. Mr. Lumbatis explained that they currently had two signs, in addition to a painted mural. They considered the mural to be an architectural element of the building to convey the character of Raising Cane's, rather than a third sign, and it was very important to them. The mural was hand-painted and externally illuminated. Their main sign was over the entrance, and they had a sign above the pick-up window. Mr. Lumbatis said many cities did not count painted murals as signs. They were doing several jobs at this particular time, and he evidently got it confused and did not realize the City of Mobile was going to count the mural as a sign. They were requesting this variance to allow the mural to remain.

In discussion Mr. Turner asked how many of their franchise stores across the gulf coast were like this particular building.

Mr. Lumbatis said they were on their 50th store, and this image started at store #9.

Asked if the signs varied from city to city, Mr. Lumbatis said the size does vary. Some cities allow the mural, but in a reduced size. Some cities do not count painted murals as signs because they are not an attached element. They are considered an architectural element.

There being no one else to speak for this application, Mr. Davitt asked if there was anyone present who wished to speak in opposition.

There was no one to speak in opposition.

September 11, 2006

In administrative session Mr. Coleman asked if the coverage area of the mural was appropriate to what would be allowed as a second sign.

Ms. Pappas said it depended on what they determined to do, and discussed their options.

Reference was made to the recent request for Blu Rabbit's. Mr. Whistler said that in the case of Blu Rabbit's, they were allowed one wall sign because they were in a multi-tenant site. This was a stand-alone site and they were allowed three signs total. They could have one free-standing sign and two wall signs, or no free-standing sign and three wall signs. The applicant currently had a free-standing sign in front of the building.

Mr. Davitt raised a question regarding the poles along the top of the façade, which the staff indicated could be used for flag poles or a logo.

Mr. Lumbatis explained that it was part of the architectural package of the original design of Raising Cane's that they would either have Cain's flags on those poles or they would have a state flag and alternate with an American flag, depending on the code. He did not think Mobile's code allowed that, although he did see one American flag and one state flag there today.

Mr. Whistler clarified that they could have flags as long as they were not of any advertising nature. The code would allow state, national or municipal flags.

Mr. Davitt said the applicant should be aware that if this request were denied, they would be required to remove one of the attached signs.

Ms. Pappas said he should also be aware that another option would be to keep the existing wall signs, but remove the free-standing sign.

Mr. Lumbatis said he understood, but removal of the free-standing sign would not be an option because it was very expensive and was a very key element of the whole sign package. He also understood they could appeal the Board's decision.

After discussion a motion was made by Mr. Davis and seconded by Mr. Turner to **deny** this request for a **Sign Variance to allow a third wall sign (87 square feet) for a business on a single tenant site** at the above referenced location.

The motion carried unanimously.

This decision was based on the fact that insufficient evidence was presented that the Zoning Ordinance caused an unnecessary hardship to the property, and as such, the Board is without authority to grant a variance.

#5372

(Case #ZON2006-01633)

Barbara G. Giddens

200 South Dearborn Street

September 11, 2006

(Southwest corner of South Dearborn Street and Monroe Street)

Side Yard Setback Variance to allow the construction of a 6' tall wooden privacy fence along the Monroe Street (side street) property line; a 10'-6" side yard setback is required along a side street (Monroe Street) for a 55'-wide lot in an R-1, Single-Family Residential District.

The site plan illustrates existing fences, building, and proposed fence.

Barbara Giddens, 200 S. Dearborn Street, applicant, stated that while having her privacy fence repaired they ran into some problems which resulted in their moving the fence closer to the sidewalk. She explained that some of the 4 by 4 fence posts were in bad condition and they were going to dig them up and put in new ones, but they were set in 18-20 feet of concrete. They decided to cut those off, but then ran into problems with the roots from the Oak tree. Ms. Giddens said she did not want to damage the roots of the tree, so they moved the fence closer to the sidewalk. She also changed the gate, which originally opened onto the sidewalk. They made it a sliding gate so when it was open it would not block the sidewalk.

There being no one else to speak for the application, Mr. Davitt asked if there was anyone present who wished to speak in opposition.

There was no one to speak in opposition.

Mr. Davitt noted that the application was recommend for approval subject to three conditions, which he read, and asked Ms. Giddens if she could comply with those conditions.

Ms. Giddens said she could comply.

Mr. Davitt asked Mr. Roberts if Traffic Engineering had been out to look at this fence and the line-of-sight.

Mr. Roberts said Traffic Engineering had conducted an on-site investigation and found that there were some line-of-sight problems with the fence as it existed for entrance into the street from the subject property. Traffic Engineering was concerned about the pedestrian factor.

Ms. Giddens said she could see better now that she did not have the gate opening onto the sidewalk than she could before.

Mr. Davitt asked Mr. Roberts what type of modifications to the fence he would envision.

Mr. Roberts said Traffic Engineering would probably have to work with Urban Forestry to come up with something to accommodate the Oak tree.

After discussion a motion was made by Ms. Collier and seconded by Mr. Davis to approve this request for a **Side Yard Setback Variance to allow the construction of a 6' tall wooden privacy fence along the Monroe Street (side street) property line** at the above referenced location, subject to the following conditions:

September 11, 2006

- 1) coordination with and approval of Traffic Engineering for modifications to the fence in the driveway area to create better line-of-sight along the sidewalk;
- 2) coordination with Urban Forestry to minimize any damage to the Oak tree root system during any required modifications; and
- 3) the obtaining of a revised Certificate of Appropriateness from the Architectural Review Road.

The motion carried unanimously.

#5373

(Case #ZON2006-01579)

Greater Macedonia Baptist Church

1350 Chinquapin Street

(South side of Chinquapin Street, extending to the North side of Chisam Street, 80'± West of Peach Street)

Use Variance to allow 21 off-site parking spaces for the expansion of a church parking lot; the Zoning Ordinance requires all parking to be on-site for a church in an R-1, Single-Family Residential District.

The site plan illustrates the existing buildings, parking, along with the proposed buildings, and parking.

Reginald Haston, of 4838 Pine Ridge Drive, Eight Mile, Alabama, was present representing the applicant. Mr. Haston said the church was planning an addition and was required to provide additional parking spaces. They had 19 on-site spaces, and were requesting a variance for an additional 21 spaces on church property across the street from the church, where the majority of the spaces have been existing and in use for over the last 30 years. They were required to have a total of 40 parking spaces.

Mr. Davitt stated that the staff had recommended approval of the Variance subject to getting the necessary approvals from the Planning Commission, and compliance with any conditions that come out of that approval.

Mr. Haston said the church would comply with any conditions required.

There being no one else to speak for the application, Mr. Davitt asked if there was anyone present who wished to speak in opposition.

There was no one present in opposition.

After discussion a motion was made by Mr. Coleman and seconded by Mr. Guess to approve this request for a **Use Variance to allow 21 off-site parking spaces for the expansion of a church parking lot** at the above referenced location, subject to the following condition:

- 1) the applicant obtain the necessary approvals from the Planning Commission, and compliance with any conditions thereof.

The motion carried unanimously.

September 11, 2006

#5374

(Case #ZON2006-01639)

Derek L. Kent

4101 Point Road

(Southeast corner of Point Road and Cypress Shores Drive)

Side Yard Setback Variance to allow the construction of an 8'-high wooden privacy fence along the Cypress Shores Drive (side street) property line; a 20' side yard setback is required along a side street (Cypress Shores Drive) in an R-1, Single-Family Residential District.

The site is surrounded by single-family residential units.

Derek Kent, 4101 Point Road, applicant, was present in this matter. Mr. Kent explained that he had a side yard at the corner of Cypress Shores Drive and Point Road. He had Mobile Fence Company remove a chain link fence and replace it with an 8-foot privacy fence down most of the side yard, because the side yard was down in a lower area than the street. He had a 6-foot fence constructed along the front of the property. Mr. Kent said that when the 8-foot fence was first constructed where the chain link fence had been, the privacy fence was blocking the view from the stop sign at Point Road. Traffic Engineering suggested they set the fence back 21 feet on the front and 30 feet on the back, and cut that corner off. Mr. Kent said they had done that and the visibility now seemed to be acceptable. He pointed out how the property sloped down lower than the road, and that was the reason for installing the 8-foot fence. It blocked the view of the inside of his garage and his back porch from the road. He related that he had a lawnmower and tools stolen from his garage, and this fence would give him some privacy. He requested a variance to allow him to keep the existing fence where it was because if he moved it, it would cut off access to his garage and his driveway.

There being no one else to speak for this application, Mr. Davitt asked if there was anyone who wished to speak in opposition.

There was no one present in opposition.

Mr. Davitt asked Mr. Kent if he had seen the staff recommendations, and if he was okay with coordinating with Traffic Engineering on any modifications deemed necessary.

Mr. Kent said he had already talked with Traffic Engineering and had already moved the fence as recommended.

Mr. Davitt asked Mr. Kent if he was agreeable with recommended condition #2, which required verification by re-survey that the fence was indeed on the subject property and not in the City right-of-way, and if in the City right-of-way, it be moved onto private property.

Mr. Kent said he was not aware of that condition. He said the new fence was located in the same place as the chain link fence had been, and he always thought it was on the property line.

Regarding the third condition requiring an after-the-fact fence permit, Mr. Davitt asked if Mobile Fence was aware that a permit was required.

September 11, 2006

Mr. Kent said he asked Mobile Fence about permits, and was told that a permit was not required.

Mr. Davitt asked if the Land Use Section could send a letter to Mobile Fence requesting that in the future they make sure they have a fence permit.

Mr. Pappas said the Permitting office could send Mobile Fence a letter outlining the permitting requirements of the City of Mobile.

After discussion a motion was made by Ms. Collier and seconded by Mr. Coleman to approve this request for a **Side Yard Setback Variance to allow the construction of an 8'-high wooden privacy fence along the Cypress Shores Drive (side street) property line** at the above referenced location, subject to the following conditions:

- 1) coordination with and approval of Traffic Engineering on any modifications deemed necessary to eliminate any line-of-sight visibility concerns;
- 2) verification by re-survey that the fence is indeed on the subject property and not in the City right-of-way, and if in the City right-of-way, it be moved onto private property; and
- 3) the obtaining of an after-the-fact fence permit.

The motion carried unanimously.

#5375/4874/1196

(Case #ZON2006-01630)

Richard K. Miles, Sr.

1504 Lois Drive

(North side of Lois Drive, 85'± West of Lartigue Drive East)

Use and Front Setback Variances to allow a 16' x 80' mobile home, setback 14' from the front property line; mobile homes are only allowed in R-1, R-2, R-3, and B-1 districts with Planning Approval, and a 25-foot front setback is required in all zoning districts.

The plan illustrates proposed building, existing buildings, fences, drive, easement and building setback line.

Richard K. Miles, Sr., applicant, 1504 Lois Drive, was present in this matter. Mr. Miles said he was requesting a Variance that would allow him to put his 16' x 80' mobile home back on the property where it had originally been located. He noted that the staff's recommendation to allow the mobile home recommended a 25-foot setback as required by the Zoning Ordinance. Mr. Miles said there were two problems with that. He pointed out that the mobile home was now sitting in the exact same location it had originally set, and there was a concrete slab that was right at the front door that made a porch. If he had to move the mobile home back, it would shift that whole concrete slab where he would not be able to put the porch back where it was. In addition, Mr. Miles said he had an existing structure near the back side of the mobile home, and moving it back would decrease the space he had between that structure and the mobile home to gain access to his back yard. That would also significantly decrease the area he had for a back yard.

September 11, 2006

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

Mr. Guess asked if the mobile home currently on the site was the same size as the mobile home that was previously on the site.

Mr. Miles said it was the same mobile home and it was in the exact same spot that it was originally. He explained that several years ago he had to move his family to Mississippi and moved the mobile home there for several years until they got adjusted. His son was now attending college in Mobile, so they moved the trailer back here so the son would have a place to live. Also, Mr. Miles said he may soon have an opportunity to move back to Mobile with the same job, so that was why they put the mobile home back where it was on the lot.

Mr. Davitt asked if the previous mobile home was on wheels.

Mr. Miles said it was skirted and on blocks. The wheels had been removed.

Mr. Davitt asked if utilities had been connected.

Mr. Miles said electricity and water had been connected.

Mr. Davitt asked if, now that they were back, they were going to remove the wheels.

Mr. Miles said the wheels had already been removed. It was blocked and strapped. He said he had someone move the mobile home for him and he had no idea about the need to get a Variance. He thought the man he hired to move it was taking care of everything. A storm tore down the power pole that was previously there, and when the gentleman went to get a power pole set up, he was informed that they would need a Variance.

Mr. Davitt noted that the mobile home was originally grandfathered-in. The mobile home was gone for two years, so he lost the non-conforming use status.

There being no one else to speak for this application, Mr. Davitt asked if there was anyone present who wished to speak in opposition.

There was no one present in opposition.

After discussion a motion was made by Mr. Turner and seconded by Mr. Davis to approve this request for **Use and Front Setback Variances to allow a 16' x 80' mobile home, setback 14' from the front property line** at the above referenced location.

The motion carried unanimously.

#5376

(Case #ZON2006-01642)

The Museum of Mobile

111 South Royal Street

(Northeast corner of South Royal Street and Church Street)

September 11, 2006

Sign Variance to allow six projecting, bracket-mounted, double-faced banner signs with a total of 390 square feet; a maximum of 64 square feet of signage is allowed per business in historic districts.

The site plan illustrates the existing buildings and proposed sign location.

Elyse Marley was present representing the applicant. Ms. Marley said they would like to attach banners to the front of the building to bring attention to the building so people would realize that it was a museum and where it was located. Currently the trees on Royal Street obscured the view of the building, and they could not put anything on the front of the building that would bring attention to it.

In discussion Mr. Coleman asked what the banners would say.

Ms. Marley said it would be a combination of a series, and several of the banners would say "The Museum of Mobile". Two of the banners would be reserved to bring attention to any traveling exhibit that they have.

Mr. Daughenbaugh asked if the existing trees would require trimming for the installation of the banners.

Ms. Marley said they would not.

There being no one else present to speak for the applicant, Mr. Davitt asked if there was anyone present who wished to speak in opposition to the request.

There was no one present in opposition.

Mr. Guess asked if this sign would be comparable to the sign for the Saenger that was approved not long ago.

Ms. Pappas said that was a marquee, both sides of which totaled 120-140 square feet.

After discussion a motion was made by Mr. Turner and seconded by Ms. Collier to approve this request for a **Sign Variance to allow six projecting, bracket-mounted, double-faced banner signs with a total of 390 square feet** at the above referenced location, subject to the following condition:

- 1) compliance with the Architectural Review Board's Certificate of Appropriateness.

The motion carried unanimously.

#5377/3885

(Case #ZON2006-01632)

Lee D. Peacock

6015 Cottage Hill Road

(South side of Cottage Hill Road, 195'+ East of Spring Creek Circle)

Use and Access/Maneuvering Variances to allow professional offices in an R-1, Single-

September 11, 2006

Family Residential District, a substandard (9-foot) wide access drive, and a 10-foot wide maneuvering area; professional offices are allowed within a minimum of a B-1, Buffer Business District, a 12' wide drive for a one-way drive, and 24-foot maneuvering area are required.

The site plan illustrates existing building, drives and property easements.

Doug Anderson, with the law firm of Bowron, Latta and Wasden, was present representing the applicant. Mr. Anderson noted that before the meeting he provided each of the members with a packet of information containing photos of the site and the surrounding property. He described each photo, one by one. Mr. Anderson explained that in 1984 his client received approval from the City to operate this State Farm Insurance business as a home occupation. At that time his client and his wife lived in the house and were using part of it for his business. There were certain conditions required at the time in order to use the house for his business, and Mr. Anderson said Mr. Peacock was still in compliance with all four of those conditions, except that he did not still reside in the house. He and his wife moved out after about three years, but continued to use the house for his State Farm Insurance office. They were still in compliance with the 25 percent maximum coverage for the business. The house was 1870 square feet, and Mr. Peacock used two rooms for his office, which was 431 square feet. Only family members - he and his wife - worked in the office. There were no outside employees coming and going on a daily basis. Mr. Anderson noted that there were no signs on the property, as evidenced by the photos submitted, and Mr. Peacock still had an average of about three clients or customers per day coming to the site. They had been inspected five or six times over the years by a City inspector and never had any problems until recently when Mr. Peacock received a citation to go to environmental court for being in violation of the Zoning Ordinance because he was no longer residing in the residence. Mr. Anderson said that was when he applied for a variance. He said it was their position that this structure at this location was no longer suitable to actually live in as an R-1 structure. Mr. Anderson said since 1984 when the home occupation exception was granted, everything West of this site had been developed tremendously. Between this property and Hillcrest Road there were shopping centers and fast food restaurants. Cottage Hill Road was now a heavily congested, five-lane road. With the increased traffic and noise level, and the commercial development in the area, especially to the West, Mr. Anderson contended that this house was no longer usable as a single-family residence. Mr. Anderson said his client planned to retire within the next 15-18 months, and at that time his practice would go back to State Farm and they would reassign his customers to another agent. It was his understanding that this Variance would then go away and would not transfer to whomever buys the house. Pursuant to the home occupation exception granted 22 years ago, and the fact that Mr. Peacock was going to retire in 15-18 months, Mr. Anderson asked that the Board grant this Variance which would allow him to continue this use. He noted that there was no opposition to this request from any of the neighbors. Regarding the staff's comments about parking spaces not being there, Mr. Anderson said the pavement was there for parking. There were two curb cuts and there were aprons on both sides of the sidewalk. They could easily go out there and paint some parking stripes so those could be designated as parking spaces. Mr. Anderson thanked the Board, and said Mr. Peacock was present and would like to comment.

Lee Peacock, applicant, stated that he had two residences. He had one at 6015 Cottage Hill Road, and one at 7030 Luverne Drive, and they did live at both of them at different times. They stayed at the address on Luverne Drive more than the one on Cottage Hill Road. Mr. Peacock

September 11, 2006

said he was 67 years old and would like to retire, and if he could get 15 months or so that would help him a whole lot.

In discussion Ms. Collier noted that the vicinity map indicated the existing zoning, and this site was right in the middle of residential homes. Although there was no one from the neighborhood present today, she wondered how the neighbors felt about this request.

Mr. Anderson said most of those neighbors were customers of Mr. Peacock.

Ms. Collier also pointed out that there were sidewalks in front of the property, which made it a beautiful place for a family to live.

Mr. Anderson disagreed. He pointed out that this site was on a major thoroughfare with 18-wheeler traffic, and there was no way a family with any children would dare buy this property. He again noted the development between Knollwood Drive and Hillcrest Road, and did not believe you could find any house located directly on Cottage Hill Road that had re-sold in the last few years since all this development had taken place. He also felt that this property could not be sold as R-1 property.

Ms. Collier said it appeared to her to be a neighborhood.

Mr. Anderson said Ms. Collier was entitled to her opinion, but he did not feel anyone would want to raise a family on this property with a drainage ditch to the side and behind the site, and a five-lane road to the North.

Mr. Davitt asked if there was going to be anyone else living in the house.

Mr. Anderson said in the next 15 months, there would probably be no one living in the house. The applicants did not live in the house at this time. That was the reason they received the citation a few months ago.

Mr. Davitt asked if there would be any signs placed on the property.

Mr. Anderson said there never had been, and never would be.

Mr. Guess asked if there would be any additional employees.

Mr. Anderson said there would be no additional employees. It would be just he and his wife, just like it had been for the past 22 years.

Regarding the restriction that allowed a maximum of 15 clients a week to visit the site, Mr. Davitt asked if that was still accurate.

Mr. Anderson said yes. They had been operating under those four restrictions for the last 22 years, and they would still agree to abide by all of them.

Mr. Davitt asked if it was correct that there were no clients coming to the house to conduct any business.

September 11, 2006

Mr. Anderson said Mr. Peacock had no walk-in traffic, because he had no sign. He had two or three clients a week who came to his office to pay their bills, but he had absolutely no walk-in traffic.

Mr. Davitt asked if there was anyone present who wished to speak in opposition to this request.

There was no one present in opposition.

In administrative session Mr. Guess said he lived fairly close to the subject property and he had observed that the subject home appeared to be one of the closest homes to Cottage Hill Road, which was extremely busy. He said he was not necessarily in favor of more businesses coming into the area, but with the restrictions on the use he would feel very comfortable with that. He noted that most of the properties had shrubs or some other barrier to protect them from street noise, or had a larger setback, whereas this one did not.

Ms. Collier said it still appeared to be some place where a family could live, especially being close to the church.

Mr. Guess said that based on the traffic, he would not live there. He also noted that the applicant had the required parking.

With regard to the sidewalk, Mr. Anderson said the sidewalk he referenced in his photos was Mr. Peacock's sidewalk from the street to his front door. There was no sidewalk along Cottage Hill Road on this side of the street. There was a sidewalk on the North side of Cottage Hill Road.

Mr. Collier said the sidewalk she referenced was in photo #4.

Mr. Davitt said that was on the North side of the street. Mr. Davitt said there was valid concern about this still being very much a residential area.

Ms. Collier agreed, and felt they must save this house for residential use.

Mr. Davitt referred to what Mr. Anderson said earlier about a variance staying with the house until it is sold.

Mr. Anderson said he understood that a Variance was not permanent. It was granted for a particular use, and if the owner transferred the property, the Variance would not go with the property.

Mr. Lawler explained that a Variance is granted for the property and not for the individual. If the applicant closes down his business, this property has a Variance that someone could step into and use for the exact thing with the same kind of conditions. A Variance flows with the land. As a practical matter, however, Mr. Lawler said what Mr. Anderson was saying was true. It was unlikely this situation would occur.

September 11, 2006

Mr. Davitt asked Mr. Peacock if, within that 15-18 month time frame, he was looking at closing the business down, or would he in essence sell it to another agent who would continue the business.

Mr. Peacock said he would close it down. State Farm would take the business back and assign it to other agents.

Mr. Anderson noted that Mr. Peacock would have to give State Farm 12 months notice of retirement. So, if, worst case scenario the Board gave him 12 months, he could give the notice today and in 12 months be gone. But even before this came up, his intent was to work another 15-18 months.

Mr. Davis commented that longevity has its rewards, and this gentleman was just trying to make it to retirement after having served his community down through the years.

After discussion a motion was made by Mr. Davis and seconded by Mr. Coleman to approve this request for **Use and Access/Maneuvering Variances to allow professional offices in an R-1, Single-Family Residential District, a substandard (9-foot) wide access drive, and a 10-foot wide maneuvering area** at the above referenced location, subject to the same conditions that were on the home occupation.

Mr. Davitt asked what those conditions were.

Ms. Pappas said the conditions would essentially be that the activity would take place entirely within the dwelling using 25 percent or less interior space. Also, only the people that live there could work in the dwelling, but that would of course be stricken by this variance. Further, no signs could be placed on the site, and Mr. Peacock would be allowed a maximum of 15 clients per week. Ms. Pappas asked if the Board wished to stipulate, as was essentially outlined in #2, that there would only be two employees at the business.

Mr. Davis said yes. He thought the applicant had agreed to that.

Ms. Pappas agreed.

Mr. Turner questioned how they could enforce limiting clients to 15 per week in the event of a natural disaster.

Mr. Lawler commented that some of these things might be a little bit difficult to enforce sometimes, but if the City received reports that there was just an absolute traffic jam at the house every day, someone could taken action to stop it.

After further discussion it was agreed that rather than limiting clients to 15, the condition should be not to allow any business traffic to the residence.

Mr. Davis agreed.

Ms. Collier asked how this house would be listed on the market at the time the applicant decided to sell it after 18 months.

September 11, 2006

Mr. Davitt said he would list it as single-family residential.

After discussion Mr. Davis amended his motion and Mr. Coleman his second to approve this request for **Use and Access/Maneuvering Variances to allow professional offices in an R-1, Single-Family Residential District, a substandard (9-foot) wide access drive, and a 10-foot wide maneuvering area** at the above referenced location, subject to the following conditions:

- 1) that the commercial activity be limited to a maximum of 25 percent of the interior of the existing residence;
- 2) that there be no signs placed on the site;
- 3) that the business be limited to two employees; and
- 4) that there be no customer traffic to and from the residence.

The vote was five in favor of the motion, and one opposed. The motion carried.

#5378

(Case #ZON2006-01638)

Wade Wright

2524 Daniels Road South

(West side of Daniels Road South, 700'+ South of Merry Lane)

Side Yard Setback and Combined Side Yards Variances to allow the construction of a 24.6' x 11.5' bedroom/bath addition to a single-family dwelling to within 3.4' of a side (North) property line with a combined side yards total of 10.4'; a 10.4' side yard setback and a combined side yards total of 20' is required in an R-1, Single-Family Residential District.

The site plan illustrates proposed addition, existing buildings, and drainage easement.

Wade Wright, applicant, stated that he both resided in and owned the subject property. He explained that the house was flooded and damaged extensively in Hurricane Katrina. When he went to pull the permit to repair the damage, he also decided that it would be a great time to do an addition to the existing bedroom going straight back in a line. Unknown to them, Mr. Wright said the house actually sat on the north side on a zero-lot-line. This was a huge piece of property and was actually in the County at the time the house was built. He did not understand why the house was built to one side of the lot. He noted, however, that there was an adjoining 10-foot piece of property, which has been called an easement, that was supposed to have been deeded back into lot 15 on which this house sits. That 10-foot piece of property goes from Daniels Road down to the canal for a distance of approximately 286 feet. Mr. Wright said he had been using it as part of his yard, as did the previous owner. There was a chain link fence on the opposite side of the property that was there when they bought the house. He said they would be building away from the property line, not building towards it or even going parallel to it. At its starting point the addition would be about 3 1/2 feet away from the property line, and angling to about 4 1/2 feet at the end of it. Mr. Wright said he had spent a considerable amount of time and money trying to determine who actually owns the referenced 10-foot easement. Guarantee Title determined that it was still owned by the subdivision. After extensive research by another title company, they guessed that it was still under the ownership of the Atco Corporation, which was dissolved in about 1984. So, therefore, it has floated to one of several members of the Tonsmeire family. They had written Skipper Tonsmeire, executor of some, but not all, of the

September 11, 2006

property, but had not received a response. Mr. Wright said his family had been out of the house since August 29 of last year, and would like to get these repairs and the addition under way so they could get back in the house. The requested variance would allow them to proceed.

Mr. Davitt asked Mr. Wright if he was aware of the staff's recommendation.

Mr. Wright said he was aware of the recommendation, and he understood what the Ordinance said, but he thought this was an oddball deal. His surveyor, the title company, and his attorney all said that it appeared the 10' easement was supposed to have been deeded back into lot 15. It was just a 10' x 270' piece of no-man's land right now, and he did not want to build on it. He simply wanted to keep the straight line of the house going back as it was.

Mr. Davitt asked if he understood correctly that the addition would be built in-line.

Mr. Wade said the existing house sits on the zero-lot-line, and with the way it was angling, the addition would be going away from the property line.

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

Mr. Turner asked if the property sloped from Daniels Road back to the canal.

Mr. Wright said yes. There was a culvert under the piece of property in question and it did slope some.

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

There was no one to speak in opposition.

In administrative session Mr. Guess commented that it seemed that the applicant had gone to great efforts to try to be in compliance.

There was further discussion among several of the members. It was asked when the house was built.

Ms. Pappas said the house was probably built prior to annexation into the City. She further pointed out to the Board that until, if ever, that 10-foot drainage area was either incorporated into this property or the other property, there would always be at least 10 feet of separation between structures on this site and structures on the other lot.

Mr. Guess asked if the City maintained the drainage, and was there a drainage culvert there.

Mr. Whistler said he believed the City did maintain the drainage, pointing out in the photographs that there was an inlet, the street, and that was shown as a drainage point on one of the City's GIS layers.

September 11, 2006

Mr. Pappas also noted that while the City may not own the real estate, just the drainage easement, the City would not allow any construction to occur within that easement, or they typically do not, especially over any improvements such as culverts.

Mr. Davitt asked Mr. Lawler if Mr. Wright had standing to take this to court to be able to determine ownership of the property and to get it resolved.

Mr. Lawler said yes. He felt Mr. Wright probably had as good a claim to it as anyone else would.

Mr. Guess asked who maintained the easement.

Mr. Wright said that he maintained it. It was part of his yard, and was fenced in as part of his yard when he bought the property.

After discussion a motion was made by Mr. Guess and seconded by Mr. Davis to approve this request for **Side Yard Setback and Combined Side Yards Variances to allow the construction of a 24.6' x 11.5' bedroom/bath addition to a single-family dwelling to within 3.4' of a side (North) property line with a combined side yards total of 10.4'** at the above referenced location.

In further discussion Mr. Davitt asked if Mr. Guess, in his motion, wanted to require the applicant to go ahead and try to resolve the ownership issue on this.

Mr. Guess said he felt the applicant had made a great effort already, and he did not wish to make that a condition of approval.

Mr. Davitt called for the vote. The vote was five in favor of the motion and one in opposition. The motion carried.

OTHER BUSINESS

There being no further business, the meeting was adjourned.

APPROVED: November 6, 2006

Stephen J. Davitt, Jr.
Vice-Chairman

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