

MOBILE CITY PLANNING COMMISSION MINUTES
MEETING OF JANUARY 20, 2011 - 2:00 P.M.
AUDITORIUM, MOBILE GOVERNMENT PLAZA

Members Present

Terry Plauche, Chairman
William G. DeMouy, Jr.
Victoria L. Rivizzigno, Secretary
Stephen J. Davitt, Jr.
Mead Miller
Roosevelt Turner
John Vallas
James F. Watkins, III

Members Absent

Nicholas H. Holmes, III
Herb Jordan

Urban Development Staff Present

Richard L. Olsen,
Deputy Director of Planning
Bert Hoffman,
Planner II
Caldwell Whistler,
Planner I
David Daughenbaugh,
Urban Forestry Coordinator
Joanie Stiff-Love,
Secretary II

Others Present

John Lawler,
Assistant City Attorney
John Forrester,
City Engineering

Capt. Billy Roach,
Fire Department
Capt. Larry Taite,
Fire Department

The notation *motion carried unanimously* indicates a consensus, with the exception of the Chairman who does not participate in voting unless otherwise noted.

Mr. Plauche stated the number of members present constituted a quorum and called the meeting to order, advising all attending of the policies and procedures pertaining to the Planning Commission.

HOLDOVERS:

Case #SUB2010-00123 (Subdivision)

Regatta Vita Subdivision

4603 Park Road
East side of Park Road at the East terminus of Alba Avenue
Number of Lots / Acres: 4 Lots / 1.1± Acres
Engineer / Surveyor: Gerald A. Smith Surveyor
Council District 3

The Chair announced the matter had been recommended for denial, however, if there were those who wished to speak on the matter to please do so at that time.

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Gerald A. Smith, surveyor for the project, spoke on behalf of the applicant and requested that the matter be held over.

Hearing no opposition or discussion, a motion was made by Mr. Plauche, with second by Dr. Rivizzigno, to hold the matter over until the February 17, 2011, meeting, at the applicant's request.

The motion carried unanimously.

Case #ZON2010-02744

Lily Baptist Church

358 Kennedy Street

Northwest corner of Basil Street and Harrison Street, extending to the East side of Kennedy Street, 90'± South of Lyons Street

Planning Approval to allow expansion of an existing church in an R-2, Two-Family Residential District.

Council District 2

Mr. Turner recused himself from discussion and voting on the matter.

The Chair announced the matter was recommended for holdover, but if there were those present who wished to speak to please do so at that time.

The following people spoke on behalf of the matter:

- Richard Davis, Lily Baptist Church; and,
- Carlos Gant, 919 Dauphin Street, Mobile, AL, Mos Designs, LLC, architect for the project.

They made the following points in favor of approving the matter that day:

- A. noted they were seeking approval pending a favorable outcome from their meeting with the Board of Zoning Adjustment;
- B. presented a copy of the current floor plan for the church; and,
- C. noted they were only adding two bathrooms to the building and based on the layout of the church, the bathrooms needed to be physical additions to the exterior of the building to prevent parishioners from walking through the church during services if they needed to utilize those facilities.

Mr. Olsen advised the Commission that earlier in the week the applicants had met with the staff and had explained that the issue was the existing layout of the church and the connection to the addition created a problem where people would have to go through the sanctuary. He added that as a result of that information, the staff had created condition for approval and the read the following into the record:

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- A. successful application for a setback variance to allow encroachment into the 25-foot setback;
- B. successful application for a parking ratio variance to allow fewer parking spaces than required; and,
- C. full compliance with all other municipal codes and ordinances.

Mr. Watkins noted that this would allow the applicant to get past this process and move on to approval from the Board of Zoning Adjustment.

The Chair asked if the applicant understood the recommendations and was in agreement with the same.

Mr. Gant stated they were.

Hearing no opposition or further discussion, a motion was made by Mr. Watkins, with second by Mr. Davitt, to approve the matter, subject to the following conditions:

- 1) **successful application for a setback variance to allow encroachment into the 25-foot setback;**
- 2) **successful application for a parking ratio variance to allow fewer parking spaces than required; and,**
- 3) **full compliance with all other municipal codes and ordinances.**

The motion carried unanimously.

Case #SUB2010-00133 (Subdivision)

Old Shell Road at MIB Subdivision

1810, 1812 and 1814 Old Shell Road

North side of Old Shell Road, 200'± West of Mobile Infirmiry Boulevard, extends to the West side of Mobile Infirmiry Boulevard, 395'± North of Old Shell Road

Number of Lots / Acres: 1 Lot / 3.1± Acres

Engineer / Surveyor: Rester and Coleman, Inc.

Council District 1

(Also see **Case #ZON2010-02740 (Planned Unit Development) Old Shell Road at MIB Subdivision**, **Case #ZON2010-02739 (Planning Approval) Old Shell Road at MIB Subdivision**, and, **Case #ZON2010-02741 (Rezoning) Ernest Construction, LLC**, below)

Mr. Vallas recused himself from discussion and voting on the matter.

The Chair announced the matter had been recommended for denial, however, if there were those who wished to speak on the matter to please do so at that time.

B.T. Roberts, president, Roberts Brothers Commercial Management, 3664 Dauphin Street, Mobile, AL, spoke on behalf of the project and made the following points in favor of its approval:

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- A. noted that the property was a one lot subdivision composed of approximately 3 acres;
- B. noted that the one lot had three separate zoning classifications, which was the impetus for the request for the single zoning classification of B-2 for the entire lot;
- C. noted the belief that the property also existed as a non-conforming use and the rezoning would bring it into a conforming status;
- D. noted the belief that the staff's recommendation for denial was based upon the applicant not getting all of their information into the staff for review, primarily the narrative regarding plans for the property;
- E. felt that the lack of the narrative created a misunderstanding as there really was nothing planned for the property at this time; and,
- F. read their narrative, which stated "Ernest Construction, LLC, is the current owner of subject property and is the applicant to have their property on Old Shell Road and Mobile Infirmary Boulevard fully zoned B-2. Their single lot property currently has three different zoning classifications, although it is clearly being used for retail and other commercial uses at present. The property contains concrete and metal structures being used for retail, office, warehousing, storage, and cell tower uses. The property is currently under contract by Infirmary Health System, who owns the property to the north and to the east, but neither the applicant nor the prospective purchasers have any concrete plans at this time for the development or the change of use for the property. The prospective purchaser is considering potential future uses for the property, but when that has been determined or put more in final form, they will come back and work with your office to receive the additional approvals that will be required. At this time, it is the desire of both parties to eliminate the existing split zoning and attain the uniform B-2 classification for this single lot of commercial property."

Mr. Watkins asked if the staff had any conditions for approval to recommend at that time.

Mr. Olsen stated the staff had prepared such, however, he also reminded the Commission that at the previous meeting where the matter had been heard, a neighbor had come with concerns regarding the potential of redeveloping/"drop and swap" of the existing cell tower on the site. He reminded the Commission that they had specifically asked for information regarding such. He noted that information had not been submitted and in as much the staff felt they had no recourse but to deny the matter. He did, however, state the following as approval conditions for the Subdivision:

- A. retention of the lot area size, in square fee, on the Final Plat;

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- B. retention of the 25-foot minimum building setback line along all public rights-of-way;
- C. placement of a note on the Final Plat stating that the lot is limited to one curb-cut to Old Shell Road and one curb-cut to Mobile Infirmary Boulevard, with the size, design, and exact location of all curb-cuts to be approved by Traffic Engineering and conform to AASHTO standards; and,
- D. placement of a note on the Final Plat stating that development of the site must be undertaken in compliance with all local, state, and federal regulations regarding endangered, threatened, or otherwise protected species.

He stated the following conditions for the Rezoning application:

- A. completion of the Subdivision process;
- B. limited to an approved Planned Unit Development;
- C. full compliance with the Tree Planting and Landscaping Ordinance to the fullest extent possible to be coordinated with Urban Forestry, if the site layout changes; and,
- D. full compliance with all municipal codes and ordinances.

He stated the following conditions for the Planned Unit Development:

- A. revision of the site plan to indicate all maneuvering and parking areas, including aggregate areas and right-of-way parking;
- B. submittal of approved non-conforming documentation for the reduced parking ratio and right-of-way parking areas to the Planning Section of Urban Development;
- C. full compliance with the Tree Planting and Landscaping Ordinance to the fullest extent possible to be coordinated with Urban Forestry, if the site layout changes;
- D. provision of a revised site plan depicting the information requested in Condition #1 to the Planning Section of Urban Development; and,
- E. full compliance with all municipal codes and ordinances.

And, finally, he stated the following conditions for the Planning Approval application:

- A. revision of the site plan to indicate all maneuvering and parking areas, including aggregate areas and right-of-way parking;
- B. submittal of approved non-conforming documentation for the reduced parking ratio and right-of-way parking areas to the Planning Section of Urban Development;
- C. full compliance with the Tree Planting and Landscaping Ordinance to the fullest extent possible to be coordinated with Urban Forestry, if the site layout changes;

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- D. provision of a revised site plan depicting the information requested in Condition #1 to the Planning Section of Urban Development; and,
- E. full compliance with all municipal codes and ordinances.

Mr. Watkins noted in reference to the subdivision application's Item 3, the section of Old Shell Road in question was very much one large curb-cut, with front in/back out parking along the hair salon and retail side.

Mr. Olsen noted that it currently existed as one curb-cut, and only if there were changes to the development would they have to go in and eliminate that single curb-cut, unless the Commission required something different at this time.

The Chair asked if the applicant was in agreement with the conditions as read by the staff.

Mr. Roberts responded they were in agreement with the conditions with the only question being about the curb-cut. He asked if limiting the site to a single curb-cut that day had to be a condition for approval or if it could be waived and addressed when a different use was proposed.

Dr. Rivizzigno asked what protections had been put in place with regards to the residential properties affected in the Old Shell Road area.

Mr. Olsen noted his belief that there was a buffer fence in place, at least along a portion of the side property line.

Mr. Turner noted that if the Commission was recommending a change in the zoning from residential to business, weren't there additional guidelines in place to protect the adjacent residential owners and their interests.

Mr. Olsen responded that the Zoning Ordinance required that a commercial property, when it abutted residential property, have in place a 10 foot buffer planting strip or a privacy fence. He reminded the Commission, as a condition of these approvals, they could require that the same be installed with the approval of this application if such did not currently exist along the entire property line.

Hearing no opposition or further discussion, a motion was made by Mr. Davitt, with second by Mr. DeMouy, to approve the above referenced matter, subject to the following conditions:

- 1) retention of the lot area size, in square feet, on the Final Plat;**
- 2) retention of the 25-foot minimum building setback line along all public rights-of-way;**
- 3) placement of a note on the Final Plat stating that the lot is limited to one curb-cut to Old Shell Road and one curb-cut to**

- Mobile Infirmary Boulevard, with the size, design, and exact location of all curb-cuts to be approved by Traffic Engineering and conform to AASHTO standards; and,
- 4) placement of a note on the Final Plat stating that development of the site must be undertaken in compliance with all local, state, and federal regulations regarding endangered, threatened, or otherwise protected species.

The motion carried unanimously.

Case #ZON2010-02740 (Planned Unit Development)

Old Shell Road at MIB Subdivision

1810, 1812 and 1814 Old Shell Road

North side of Old Shell Road, 200'± West of Mobile Infirmary Boulevard extending to the West side of Mobile Infirmary Boulevard 395'± North of Old Shell Road
Planned Unit Development Approval to allow multiple buildings on a single building site.

Council District 1

(Also see Case #SUB2010-00133 (Subdivision) Old Shell Road at MIB Subdivision, above, and, Case #ZON2010-02739 (Planning Approval) Old Shell Road at MIB Subdivision, and, Case #ZON2010-02741 (Rezoning) Ernest Construction, LLC, below)

Mr. Vallas recused himself from discussion and voting on the matter.

Hearing no opposition or further discussion, a motion was made by Mr. Davitt, with second by Mr. DeMouy, to approve the above referenced matter, subject to the following conditions:

- 1) revision of the site plan to indicate all maneuvering and parking areas, including aggregate areas and right-of-way parking;
- 2) submittal of approved non-conforming documentation for the reduced parking ratio and right-of-way parking areas to the Planning Section of Urban Development;
- 3) full compliance with the Tree Planting and Landscaping Ordinance to fullest extent possible to be coordinated with Urban Forestry if the site layout changes;
- 4) provision of a revised site plan depicting the information requested in condition #1 to the Planning Section of Urban Development; and,
- 5) full compliance with all municipal codes and ordinances.

The motion carried unanimously.

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Case #ZON2010-02739 (Planning Approval)

Old Shell Road at MIB Subdivision

1810, 1812 and 1814 Old Shell Road

North side of Old Shell Road, 200'± West of Mobile Infirmary Boulevard extending to the West side of Mobile Infirmary Boulevard 395'± North of Old Shell Road

Planning Approval to allow the use of a cell tower in a B-2 Neighborhood Business District.

Council District 1

(Also see **Case #SUB2010-00133 (Subdivision) Old Shell Road at MIB Subdivision**, and, **Case #ZON2010-02740 (Planned Unit Development) Old Shell Road at MIB Subdivision**, above, and, **Case #ZON2010-02741 (Rezoning) Ernest Construction, LLC**, below)

Mr. Vallas recused himself from discussion and voting on the matter.

Hearing no opposition or further discussion, a motion was made by Mr. Davitt, with second by Mr. DeMouy, to approve the above referenced matter, subject to the following conditions:

- 1) **revision of the site plan to indicate all maneuvering and parking areas, including aggregate areas and right-of-way parking;**
- 2) **submittal of approved non-conforming documentation for the reduced parking ratio and right-of-way parking areas to the Planning Section of Urban Development;**
- 3) **full compliance with the Tree Planting and Landscaping Ordinance to fullest extent possible to be coordinated with Urban Forestry if the site layout changes;**
- 4) **provision of a revised site plan depicting the information requested in condition #1 to the Planning Section of Urban Development; and,**
- 5) **full compliance with all municipal codes and ordinances.**

The motion carried unanimously.

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Case #ZON2010-02741 (Rezoning)

Ernest Construction, LLC

1810, 1812 and 1814 Old Shell Road

North side of Old Shell Road, 200'± West of Mobile Infirmary Boulevard extending to the West side of Mobile Infirmary Boulevard 395'± North of Old Shell Road

Rezoning from R-1, Single-Family Residential District, B-1, Buffer Business District and B-2, Neighborhood Business District, to B-2, Neighborhood Business District to eliminate split zoning.

Council District 1

(Also see **Case #SUB2010-00133 (Subdivision) Old Shell Road at MIB Subdivision**, and, **Case #ZON2010-02740 (Planned Unit Development) Old Shell Road at MIB Subdivision**, and, **Case #ZON2010-02739 (Planning Approval) Old Shell Road at MIB Subdivision**, above)

Mr. Vallas recused himself from voting and discussion on the matter.

Hearing no opposition or further discussion, a motion was made by Mr. Davitt, with second by Mr. DeMouy, to approve the above referenced matter, subject to the following conditions:

- 1) completion of the Subdivision process;**
- 2) limited to an approved Planned Unit Development;**
- 3) full compliance with the Tree Planting and Landscaping Ordinance to fullest extent possible to be coordinated with Urban Forestry if the site layout changes; and,**
- 4) full compliance with all municipal codes and ordinances.**

The motion carried unanimously.

Case #ZON2010-02754 (Planning Approval)

Mobile Terrace Christian Center Subdivision

7154 Ninth Street

North side of Ninth Street, 200'± East of Lincoln Boulevard

Planning Approval to allow a church facility in an R-1, Single-Family Residential District.

Council District 7

The Chair announced the matter had been recommended for denial, however, if there were those who wished to speak on the matter to please do so at that time.

The following people spoke in favor of the matter:

- Jerry Williams, 7210 Fourteenth Street, Mobile, AL, pastor, Mobile Terrace Christian Center;
- Lizzie Anderson, 7158 Ninth Street, Mobile, AL; and,

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- Bill Partridge, 302 Park Avenue, Mobile, AL, with Coast Architects.

They made the following points for approval:

- A. noted there would not be set operating hours, however, the applicant added that the hours of operation would be convenient for the children he expected to serve;
- B. noted that the noise level should be inconsequential, as the neighbors were also his neighbors and had been his neighbors for approximately the last 20 years and it was not his intent to become a nuisance to those individuals;
- C. noted that the facility would not add any additional burden to parking in the neighborhood and stated that the majority of churches in the neighborhood did not have adequate parking either;
- D. noted that vehicular traffic should remain the same as most of the children serviced would not come to the facility by cars;
- E. felt that the building involved was a very nice building;
- F. noted that all issues and concerns regarding landscaping and property lines had either already been resolved or were in the process of being resolved so the matter should be approved that day; and,
- G. expressed the belief that the project was an awesome effort on the part of one individual to try and make such a positive impact on the children in his neighborhood; and,
- H. Ms. Anderson, a neighbor, expressed her approval of the project;

Karen Alexander, whose parents live at 7124 Ninth Street, Mobile, AL, spoke in opposition to approving the matter that day. She made the following points:

- A. stated she was not speaking so much in opposition to the matter but more in an effort to get clarification on what was truly to be expected of the project;
- B. noted that the applicant was supposed to have gotten with the neighbors regarding the project, however, that had not happened;
- C. felt that the neighbors were not getting true answers on what was to take place at the site;
- D. while noting Mrs. Anderson's approval of the project, also noted Mrs. Anderson's infirmities and expressed the opinion that though Mrs. Anderson was a sweet lady, she rarely left her home due to her health so she would have limited knowledge of what would take place outside the confines of her home;
- E. noted that her parents and a number of the other elderly neighbors were not in attendance as they were unable to come but that they were still concerned as to what would take place on the site as they

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had been unable to get a “true feel” of what was planned to take place there; and,

F. wanted to know if the facility was for tutoring or “at risk” youth.

The Chair noted that some of the information requested by the speaker was not within the purview of the Commission.

Mr. Williams responded to the opposition with the following:

- A. noted that when he went to speak to the neighbors, he found that the family of the opposition speaker was the only opposition to the matter;
- B. expressed his feelings that the individuals who opposed the project felt so strongly that he would just aggravate the negative feelings if he approached them;
- C. felt that the work he was doing and had done over the past 13 years with the children in question spoke for itself;
- D. gave examples of some of the work he did with the children such as meeting on Christmas Day with a child who had no weather appropriate clothing nor gifts, teaching a child who could not count money (i.e. 25 cents) how to do so in his shop, and offering a non-judgmental atmosphere to young people as a way to minister to them;
- E. previously had only been able to sustain projects with the children for approximately five weeks during the summer, but was now partnering with an organization known as “Mission Fuse” which did backyard Bible studies and life enhancement programs;
- F. noted the project did not have money to spend on such things as computers and was dependant upon volunteer assistance; and,
- G. noted there were no programs available to assist in talking inner city kids out of shooting each other or selling themselves for a video game, which were some of the challenges he encountered and was trying to prevent with the proposed project.

Mr. Miller commented that he did not feel that bureaucracy should get in the way of “home grown” projects that were doing a lot of good in the community, however, he also noted there were a number of technical problems associated with the project that the Planning Commission was required to address, which made it difficult to approve the project that day. He stated his belief that holding the matter over would be the best course of action as it would allow the applicant to answer the questions that remained.

Mr. Turner expressed his concern that the applicant had not set up a specific open meeting with the neighbors to discuss their concerns, noting if they chose not to attend

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the meeting, it was their issue but holding such a meeting would have shown more due diligence in trying to resolve the matter by the applicant. He also noted there needed to be some form of documentation regarding the plan and purpose for the facility.

Mr. Vallas offered his agreement with both Mr. Turner and Mr. Miller, noting the applicant was making it difficult for the Commission to approve the project as they really did not know clearly what they were approving. He suggested reviewing the application for St. Dominic's Catholic Church youth facility where the Commission gave certain conditions for approval based upon the neighbors' concerns.

Mr. Olsen noted that with the application mentioned by Mr. Vallas there were some very stringent conditions placed on that project. He also agreed that it would be very helpful for the applicant to set up a meeting with the neighbors and present them with some type of documentation that outlined the plan and purpose for the facility, as well as submitting that documentation to the staff so that they could include the same in the packet to the Commission for their review.

The Chair advised the applicant that the Commission would discuss holding the matter over and if they chose to do so, it would be imperative that he hold an open meeting for all of the neighbors to attend to discuss the scope of the project.

Mr. Miller noted his agreement with the Chair's statements saying he would be more inclined to approve the project once he knew the neighbors had had a chance to meet with the applicant and discuss the project.

Mr. Olsen suggested that the applicant contact Gina Gregory, the council person for District 7, to see if she would be involved in that community meeting.

Mr. Watkins noted that he felt all of the Commission would rather see the property in question used for the community good as opposed to see it abandoned and left to deteriorate. He expressed his opinion that the applicant had a good idea and a good project but needed to spend a little more time creating the necessary communication to get that message out to the community and to the staff.

In deliberation, Mr. Watkins asked if the staff could support approving the matter if the applicant could get some consistent affirmation from the neighborhood. He added that he felt it would be better for the community if the property and associated buildings be occupied.

Mr. Olsen agreed that having the property repaired, occupied, and maintained was the most desirable of options; however, the applicant would have to bear the responsibility of convincing the Commission that the project was in harmony with the neighborhood. He expressed his belief that once that was accomplished, the staff could look at recommending conditions that limited hours of operation and such to assure that the site and proposed use remained in character with the neighborhood. He noted the staff would continue to have concerns regarding the lack of sidewalks and access to the facility,

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noting that the streets in the area were very substandard with no room in the rights-of-way for sidewalks.

Mr. Davitt noted that the proposed use was very admirable and that the Commission should support the same, however, it was the technical issues that caused such distress for the staff and Commission members.

Mr. Vallas noted that the applicant still had not adequately gotten with his neighbors regarding the purpose of the facility nor had he given the staff a written description of the same.

Mr. Watkins noted that the staff could not require self-imposed restrictions from the applicant, but he did note that it would be helpful if the staff would direct the applicant to someone who could advise him on some of the items the staff and Commission had addressed.

Hearing no further opposition or discussion, a motion was made by Mr. Watkins, with second by Mr. Vallas, to hold the matter over until the February 17, 2011, meeting, to allow the applicant to meet with neighbors; to submit a scope of operations for the youth center; and to allow the applicant to address other issues raised in the staff comments.

The motion carried unanimously.

EXTENSIONS:

Case #ZON2009-02884 (Planned Unit Development)

UMS Wright Corporation

65 North Mobile Street

Southwest corner of North Mobile Street and Old Shell Road, extending North and West to the CN Railroad right-of-way and the South terminus of Martin Street

Planned Unit Development to amend a previously approved Planned Unit Development Master Plan to allow a new practice field for softball and soccer and new parking area.

Council District 1

The Chair announced the application had been recommended for approval and stated the applicant was agreeable with the recommendations. He added if anyone wished to speak on the matter they should do so at that time.

Hearing no opposition or discussion, a motion was made by Mr. Plauche, with second by Mr. Vallas, to approve the request for a one-year extension.

The motion carried unanimously.

NEW SUBDIVISION APPLICATIONS:

Case #SUB2010-00149

Mary Armstrong Family Division Subdivision

5681 Gibson Road

Northeast corner of Gibson Road and Old Pascagoula Road

Number of Lots / Acres: 1 Lot / 2.0± Acres

Engineer / Surveyor: Polysurveying Engineering – Land Surveying
County

The Chair announced the matter was recommended for holdover, but if there were those present who wished to speak to please do so at that time.

Hearing no opposition or discussion, a motion was made by Mr. Plauche, with second by Mr. Turner, to hold the matter over until the February 17, 2011, meeting, for the following reasons:

- 1) include “reserved for future development” portion as Lot 2;
and,
- 2) re-notify adjacent property owners of the entire subdivision.

The motion carried unanimously.

GROUP APPLICATIONS:

Case #SUB2010-00150 (Subdivision)

Forest Park Subdivision, Re-subdivision of Lot 5 and a Portion of Lot 6

1916 Dauphin Island Parkway

West side of Dauphin Island Parkway, 560'± North of Old Military Road, extending
West to Roys Lane

Number of Lots / Acres: 2 Lots / 0.8± Acre

Engineer / Surveyor: Wattier Surveying

Council District 4

(Also see **Case #ZON2010-02969 (Rezoning) Robert D. & Debra B. Williams,**
below)

The Chair announced the application had been recommended for approval. He added if anyone wished to speak on the matter they should do so at that time.

Mark Wattier, Wattier Surveying, spoke on behalf of the applicant and stated they were in agreement with most of the recommendations. He then proceeded to address those recommendations which were at issue:

- A. regarding Recommendation 2, which asked for dedication of right-of-way along Dauphin Island Parkway sufficient to provide 50-feet as measured from the centerline, noted that in 2004, Fulton Road

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Baptist Church which was located approximately 1000 feet north of the applicant's site, came before the Commission with an application for subdivision;

- B. noted that the plat associated with that subdivision depicted the right-of-way as 90 feet and Fulton Road Baptist Church was not required by the Commission to give the additional widening;
- C. regarding Recommendation 3, which asked for a 25-foot building setback from the newly dedicated right-of-way line, the applicant would like to propose that in lieu of the dedication of that 5 feet to instead give a building setback line that would be 75 feet back from the center line which would ensure that any future building construction would be located in such a way that it would not be a hindrance if the road were ever to be widened;
- D. based on the fact that the widening was not requested in the 2004 subdivision for Fulton Road Baptist Church and the fact that the applicant is willing to give a 75 foot building setback from the center line, it was hoped that the matter could be approved that day with those changes; and,
- E. regarding Recommendation 8, which required a buffer between Lots 1 and 2, noted that while it was typical to require such a buffer between residential and commercial properties, in this case, the applicant owned both lots and had no immediate plans to develop the residential lot and had had trouble regarding security in the back of his property and felt that a fence between the two would only increase the security issues as it would block his currently unencumbered view of both lots, so they were requesting that a note be put on the Final Plat stating that at such time as Lot 2 was developed residentially, the owner of Lot 1 would provide the necessary buffer between the two properties and not the owner of Lot 2.

Mr. Olsen responded with the following:

- A. without research he did not know why the dedication noted in the 2004 application was not required, but noted that subdivisions submitted in the area since 2004 had been required to provide said dedication as a condition for approval for both subdivision and/or rezoning; and,
- B. noted that the staff stood by their recommendations however it was a choice the Commission was free to make.

Hearing no opposition or further discussion, a motion was made by Mr. Davitt, with second by Mr. Turner, to approve the above referenced matter, subject to the following conditions:

- 1) compliance with Engineering comments: (*Need to provide a 10'***

- dedication along Roys Lane. Must comply with all stormwater and flood control ordinances. Any increase in impervious area in excess of 4,000 square feet will require detention. Any work performed in the right-of-way will require a right-of-way permit, in addition to any required land disturbance permits.);*
- 2) dedication of right-of-way along Dauphin Island Parkway sufficient to provide 50-feet as measured from the centerline;
 - 3) depiction of the 25-foot minimum building setback line along Dauphin Island Parkway for Lot 1;
 - 4) depiction of a 25-foot minimum building setback for Lot 2 along Roys Lane;
 - 5) placement of a note on the final plat stating that Lot 1 is limited to one (1) curb-cut to Dauphin Island Parkway, with the size, design, and location to be approved by Traffic Engineering and ALDOT, and to conform with AASHTO standards, with curb-cut improvements to take place when Lot 1 is additionally improved or redeveloped;
 - 6) placement of a note on the final plat stating that Lot 2 is limited to one (1) curb-cut to Roys Lane, with the size, design, and location to be approved by Traffic Engineering, and to conform with AASHTO standards;
 - 7) placement of a note on the final plat stating that development of the site must be undertaken in compliance with all local, state, and federal regulations regarding endangered, threatened, or otherwise protected species;
 - 8) placement of a note on the final plat stating that the owner of Lot 1 shall provide a buffer between Lots 1 and 2, which complies with Section V.A.8. of the Subdivision Regulations, at the time that Lot 2 is developed; and,
 - 9) revision of the plat to depict the lot size in square feet, after any required dedication.

The motion carried unanimously.

Case #ZON2010-02969 (Rezoning)

Robert D. & Debra B. Williams

1916 Dauphin Island Parkway

West side of Dauphin Island Parkway, 560'± North of Old Military Road, extending West to Roys Lane

Rezoning from B-2, Neighborhood Business District, to R-1, Single Family Residential District to eliminate split zoning.

Council District 4

(Also see **Case #SUB2010-00150 (Subdivision) Forest Park Subdivision, Re-subdivision of Lot 5 and a Portion of Lot 6**, above)

Hearing no opposition or further discussion, a motion was made by Mr. Davitt, with

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second by Mr. Turner, to approve the request to change from B-2 to R-1 zoning, subject to the following conditions:

- 1) **completion of the subdivision process prior to any requests for permits for residential or commercial uses; and,**
- 2) **full compliance with all municipal codes and ordinances.**

The motion carried unanimously.

Case #SUB2010-00151 (Subdivision)

Peacock Subdivision

6015 Cottage Hill Road

South side of Cottage Hill Road, 175'± East of Spring Creek Circle

Number of Lots / Acres: 1 Lot / 1.2± Acre

Engineer / Surveyor: Byrd Surveying, Inc.

Council District 4

(Also see **Case #ZON2010-02985 (Rezoning) Lee D. and Patti P. Peacock**, below)

The Chair announced the application for subdivision had been recommended for approval. He stated if anyone wished to speak on the matter they should do so at that time. The Chair also advised the Commission members that there was a packet of information regarding the project at their seats.

Doug Anderson, Burr and Foreman Law Firm, spoke on behalf of the applicants. He made the following points on both the subdivision and accompanying rezoning:

- A. noted the house had enjoyed B-1 usage since 1983 when the owner obtained a variance from the City to have a home occupation/business to operate his insurance business at that address while he and his wife lived there;
- B. in 2006 the City required the variance be converted to a full use variance as the owners no longer lived in the house;
- C. the property owner recently retired and as they no longer live in the house nor operate a business there, they would like to sell said property but due to the change in the area's conditions, it was not a prime residential location;
- D. noted that two-thirds of the western side of the site was a natural, wooded buffer which also had a drainage ditch/ravine running along that property line, all of which served as a way to buffer the property in question from the residential subdivision adjacent to it on the western side;
- E. noted that on the eastern property line, there was one adjacent, residential property facing Cottage Hill Road;
- F. noted that the property located directly across the street had recently been changed to R-2 or R-3 zoning so that condominiums or apartments could be built there;

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- G. noted that John Williams, Councilperson for District 4, had been contacted regarding this request and was in favor of the rezoning; and,
- H. noted that the changing conditions in the area, including the increase in commercial properties such as the Wal-Green's and the expansion of Mobile Christian School, made the majority of Cottage Hill Road very similar in character to Airport Boulevard, with no new residential developments taking place in either area.

Mr. Olsen responded that the staff supported their recommendation for denial as the site had a variance and could continue to be used in a non-residential manner under that variance. He suggested that should a new owner wish to change the use, that an application to do so could be made to the Board of Zoning Adjustment rather than grant this and approve what would amount to spot zoning in this instance. In noting the buffer mentioned by Mr. Anderson, Mr. Olsen pointed out that if the property were rezoned and then sold, a new owner could clear the wooded buffer, demolish the current house, and develop something that might not be as compatible as the single family, residential structure that was currently in place.

Mr. Vallas noted that the variance was specifically for an insurance office and that made it difficult, from a realtor's stand point, to market the property.

Mr. Olsen reiterated that if a different office use was desired for the property, it could easily be brought before the Board of Zoning Adjustment.

Mr. Turner asked if there were any other residential lots in use in the immediate vicinity.

Mr. Olsen stated there were none. He went on to discuss the property Mr. Anderson had mentioned which was across the street from the applicant's property. He stated that property had been rezoned to R-2 but had a Planned Unit Development for single family dwellings. He noted the original approval had been for condominiums but that had changed to single family, reduced setback dwellings, so even that area was now planned as single family residential.

Mr. Anderson responded that Mr. Vallas was correct in his assumptions regarding the marketing of the property. He added that trying to sell the property as anything other than an insurance office had the perception of limiting the use of said property to any potential buyer.

Mr. Watkins asked how large the site in question was.

Mr. Olsen responded that it was approximately 1.2 acres which was below the minimum recommended by the Zoning Ordinance.

In deliberation, Mr. Miller noted that stating the house was too dangerous for a family to live in was not, in his opinion, justification for putting a business there. He also stated

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that if the house were so unattractive that the first thing that might be done by a new property owner, if the property was rezoned, would be the demolition of the current structure. He noted he could support neither of the reasons and so he was against rezoning the property.

Mr. Vallas noted he didn't think it was a case of being dangerous but rather that it was an undesirable location residentially.

Mr. Lawler advised that many times individuals come before the Board of Zoning Adjustment with an option to purchase property with a planned use which would change the variance of said property and that could be the case with this property. He noted that if it were rezoned as B-1, then any B-1 use could legitimately be placed on said property and though B-1 zoned property was typically thought of just offices, the chart of uses for B-1 did reveal some uses that would not be quite as compatible for placement between two residential subdivisions.

Mr. Davitt noted that he lived in the subdivision across the street from the particular area and he agreed that though the area was changing, this particular section has not seen the changes that the corner lots seemed to have encountered so he, too, could not support rezoning of the property.

Mr. Watkins asked what time frame was associated with the variance, if the owners were not actively engaged in using the property according to the granted use variance.

Mr. Olsen advised that a variance was in perpetuity.

Hearing no opposition or discussion, a motion was made by Mr. Watkins, with second by Mr. Vallas, to approve the subdivision, subject to the following conditions:

- 1) placement of a note on the Final Plat limiting the development to the two existing curb-cuts to Cottage Hill Road, if the site is redeveloped in the future the size, location, and design of all new curb-cuts to be approved by Traffic Engineering and conform to AASHTO standards;**
- 2) compliance with Traffic Engineering comments: (*Driveway number, size, location, and design to be approved by Traffic Engineering and conform to AASHTO standards.*)**
- 3) depiction 25-foot minimum building setback from the centerline of Cottage Hill Road on the Final Plat;**
- 4) compliance with Engineering comments: (*Show the limits of the flood plain on the plat. Also show the Minimum Finished Floor Elevation on each lot on Plat. There is to be no fill placed within the limits of the flood plain without providing compensation. Width of drainage easement subject to change upon completion of review by City Engineer. Must comply with all stormwater and flood control ordinances. Any work performed in the right-***

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- of-way will require a right-of-way permit.);*
- 5) **placement of a note on the final plat stating that development of the site must be undertaken in compliance with all local, state, and federal regulations regarding endangered, threatened, or otherwise protected species;**
 - 6) **placement of the lot size labeling to depict the lot size in square feet on the Final Plat; and,**
 - 7) **full compliance with all municipal codes and ordinances.**

The motion carried unanimously.

Case #ZON2010-02985 (Rezoning)

Lee D. and Patti P. Peacock

6015 Cottage Hill Road

South side of Cottage Hill Road, 175'± East of Spring Creek Circle

Rezoning from R-1, Single-Family Residential District to B-1, Buffer Business District, to allow commercial office space.

Council District 4

(Also see **Case #SUB2010-00151 (Subdivision) Peacock Subdivision**, above)

The Chair announced the request for rezoning had been recommended for denial, however, if there were those who wished to speak on the matter to please do so at that time.

Hearing no further opposition or discussion, a motion was made by Mr. Davitt, with second by Dr. Rivizzigno, to deny the above referenced request for rezoning for the following reasons:

- 1) **site does not meet the criteria of Section 64-9.2b., states a new free-standing B-1 district should contain at least two (2) acres of gross area; the site enjoys a Use Variance to allow an insurance agency at this time; and,**
- 2) **a new variance application is more appropriate.**

The motion carried with only Mr. Vallas voting in opposition to the denial.

Case #SUB2010-00135 (Subdivision) (Holdover)

Overlook Road VOA Housing Subdivision

6917 Overlook Road

South side of Overlook Road, 625'± East of Cody Road

Number of Lots / Acres: 2 Lots / 7.8± Acres

Engineer / Surveyor: Rowe Surveying & Engineering, Co., Inc.

Council District 7

(Also see **Case #ZON2010-02992 (Planned Unit Development) Volunteers of America**, and, **Case #ZON2010-02743 (Rezoning) (Holdover) Volunteers of America**, below)

The Chair announced the matter had been recommended for denial, however, if there were those who wished to speak on the matter to please do so at that time.

Don Rowe, Rowe Surveying and Engineering, Co., Inc., spoke on behalf of the applicant and made the following points in favor of holding the matter over:

- A. noted that the hold over was being requested as the out of town landscape architect had been asked to correct some issues and that time was needed for that to be done;
- B. noted that the property in question was “sandwiched” in between R-3 zoned property making the request for rezoning to the same appear simple, however, as the property to the east had not actually been developed it gave rise to concerns that it might not be developed at the R-3 density;
- C. noted that the proposed development was “shovel ready” with the applicant having most everything in place to move forward on this development;
- D. noted that Lot 1 was being designed to include a city standard street with curb and gutter along with a requirement that all testing and documentation be done so that at the time the street was extended it would be easily and readily accessible to the City; and,
- E. felt that it was unfair to delay the applicant because an adjacent developer had yet to proceed with their plans.

Mr. Vallas asked if it was the applicant’s desire to proceed with developing Lot 1 and have Lot 2 noted as “future use.”

Mr. Rowe noted that was true and described Lot 1 as being low density with three apartment buildings with four units in each building, with one community building. He noted, regarding Lot 2, that the 50 foot “panhandled” access portion of the lot would actually be the location of a public street once that property was fully developed. He let it be known that Lot 2 was planned as either single or multi family dwellings but a firm decision as to which had not yet been reached by the developer.

Mr. Olsen stated that if the Commission wanted to allow the matter to be held over to the February 3, 2011, meeting, the staff had no issues with such.

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Mr. Davitt asked what justification the staff was asking for with regards to the creation of the previously mentioned flag shaped lot.

Mr. Olsen noted that Mr. Rowe had addressed the staff's concerns and that at this time the staff would like to have the same in writing to be placed in the file, because if developed as described by Mr. Rowe, it would no longer be a flag shaped lot.

Mr. Davitt asked what the staff needed regarding the discrepancies noted in the Planned Unit Development and its associated site plan/plat.

Mr. Rowe noted that in the middle of designing the proposed development he had to make the detention pond larger so he would bring the staff a subdivision plat that matched the landscape plan.

Mr. Vallas noted that the last few applications for apartments reviewed by the Commission had been denied. He also noted that it now required more than looking at a zoning map to determine whether or not more R-3 zoned properties were appropriate or needed.

Mr. Davitt stated his opinion, that in this particular case and with the applicant being the Volunteers of America; that the market for these apartments was different from those previously seen by the Commission.

Mr. Olsen noted that in a number of the cases referenced by Mr. Vallas, the denial of the property came at the City Council level.

Hearing no opposition or discussion, a motion was made by Mr. Plauche, with second by Mr. Turner, to hold the matter over until the February 17, 2011, meeting, at the applicant's request.

The motion carried unanimously.

Case #ZON2010-02992 (Planned Unit Development)

Volunteers of America

6917 Overlook Road

South side of Overlook Road, 625'± East of Cody Road

Planned Unit Development Approval to allow multiple buildings on a single building site and shared access between two lots.

Council District 7

(Also see **Case #SUB2010-00135 (Subdivision) (Holdover) Overlook Road VOA**

Housing Subdivision, above, and, **Case #ZON2010-02743 (Rezoning) (Holdover)**

Volunteers of America, below)

Hearing no opposition or discussion, a motion was made by Mr. Plauche, with second by Mr. Turner, to hold the matter over until the February 17, 2011, meeting, at the

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applicant's request.

The motion carried unanimously.

Case #ZON2010-02743 (Rezoning) (Holdover)

Volunteers of America

6917 Overlook Road

South side of Overlook Road, 625'± East of Cody Road

Rezoning from R-1, Single-Family Residential District, to R-3, Multi-Family Residential District to allow the construction of a multi family residential neighborhood.
Council District 7

(Also see **Case #SUB2010-00135 (Subdivision) (Holdover) Overlook Road VOA Housing Subdivision**, and, **Case #ZON2010-02992 (Planned Unit Development) Volunteers of America**, above)

Hearing no opposition or discussion, a motion was made by Mr. Plauche, with second by Mr. Turner, to hold the matter over until the February 17, 2011, meeting, at the applicant's request.

The motion carried unanimously.

OTHER BUSINESS:

Hearing no further business, the meeting was adjourned.

APPROVED: March 17, 2011

Dr. Victoria Rivizzigno, Secretary

Terry Plauche, Chairman

jsl