

MOBILE CITY PLANNING COMMISSION MINUTES
MEETING OF APRIL 15, 2004 - 2:00 P.M.
AUDITORIUM, MOBILE GOVERNMENT PLAZA

Members Present

Terry Plauche, Chairman
Ann Deakle
James Laier (S)
Mead Miller
Victoria L. Rivizzigno
John Vallas
James F. Watkins, III

Members Absent

Nicholas Holmes
Clinton Johnson
Ernest Scott
Victor McSwain, Secretary

Urban Development Staff Present

Laura J. Clarke, Director,
Urban Development Department
Richard L. Olsen, Planner II
Margaret Pappas, Planner II
David Daughenbaugh, Urban Forestry
Val Manuel, Secretary II

Others Present

Wanda Cochran, Assistant City Attorney
Jennifer White, Traffic Engineering
Pat Stewart, County Engineering
Margaret Swindle, City Engineering

Mr. Plauche stated the number of members present constituted a quorum and called the meeting to order.

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

HOLDOVERS:

Case #ZON2004-00549 (Planning Approval)

Eliska Wireless Ventures I, Inc. (T-Mobile), (David Wilkins, Agent)

South side of Osage Street, 180' ± East of Dr. Martin Luther King, Jr. Avenue.

A request for Planning Approval to allow a 150' monopole cellular communications tower in a B-2, Neighborhood Business district.

The plan illustrates the proposed structures and parking.

Mr. Plauche stated that the applicant was present and concurred with the staff recommendations.

There was no present one in opposition.

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After discussion a motion was made by Ms. Deakle and seconded Mr. Vallas to approve this plan subject to the following conditions:

- 1) the approval of all necessary variances by the Board of Zoning Adjustment;
- 2) completion of the subdivision process prior to the issuance of any permits;
- 3) the entire lot (Lot 2) be brought into full compliance with landscaping, tree plantings and sidewalk requirements; and
- 4) full compliance with all municipal codes and ordinances, including but not limited to Telecommunications Towers and Facilities Ordinance.

The motion carried unanimously.

Case #SUB2004-00046 (Subdivision)
Westminster Place Subdivision, Revised Lot 1

5276 Old Shell Road (North side of Old shell Road at the North terminus of Schwaemmle Drive).

1 Lot / 0.3± Acre

Paul Mayer of 6712 Cedarwood Court, the applicant, was present in this matter. Mr. Mayer said that this application had been held over from the last meeting. He requested that the condition requiring a 45-foot setback along Old Shell Road be removed. He explained that he needed to move the house forward 20 feet. Mr. Mayer stated that he had an 8-foot setback in the back yard and there was also an oak tree. He also said that they did not want to back out onto Old Shell Road. Mr. Mayer stated that he was aware that Old Shell Road was going to be widened some day, but Councilman Nodine had assured him that the widening was not even on the long-term plan for the City. Mr. Mayer also said Mr. Nodine had plans on his desk to put bike trails on both sides of Old Shell Road. He felt that the City would not go ahead with that project and then widen the street.

Ms. Clarke stated that although Mr. Nodine had made a request for that plan to be studied, Old Shell Road was on the Major Street Plan to be widened and it would remain there until the Planning Commission decided to remove it.

Mr. Mayer further stated that this application was held over for two weeks so that the Commission could check on the tree and the adjacent setbacks. He said no one came out to check the setbacks. Mr. Mayer stated that he still wanted to move the house forward 20 feet within 45 feet of Old Shell Road. He pointed out fourteen properties, within a quarter of a mile in each direction, that were closer than 25 feet to Old Shell Road. He contended that if Old Shell Road was ever widened, all the widening would be taken from the south side.

Ms. Deakle asked if the house was moved forward 20 feet where would that put him in line with the residences to the east and west.

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Mr. Mayer replied that the residence to the east was already way back because of an Oak tree, but he would be in line with the next property. The residence on the west side was an older house that had been there 20 or 30 years. Mr. Mayer said he would actually be in front of both of them.

Patrick Waller, P.O. Box 7799, Spanish Fort, stated that both of the neighbors had been contacted, because one of them, who was the developer of the subdivision, thought the setback already 25 feet. Mr. Waller said they had spoken to them repeatedly. Obviously, they did not have any problems or they would have attended the last two meetings. He said their whole point of holding this application over was so someone would come out and inspect it. Mr. Waller said when they called the office to have the inspection done, they were told, by Frank, that it was going to be denied.

Ms. Clarke said there was a Frank Palombo on the staff, but she felt that was not the language he used.

Mr. Waller said he was not going to quote him verbatim. He stated that he did not know if anyone came to inspect the site. He does not think anyone had.

Ms. Pappas stated that Urban Forestry did go out to the site and looked at the tree. She said in terms of setbacks for the two houses to the east or to the right of the site; the one the farthest to the east was setback 42 feet and the next house was 52 feet back based on the site plans that were submitted for permitting.

Mr. Waller said that at the last meeting the staff had said that the easternmost house was 30-something feet back on one corner and asked if the house was moving around.

Ms. Pappas said it was not. She indicated Westminster Way, which was the path of major street and it continued on westwardly to Old Shell Road. She indicated that in 1998 the Commission had approved four lots. Ms. Pappas explained that on a lot to the east the setback line on the east side property line was at 35 feet and then on the west side property line it was 45 feet to allow for the curvature of the major street coming through. She also stated that this was in reference to the setback line on the plat, not necessarily what was actually constructed in the field.

Mr. Waller again pointed out that most of the room for widening was on the opposite side of Old Shell Road. He said we are not limiting the restrictions of Old Shell Road. It could still be widened, but it would just be an inconvenience for the Mayers' down the road. They would still be 40 something feet off the existing road.

Mr. Watkins asked how far back off the street they would be if their current plan were adopted.

Mr. Waller replied that they would be 45 feet back from the edge of the street. He said when they say 45-foot setback, that was now, but it doesn't include the 20 feet.

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Mr. Waller further indicated on the map, about three places to the west, there was a house 19 feet back from Old Shell Road. That was the house itself, not the setback.

For clarification, Ms. Pappas asked if 45 feet was the setback the applicant wanted.

Mr. Waller replied that they want to be 45 feet from the road with a 25-foot setback totaling 45 feet from the actual paved edge of the street.

Ms. Clarke noted that there was a big difference between street, roadbed and right-of-way, and that's what was in dispute.

There was no one present in opposition.

In executive session Ms. Deakle asked if there was any kind of compromise they could make so that Mr. Mayer could build a house without an 8-foot back yard.

Ms. Pappas commented that, basically, the difference between his proposed house and the existing houses is that the other homes were wide, but not deep. She went on to say that this house has an 8-foot setback in the back yard; which the standard setback for a rear yard. Additionally, the Zoning Ordinance, as far as setbacks are concerned, is the reason why the setbacks were proposed. The original plat shows that all structures had to be set back from the right-of-way of the planned major street. So the setback line on the plat was simply a heads up to any future purchasers of the setback requirement.

Mr. Olsen noted that even if the setback were modified, a variance would be required. That additional setback, as Ms. Pappas stated, would be required regardless of whether the setback was shown on this plat.

Ms. Clarke commented that if a waiver is needed to build closer for this lot, who is to say that someone else may try to use that as a justification to have the Major Street Plan altered, and that's a whole separate issue. Nothing has been studied or considered at this point as far as a Major Street Plan amendment.

Mr. Miller asked if there was some sort of compromise they could make. He felt it was unlikely that Old Shell Road will go through the Country Club.

Mr. Vallas asked if the house to the east had a three-foot variance of some kind, because the set back is 42 feet.

Mr. Olsen said the difference was the angle due to the curvature of how the major street comes in. The lot to the east of that had even less of a setback because of the way the major street curve in.

Dr. Rivizzigno noted that when the owner bought the lot he knew what the setback was.

Mr. Olsen noted that the setbacks were on the recorded plat.

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After discussion a motion was made by Dr. Rivizzigno and seconded by Mr. Laier to approve the above referenced subdivision subject to the following conditions.

- 1) that the setback remain 45-feet as required in Section IV. D.5 of the Zoning Ordinance; and
- 2) that the site be allowed one curb cut to Old Shell Road to be approved by Traffic Engineering and Right-of-Way Departments.

The motion carried unanimously.

EXTENSIONS:

Case #SUB2002-00030 (Subdivision)

Hamilton Bridges Subdivision – Remainder (formerly Terrell Estates Subdivision)

South side of Airport Boulevard, 600'± East of the South terminus of Flave Pierce Road, extending to the West side of Lowry Road.

207 Lots / 75.0± Acres

Request for a one-year extension of previous approval.

Don Coleman, Rester and Coleman Engineers, Inc., was present and indicated the applicant concurred with the recommendations of the staff.

A motion was made by Mr. Plauche and seconded by Dr. Rivizzigno to approve a one-year extension of the previous approval for the above referenced subdivision.

The motion carried unanimously.

GROUP APPLICATIONS:

Case #ZON2004-00795 (Rezoning)

O. A. Pesnell, Jr.

580'± North of the North terminus of Pesnell Court, adjacent to the West side of Inverness Subdivision, Unit Two.

A request for change in zoning from R-1, Single-Family Residential, to R-3, Multi-Family Residential, for a retirement housing community.

The plan illustrates the existing and proposed structures and parking.

(Also see Case #ZON2004-00796 – Brookview at Brookside Subdivision (PUD) and Case #SUB2004-00064 – Brookview at Brookside Subdivision – Below).

Mr. Plauche stated that the applicant was present and concurred with the staff recommendations.

There was no one present in opposition.

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A motion was made by Dr. Rivizzigno and seconded by Mr. Laier to recommend approval of this change in zoning to the City Council subject to the following conditions:

- 1) completion of the rezoning and subdivision processes;
- 2) provision of a six-foot wooden privacy fence where the site adjoins R-1 development;
- 3) the provision of a drainage easement for the Milkhouse Creek Floodplain, as well as any necessary surveys and coordination thereof with the City Engineering Department;
- 4) approval of City Engineering, Traffic Engineering and the Bureau of Fire Prevention for any existing or proposed bridges/culverts prior to the issuance of any permits for new construction on the site;
- 5) that the driveway, from Pesnell Court to the north terminus, be widened to a minimum width of 24-feet and paved with asphalt or concrete;
- 6) the approval of all applicable federal, state and local agencies; and
- 7) full compliance with all municipal codes and ordinances.

The motion carried unanimously.

Case #ZON2004-00796 (Planned Unit Development)

Brookview at Brookside Subdivision

North terminus of Pesnell Court extending North to the West side of Inverness Subdivision, Unit Two.

A request for Planned United Development Approval to allow multiple buildings on a single building site.

The plan illustrates the existing and proposed structures and parking.

(Also see Case #ZON2004-00795 – O. A. Pesnell, Jr. (Rezoning) - Above and Case #SUB2004-00064 – Brookview at Brookside Subdivision – Below).

Mr. Plauche stated that the applicant was present and concurred with the staff recommendations.

There was no one in opposition.

A motion was made by Dr. Rivizzigno and seconded by Mr. Laier to approve this plan subject to the following conditions:

- 1) limited to the approved Planned Unit Development application;
- 2) provision of a six-foot wooden privacy fence where the site adjoins R-1 development;
- 3) the provision a drainage easement for the Milkhouse Creek Floodplain, as well as any necessary surveys and coordination thereof with the City Engineering Department;

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- 4) approval of City Engineering, Traffic Engineering and the Bureau of Fire Prevention for any existing or proposed bridges/culverts prior to the issuance of any permits for new construction on the site;
- 5) that the driveway, from Pesnell Court to the north terminus, be widened to a minimum width of 24-feet and paved with asphalt or concrete;
- 6) that there be no windows on the side of a building that would face a neighboring building;
- 7) the approval of all applicable federal, state and local agencies; and
- 8) full compliance with all municipal codes and ordinances.

The motion carried unanimously.

Case #SUB2004-00064 (Subdivision)

Brookview at Brookside Subdivision

North terminus of Pesnell Court extending North to the West side of Inverness Subdivision, Unit Two.

1 Lot / 8.0± Acres

(For discussion see Case #ZON2004-00795 – O. A. Pesnell, Jr. (Rezoning) - Above and Case #ZON2004-00796 – Brookview at Brookside Subdivision (PUD) – Above).

Mr. Plauche stated that the applicant was present and concurred with the staff recommendations.

There was no one in opposition.

A motion was made by Dr. Rivizzigno and seconded by Mr. Laier to approve this reference subdivision subject to the following conditions:

- 1) the approval of all applicable federal, state and local agencies; and
- 2) completion of the rezoning process prior to the recording of the final plat.

The motion carried unanimously.

NEW PLANNING APPROVAL APPLICATION:

Case #ZON2004-00812

Southtrust Bank (Mark Goodwin, Agent)

1763 Spring Hill Avenue (South side of Spring Hill Avenue, 215'± West of Mobile Infirmary Boulevard [formerly Louiselle Street]).

A request for Planning Approval to amend the site plan of a previously approved Planning Approval to allow a bank in a B-1, Buffer Business district.

The plan illustrates the proposed building, drive, and parking.

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Mr. Plauche stated that the applicant was present and concurred with the staff recommendations.

There was no present in opposition.

A motion was made by Dr. Rivizzigno and seconded by Ms. Deakle to approve this plan subject to the following conditions:

- 1) driveway number, sizes, location and design to be approved by Traffic Engineering and conform to AASHTO standards;
- 2) compliance with previously approved PUD and Subdivision;
- 3) full compliance with Urban Forestry Comments (Ingress and egress, and all work to be performed under the canopy of the trees to be coordinated with Urban Forestry for tree protection and preservation on city property. The 60" Live Oak is to be given preservation status, with alternative paving surfaces to be used on the south side, all work performed under the canopy of the tree to be coordinated with Urban Forestry);
- 4) closure (including removal and installation of curbing and landscaping) of "abandoned" existing curb cuts; and
- 5) full compliance with all municipal codes and ordinances. Copies of the revised plan and letter of decision to be placed in the PUD file for reference.

The motion carried unanimously.

NEW SUBDIVISION APPLICATIONS:

Case #SUB2004-00065

Crestview Subdivision, Fifth Addition, Unit Two, Part B, Resubdivision of Lots 4 & 5

1600 and 1604 Apex Court (West and South sides of the West terminus of Apex Court)

2 Lots / 1.2± Acres

Mr. Plauche stated that the applicant was present and concurred with the staff recommendations.

There was no one present in opposition.

A motion was made by Ms. Deakle and seconded by Mr. Laier to approve the above referenced subdivision

The motion carried unanimously.

Case #SUB2004-00071

Dawes Lake Trace Subdivision

West side of Dawes Lake Road at its North terminus.

20 Lots / 10.0± Acres

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Mr. Plauche announced that the applicant had asked to hold over this application. He asked if anyone present wished to speak.

Bernard Brooks, 2800 D'Iberville Drive, stated that he owned all of the property to the north of this proposed subdivision. Mr. Brooks said his biggest problem with the subdivision was that it failed to follow any harmonious development. It was too dense for the general area. There was no public water, sewer, and the lot sizes did not comply with the Subdivision Regulations. Mr. Brooks stated that he and another property owner had issues with the storm water. He said all the water draining off the subject property would drain on their property. He also said they were already beyond maximum capacity for storm water in the area. Mr. Brooks stated that he had a 17-acre pond and everything in the general area drained into it. He already had to repair the pond twice because of siltation, not to mention the trash that comes in. He felt the storm water management in the area had been neglected and needed to be addressed. Further, Mr. Brooks pointed out that the proposed lots would be smaller than the lots in the area. He was concerned that this would depreciate the property values. Mr. Brooks was also concerned about people trespassing on his property and felt that some type of fence or barrier should be required.

Mr. Plauche asked Mr. Stewart, County Engineering, what the County's overview was of storm water in the County. Mr. Stewart stated that as long as it does not affect the roadway being built, the County does not address it as long as it does not impact the flood plain. If it did, the applicant would have to do a flood study.

Mr. Brooks asked what the rule was on drilling wells on this type of acreage for this size lots.

Mr. Stewart replied that City water was available to this site, to the West in Dawes Lake Estates.

Rich Crowe, 2700 McFarland Circle, stated that he owned an adjacent 10-acre tract. The northeast corner of his property was common with the southwest corner of proposed Dawes Lake Trace Estates. Mr. Crowe said his property was downhill of said development. He said Dawes Lake Road drained into a culvert that emptied onto his property. Mr. Crowe said when this property was developed, it would drain down onto Dawes Lake Road and onto his property. He stated that he had a massive erosion gully across the front of his property. Mr. Crowe said he consulted with Richard Crist regarding this matter. Mr. Crist developed a plan that seems to have arrested the problem, but just barely. Mr. Crowe stated that he could not accept anymore drainage from any direction onto his property. He noted that the nearest subdivision to the proposed subdivision was Vintage Woods, which also drained onto his property. Mr. Crowe felt that this was a matter that needed to be looked at by some engineers, hydrologists, or a knowledgeable person who could see that he did have a problem. Finally, Mr. Crowe felt the proposed 20-lot subdivision on seven or eight acres would not be a harmonious development with what was already there.

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Kyle Zimmer, 8501 Vintage Woods Drive, stated that he knew what Mr. Brooks and Mr. Crowe were saying was true. He said the soil was very sandy and the water does drain heavily off Vintage Wood Road onto Dawes Lake Road and down onto Mr. Crowe's property. Mr. Zimmer's said his main concern was that the proposed development does not look consistent with the houses in the area. He also said when you go all the way up to Dawes Road, there are one-half and two-acre lots and large homes. Mr. Zimmer questioned whether there were any covenants that would have a minimum restriction on size. He was also concerned that this development would cause their property values to deteriorate.

Tracy Heavner, a resident of 8530 Dawes Lake Road, said her opposition was for several reasons. Ms. Heavner stated that most of the homes in their area were large homes with two acres or more. She said that she moved to the area because it was beautiful, wooded, and the houses were not close together. It made you feel like you were in a rural country setting. Ms. Heavner was afraid that this proposed subdivision, with its tiny houses and half-acre lots, would lower the property values on everything it touch. She also expressed concern that the development would create a lot of congestion with additional traffic on the road. A lot of the residents have horses that they ride along the side of the road. With the additional traffic on the road, it would cause safety problems. Ms. Heavner also expressed concerns as to whether the lots would have city water, a sewer, or if they would have septic tanks and well water.

Mr. Olsen noted that the applicant did indicate that city water and sanitary facilities were available. He said that was one of the bases for the staff report as it stood.

Mr. Vallas asked if the power company easement was above or below ground.

Mr. Stewart answered that it was a 200-foot above ground easement.

In executive session Dr. Rivizzigno asked, with the building of the road, and possibly diverting the water onto the adjoining property, do the property owners have any recourse?

Ms. Clarke stated that it would be a civil matter.

Mr. Stewart stated that when the developer was ready to build, he would have to design in a way that would not create any more water than one cubic foot per second into the right-of-way. The rest of the water has to be retained and held. He said the neighbors were not going to be getting any more water than what they were getting now.

Ms. Clarke stated that she thought Dr. Rivizzigno was not talking about the proposed subdivision road. She said there was a claim made, truth or not, that once Dawes Lake Road, a county road, was paved it increased the flooding on their property. So the question was, is there any recourse?

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Mr. Stewart noted that where the property owner was getting flooded was the natural outfall. That's where the water has always been going.

Ms. Clarke said that his recourse would be civil.

After discussion a motion was made by Mr. Plauche and seconded by Dr. Rivizzigno to holdover this application until the May 6, 2004, meeting at the applicant's request.

In further discussion Mr. Watkins stated that there were two kinds of contradictory claims being made. The staff says there is city sanitary sewer. The speakers said they were all on septic and there weren't any sanitary sewers. He asked if the staff knew.

Mr. Olsen responded that the application indicated that city water and sewer were available. He said the lots met the minimum size requirement, which was 15,000 square feet, for city water and septic tank. If the lots had wells and septic systems, they would have to be 20,000 square feet. Mr. Olsen said the staff could verify that by the May 6th meeting.

There being no further discussion Mr. Plauche called the question. The motion carried unanimously.

Case #SUB2004-00063

Heritage Hills Commercial Park Subdivision, Resubdivision of Lot 3

3450 Hillcrest Road (West side of Hillcrest Road at the West terminus of Girby Road).

2 Lots / 2.5± Acres

William McGlasson, 6545 Audubon Square, stated that he was president of the Audubon Square Homeowners Association. Mr. McGlasson presented a statement with photographs to the Commission that was prepared by the neighboring property owners of Hearthstone Assisted Living Center, Audubon Square Subdivision, Heritage Hills Subdivision, and the Windsor Subdivision. He also stated that they take exception to the proposed resubdivision of the property in question because of safety, health, and property depreciation reasons. Mr. McGlasson said that he was speaking as a former corporate medical toxicology, safety, and environment director for Olin Corporation. He also was the plant manager of Olin Corporation in McIntosh, Alabama and in Lake Charles, Louisiana. Mr. McGlasson felt he knew a little bit about construction. He stated that unfortunately the present contractor/owner removed the timber from this property for his financial benefit. Mr. McGlasson stated that the contractor left an overwhelming pile of underbrush that was an eyesore. The photographs, which he submitted, would support this. The underbrush was creating a major fire and health risk to Hearthstone Living Center, as well as the neighbors in Audubon Square, Heritage Hills, and Windsor. Mr. McGlasson stated that the contractor/owner had the opportunity to leave a row of pine trees, which would have provided a buffer for the neighbors. However, the contractor/owner choose to cut all the timber down. Cutting the timber and leaving the under brush had caused an eyesore, which caused the prospective buyers of real estate to terminate their negotiations with the property owners in Audubon Square Subdivision.

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He said these actions had greatly depreciated the value of the neighboring property. The unsightly and unsafe brush pile had been there since January, 2004. Presently, there were no plans to remove it. The realtor, who was planning to build a home on Lot 9, had since terminated his plans to build that dwelling, which has caused a depreciation of the property. Mr. McGlasson said it was also a serious safety risk for the children from Cranford-Burns School. It was rumored that the contractor/owner does not plan to remove this brush. He is under negotiations with businesses to have them remove the under brush. Mr. McGlasson further stated that the plot plan that the staff showed on the screen was not accurate. It showed that the City of Mobile easement goes down between Lot 3-A and Lot 3-B. He said the easement was actually on the south side of Lot 3-B. Mr. McGlasson stated that this would create a problem for the people who will be stopping at the traffic light at Girby and Hillcrest. He also said there would be a problem of entry to the property as shown on Lot 3-A and Lot 3-B. They see it as a safety problem not only to the motorists, but also to the children walking back and forth from Cranford-Burns, the residents of the Heritage Hills, and the other subdivisions, Windsor and Audubon Square. Mr. McGlasson contended that if the property were subdivided into two pieces of property, instead of working with one contractor/owner, they would be working with at least two or more contractors trying to get the health and fire hazard removed. He also felt that the business climate and other prospective people coming into Hearthstone were going to be negatively impacted. Mr. McGlasson stated that they had invited the contractor/owner to their homeowners association meeting on February 9, 2004, but he could not attend. The contractor/owner was asked for a date when he could come and talk to property owners and other people to relieve their concerns in regard to fire, rats and snakes and other predators. They have yet to receive any information back from him. He also said this was an eyesore for the people who travel up and down Hillcrest Road every day. Mr. McGlasson said he had lived, worked, and now was retired in Mobile. Mr. McGlasson said that he was proud to live in the City of Mobile, but was very concerned, as a taxpayer, that this piece of property was allowed to be zoned. He felt the contractors involved in the zoning let them down. Now, they were being let down by this owner and the contractor.

In summary, Mr. McGlasson said that the neighboring property owners appreciated the opportunity to attend the public hearing. He said they would appreciate receiving feedback from the Urban Development Department within ten working days. Mr. McGlasson also asked that the feedback be provided to Cindy Freeman, the general manager of Hearthstone Assisted Living Center at the address listed. Mr. McGlasson said he would try to answer any questions the Commission might have.

Ms. Pappas said in reference to the easement, it was difficult to tell from the sketch, but actually there was 15 feet of easement on the north side and 10 feet of easement on the south side of the line, for a total width of 25 feet. She said they didn't show the existing easement. They showed the proposed one.

Mr. McGlasson asked how much impact this would have on the traffic coming in and out of that piece of property.

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Ms. Pappas stated that the curb cut to Hillcrest Road as well as the internal circulation would still have to be approved by the City Traffic Engineering Department.

Mr. McGlasson was concerned that people would cross over from this site to go on to the Hearthstone property.

Ms. Pappas stated that the parking lot would have to be curbed.

Mr. McGlasson contended that people would jump the curb.

Mr. Plauche said there was no way to stop people from jumping curbs.

Mr. Olsen stated that they would pass the concern about the debris on to the Urban Development Department safety unit. He said the safety unit would coordinate with the Mobile County Board of Health to make an investigation and determine if there was any type of violation of code. If so, the violation would be addressed. Regarding the discussion about leaving trees as a natural buffer, when this property was originally zoned B-3 quite a few years ago there was no specific requirement regarding a natural vegetative buffer to remain. It would be at the developer's discretion to remove the trees and provide a buffer as required by the Zoning Ordinance.

Mr. McGlasson said the neighbors would prefer they take a look at fast growing trees such as the Leland Cypress.

Ms. Deakle asked if matters of this kind would not be more appropriately addressed at a later time. She understood that only the subdivision was under consideration.

Mr. Olsen said that she was correct.

Ms. Clarke explained that if their proposed development was in compliance with the regulations of the Zoning Ordinance, it would not come back to a governing body for any commercial development. The Zoning Ordinance automatically provides for a minimum six-foot high buffer wherever commercial abuts residential. It would be the option of the developer to provide either a six-foot privacy fence or a six-foot natural buffer. If the developer choose to go back with some new plantings it would be up to his discretion as long as it was sufficiently dense.

Mr. Olsen said that he had one further question. In the statement Mr. McGlasson submitted, he asked for feedback from the staff. Mr. Olsen said that he was not sure the staff understood what type of feedback was being requested.

Mr. McGlasson asked that they be given some feedback to take back to the property owners in Windsor, in Audubon Square and Heritage Hills. He also wanted to help out Cindy Freeman, who runs that business next door, so she doesn't have to put up with the rat's nest.

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Ms. Clarke stated that if Mr. McGlasson, or whomever he deemed from their group, would simply call the office in the morning. The staff would give them the results of the meeting. Then if there were any further discussion needed, their group would be informed as soon as possible.

Mr. Vallas asked if the Commission could place landscaping restrictions strictly on the subdivision.

Mr. Olsen replied that they could only require what the Subdivision Regulations state under the Buffer Section.

Mr. McGlasson suggested that if they had Cypress trees as a buffer it would really help.

Mr. Vallas commented that the homeowners may have to take it upon themselves and plant some landscaping on their property and not strictly count on this developer. He said that the Commission can not require the developer to do it.

Mr. McGlasson asked if they could get the contractor or owner to attend one of their meetings so they could at least talk to him.

Mr. Plauche stated that the Commission had no way to make him do that.

Cindy Freeman of 3440 Hillcrest Road, is the general manager of Hearthstone Heritage Woods. Ms. Freeman stated that she has to deal with protecting the lives of seniors every day. She asked that the applicant be required to have a buffer before they start construction to help keep traffic from crossing over to their property. Ms. Freeman asked if they could be notified in thirty days as to whether that would happen. Also, she asked that an eight-foot fence be placed there, rather than a six-foot.

Mr. Plauche stated that a six-foot fence was according to the regulations. Anything above that would be at the discretion of the builder.

Ms. Freeman stated that traffic was also a concern. She stated that if there were two different entrances, traffic would come down Girby Road and turn right onto Hillcrest Road. Ms. Freeman said the traffic would come through her property in front of where her seniors were enjoying the day outside.

Ms. Deakle asked Ms. Freeman if her property had a buffer around it and curbing.

Ms. Freeman stated that they have some trees twenty to thirty feet apart. There is a minimal buffer.

Mr. Vallas noted that Hearthstone was also zoned B-3, so there was no buffering required between those two sites.

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Ms. Freeman said she was also concerned as to whether she would be on the back or on the side of the proposed business.

Mr. Olsen commented on the request that the buffer be installed prior to development of the site. He said that was something the Commission has typically not required. Mr. Olsen also said it was really not functional because when the site is under development, that could have a negative impact on any type of fence or landscaping that was installed.

Councilperson Connie Hudson resides at 2128 Pine Needle Drive East stated that she represented District 6, which included the Lot 3 Heritage Hills Commercial Park area. She said that she came to speak strongly in support of the Commission amending the application for the subdivision to include more strengthened buffer requirements. It was her impression in communicating with the Urban Development Department that this was a possibility. Ms. Hudson understood that it had been done before and assumed that that was the Commission's prerogative to add additional requirements. She said that she had received a lot of feedback from homeowners in all the surrounding neighborhoods in Hearthstone. She also said that they were very much concerned about the value of their property. Many of them bought their lots and built homes not knowing that their property was abutting a B-3, high commercial property. Ms. Hudson felt that their concerns were very valid. She also felt a request for the additional buffering of a higher fence and to add a setback of a ten-foot planting area, that would be exclusive of parking, was really not that much to ask to help protect their property values. If there was no way the Commission could legally do this, then she asked if the developer was present and willing to respond to the request to these homeowners. Ms. Hudson hoped that the developer, Mr. Langan, would be willing to go along with those requirements.

Mr. Plauche asked if the applicant was present.

Matt Orrell, Polysurveying, was present representing the applicant and stated that he was not authorized to accept anything other than what the regulations required in regard buffer requirements. Mr. Orrell said that they were strictly asking for resubdivision of this two and a half-acre site into two lots. He did not have the authority to speak for Mr. Langan on that point.

Ms. Hudson asked the Commission what recourse does the homeowners had if this does not come back to the Planning Commission. Was there any way other than to simply request the developer to implement additional requirements for buffering?

Mr. Plauche deferred the question to Ms. Cochran, counsel.

Ms. Cochran said that she didn't know what recourse there was for the neighbors. Based on a similar issue raised in connection with the development of Providence Park in 2000, the Planning Commission imposed a 20-foot buffer in connection with the subdivision, when the Regulations only required 10 feet. It was then reversed. She noted that the Commission's jurisdiction was based upon the Regulations. Although the Commission had the power to amend the Regulations, it can not be done on an ad-hoc basis. You

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would have to advertise them and adopt them. Ms. Cochran said that right now they were stuck with the regulations they had.

Ms. Hudson asked that if this Commission finds that there were no legal reasons, that they then deny this application.

Robin Roberts, a resident of 6451 Audubon Square North, stated that since this was a B-3 property against a R-1 property, they were proposing that the developer provide both a six-foot fence and a buffer of trees to give them some additional barriers between a nice and quiet residential neighborhood. Mr. Roberts said that the site was surrounded by residential neighborhoods on three sides. It would be visible to homeowners all the way around it. He contended it would be in the homeowners' best interest. Mr. Roberts said that they felt it was in the developer's best interest to have it appealing. Mr. Roberts noted other very fine development in the area, which was very upscale and growing. He said all they were asking is to be allowed to have some maintenance of the environment that they moved into and bought into. He also felt having a combination of the fence and the trees didn't seem to be unrealistic. Mr. Roberts presented copies of their proposal to the Commission.

Mr. Plauche noted that the Regulations require either a six-foot fence or a vegetative buffer.

Mr. Roberts said he was seeking to reach an agreement with the developer to see what he would do on the three sides of the property.

In executive session a motion was made by Ms. Deakle to approve this application subject to staff recommendations.

In further discussion Mr. Vallas asked if the Commission could require that prior to the subdivision application being recorded, the developer at least remove the trash from the site.

Ms. Clarke stated that the staff would recommend they handle it through our enforcement mechanisms. She said they would have a safety, trash, and litter person to inspect the site tomorrow to see if there were any violations. If so, they can go ahead and issue a hazard warning. If there's a rodent problem, the Board of Health will also be contacted. Ms. Clarke felt this would be the more appropriate path to address this issue.

Mr. Vallas asked if it was clear that they couldn't address the concerns of the fence and landscaping.

Ms. Cochran stated that it had come to her attention that the Subdivision Regulations, on buffering, were amended in March of 2002. She said the Commission now has the option to require both a fence and landscaping.

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Mr. Miller said it did not seem like the developer had ingratiated himself to the neighborhood by the way he has done things. He also said he would like to require greater buffering, if it is in our ability to do so. If not, he understood. Mr. Miller asked if the developer could be encouraged to meet with the neighbors to see what was going on.

Mr. Olsen noted that under state law the Commission could only hold an application, without the applicant's consent, for a maximum of thirty days. The second meeting in May would be the 20th, which was beyond thirty days. The most they could hold the application would be until the May 6, 2004 meeting.

Mr. Vallas suggested they could recommend the fence and landscaping which would satisfy the neighbors.

Ms. Clarke noted that the neighbors had asked for an eight-foot fence. She said that was not within the Commission's authority, since the Regulations stipulated a six-foot fence.

Mr. Plauche asked Ms. Deakle if she would like to amend her motion.

Ms. Deakle amended her motion and it was seconded by Dr. Rivizzigno to waive Section V.D.3. and approve the above referenced subdivision subject to the following conditions:

- 1) the provision of a 6' wooden privacy fence and 10' landscaped buffer where the site abuts residential property as required by Section V.A.7. of the Subdivision Regulations and
- 2) the placement of a note on the final plat stating that Traffic Engineering shall approve the number, size, location and design of all curb cuts.

The motion carried unanimously.

Case #SUB2004-00074

Hillview Ranch Subdivision

Northeast corner of Rester Road and Hillview Road.

1 Lot / 0.5± Acre

Ms. Pappas stated that since the reports were mailed out, the engineer representing this application had submitted information indicating that the balance of the property had changed hands a couple of times. He had submitted a letter stating that the current owners did not wish to participate in the application and the Commission has typically approved these types of requests where the homeowner did not create the problem and the current owner does not wish to participate. Based on that, the staff would recommend approval subject to it being noted that if this property were developed commercially, a buffer would be required, and 25' minimum building setback lines would be provided along Hillview Road and Rester Road.

Bobby McBryde, Rowe Surveying, was present and concurred with the staff recommendations.

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There was no one present in opposition.

After discussion a motion was made by Mr. Vallas and seconded by Dr. Rivizzigno to approve the above referenced subdivision subject to the following conditions:

- 1) the placement of a note on the final plat stating that if any property is developed commercially and adjoins residential, a buffer in compliance with Section V.A.7. of the Subdivision Regulations, will be provided; and
- 2) the placement of the 25-foot minimum setback line from Hillview Road and Rester Road on the final plat.

The motion carried unanimously.

Case #SUB2004-00067

Lifetouch Subdivision

957 and 959 Spring Hill Avenue (South side of Spring Hill Avenue, 430'± West of Broad Street, extending to the North side of Old Shell Road, 630'± West of Broad Street).

1 Lot / 1.9± Acres

Matt Orrell, Polysurveying Engineering – Land Surveying, was present and indicated the applicant concurred with the staff recommendations.

Mr. Olsen stated that there was a minor change that was made between the reports that were mailed out and the reports that the members had in front of them. In the report that was mailed out, it limited the site to one curb cut to Spring Hill Avenue. In effect, that would not have allowed the lot fronting Old Shell Road to have a curb cut. So that condition was changed to allow one curb cut for each lot.

Mr. Orrell stated that he concurred.

Dan McCleave, a resident of 1010 Old Shell Road since 1978, pointed out that this was a historically significant area. That was the reason why he purchased his house and restored it. He said they also had other properties in the neighborhood. Mr. McCleave said Devereaux Bemis was present to speak, but he had to leave. He pointed out that this site was a residential area on the Old Shell Road side. The proposal was to join the Old Shell Road properties with the Spring Hill Avenue properties. The Spring Hill Avenue property was industrial. It was a florist's warehouse for a long time, and it had been vacant for a long time. Presently the Lifetouch people were using the building. They built a paved parking lot with the entrance on Old Shell Road. This parking lot cut through the residential lots. Mr. McCleave noted that the applicant had previously come before the Commission to have Old Shell Road lots rezoned for parking and cut through and the applicant was turned down. They have circumvented the Commission by using it now as a drive through. Mr. McCleave said that when he first moved to Old Shell Road in a house built in 1898, there were three homes on those three lots on Old Shell Road, two of which were occupied. Within the next fifteen years all three homes were torn

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down. He noted that it was the recommendation of the staff to retain the R-1 zoning for the properties on Old Shell Road, which he was in agreement. However, he was not in agreement with joining them as one property. Mr. McCleave did not feel there was a legitimate reason to make them one property to use as R-1. They also wanted to join them into one property in order to facilitate their next move, which he felt was to rezone them to a B-4 use.

Mr. Plauche interrupted, saying he thought this was to divide the three lots on Spring Hill Avenue into one lot of record.

Mr. Olsen explained that the original request was for a one-lot subdivision to incorporate all of this into one property. The staff's recommendation was that it be a two-lot subdivision, so that they would not be creating a split-zoned property. The three lots that front on Spring Hill Avenue are zoned B-4 as one legal lot and the three lots that front on Old Shell Road as the second legal lot of record.

Mr. McCleave said he did not disagree with them treating the Old Shell Road properties different than the Spring Hill Avenue properties. Spring Hill Avenue was fine, but he felt in order to facilitate the neighborhood as a residential historic neighborhood these properties need to remain three separate lots on Old Shell Road. Then the likelihood of them becoming a residential property again would be much greater. Mr. McCleave said there was no legitimate proposal to use the three lots on Old Shell Road as one lot for residential purposes.

Mr. Watkins asked Ms. Pappas that if this was approved subject to staff recommendations, that would be two lots, what would be the buffering requirements between the residential and the commercial, and would they be able to do it in such a way as to have this cut-through that they were talking about.

Ms. Pappas explained that the existing cut-through or driveway was non-conforming. In order to further develop the existing R-1 property either a rezoning and PUD would be required, or the approval of a variance with the Board of Adjustment.

Mr. Watkins asked if there would be buffering required between the R-1 and the B-4 since they owned both lots.

Mr. Olsen stated that if there was additional development on the B-4 lot, buffering would be required at that time. The driveway would still be allowed. If the Commission placed a condition on the subdivision now, a buffer could be required, but again, that driveway was existing so it would not cause it to be closed.

Mr. Watkins asked if it would be a better situation for the neighbors if the staff's recommendation was passed.

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Mr. Olsen stated that there would not be an automatic buffer provided based on the staff recommendation. The Commission, however, could add the buffer requirement of the Subdivision Regulations if they so chose.

Mr. Miller stated that it seemed odd to him for this building to be fronting on Spring Hill Avenue and directing everybody around to a residential street and going up what you claim is a non-conforming entrance.

Mr. Olsen stated that it would really not have an effect on this. As Ms. Pappas stated, the existing driveway from Old Shell Road to the Spring Hill Avenue property was non-conforming. It was grandfathered in. So the subdivision would not have any impact on that.

Mr. McCleave stated that it seemed that if that's the way they were doing it now, he felt perhaps suspicions may be well grounded that their eyes for Old Shell Road were not in residential.

Mr. Olsen said that may well be the case. Again, for any expansion of commercial use on that R-1 property, they would either have to file a rezoning and PUD applications and come back before this body. Or, they would have to file an application with the Board of Zoning Adjustment for a use variance. Either way, there would be a public hearing involved. In this particular instance, with regard to the division of land, that potential application or use was not a part of this consideration.

Mr. McCleave said regarding the cut-through, the neighborhood was not notified that was occurring. He said they were only finding out now that they were allowed to grandfather this drive somehow. They were trying to find the correct procedure to address this. Mr. McCleave said he would tell the Commission that from his own experience that there wasn't any driving through going on for at least 10-15 years. He understood that for a grandfather situation, you have to have a consistent, continuous use.

Evans Crowe stated that he resided at 209 N. Joachim Street. Mr. Crowe said that he owned the property at 960 Old Shell Road that was immediately east of the three lots in question on Old Shell Road. He expressed his opposition to the resubdivision of the Old Shell Road lots into one lot. He also had no problem with the resubdivision of the Spring Hill Avenue lots into one lot. Mr. Crowe noted that the formal request for the resubdivision was to resubdivide all six lots into one lot. He did not know of any reason why the Commission would not grant that part as it related to the Spring Hill Avenue lots, deny the part that related to the Old Shell Road lots, and allow them to remain three lots. He felt as Mr. McCleave felt that the suspicion here that the design on the Old Shell Road lots was not for residential purposes. As a practical matter, he did not think that the applicant himself would achieve any benefit in trying to convert those three lots into one. Mr. Crowe said that he had just learned this morning from Caldwell Whistler that the applicant had in fact filed an application for a variance to use the Old Shell Road lots as off-site parking for the Spring Hill Avenue lots. He pointed out that all of the lots in the neighborhood were about 60 feet wide and contended that there was no way anybody was

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going to go in and construct a house on a 174-foot wide lot. Mr. Crowe noted that the Old Shell Road property was in the Old Dauphin Way Historic District. The City's Comprehensive Plan has designs that this area remains residential. He felt the most practical way for the Old Shell Road lots to be developed would be as three lots, not as one lot. Mr. Crowe noted that in 1993 the Zoning Ordinance was amended to convert any residential property in this area from R-whatever to R-1, almost giving a legislative mandate that this area maintain its residential status. When the application for a variance was denied in 2000, the Board of Zoning Adjustment's staff recommendation for denial was based on the fact that allowing the use would not achieve substantial justice to the surrounding neighborhood. The expansion of commercial uses fronting Spring Hill Avenue onto Old Shell Road would lend justification for further commercial creep. Mr. Crowe submitted that this was exactly what this owner was trying to do now and the reasons for denial in that context then, apply today.

Mr. Vallas said that this was really no different than the previous application on subdivision, going from three lots to one, or one to two. He asked what they could do.

Ms. Cochran noted that in the Regulations, on lot size, it states that the size, width, depth, shape, orientation of lots, and the minimum setback shall be appropriate to the location of the subdivision and type of development use contemplated. She said at least in this context there was a specific regulation dealing with lot size as opposed to the buffer.

Mr. Crowe noted that the staff recommendation was to convert six lots into two sets of three. It was suggested that the Commission could, as a compromise, convert the three commercial lots into one and leave the Old Shell Road lots as they were.

Mr. Olsen stated that if the Commission chose, they could approve it as a four-lot subdivision with one lot being the three existing lots fronting Spring Hill Avenue, and leaving the three fronting Old Shell Road as three individual lots.

Mr. Crowe said he felt that no one on Old Shell Road would have a problem with that at all.

Matt Orrell, Polysurveying, stated that he agreed with the staff's recommendation for two lots. He said that this was the first step in a use variance. Mr. Orrell said he was representing the owner and the architect who were designing a parking area. He said the owner wanted to meet with the neighbors and they would meet all the Old Dauphin Way District requirements.

Mr. Olsen pointed out that if the Commission approved this as a four-lot subdivision with three lots fronting on Old Shell Road, it would not preclude the applicant from filing for a variance using all three lots.

After discussion a motion was made by Mr. Vallas and seconded by Dr. Rivizzigno to modify the request and approve a four-lot subdivision with one lot consisting of the three

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commercially zoned properties and the three residential lots remain as they currently exist.

In further discussion Mr. Miller stated that he was very familiar with the Old Shell Road property and the area had made a lot of progress in the last few years. He said he was disturbed by the way they were routing people around to go in the back way. Mr. Miller also said that he did not know if anything could be done about the driveway, but he was in agreement with the approving four lots rather than two.

Ms. Clarke noted that Mr. McCleave was looking into the non-conforming status and if they pursue that, the whole drive out onto Old Shell Road could be brought into question. As it stands now, with it being recognized as a non-conforming, grandfather situation, administratively there was nothing that could be done to prohibit them from getting a sign and routing people around.

After discussion Mr. Plauche called the question as was stated by Mr. Vallas and seconded by Dr. Rivizzigno to approve a four lot subdivision with one lot consisting of the three commercially zoned properties and the three residential lots remaining as currently exist.

Mr. Olsen asked the Commission if they wanted to modify the curb cut condition on Old Shell Road to allow one curb cut for each lot.

After discussion an amended motion was made by Mr. Vallas and seconded by Dr. Rivizzigno to approve a subdivision as follows:

- 1) the placement of a note on the final plat stating that the lot fronting Spring Hill Avenue is limited to one curb cut to Springhill Avenue and the three lots fronting Old Shell Road one curb cut per lot to Old Shell Road, with the location, size, and design to be approved by Traffic Engineering; and
- 2) the placement of the 25-foot minimum setback line from Old Shell Road on the final plat (no setback required from Spring Hill Avenue).

The motion carried unanimously.

Case #SUB2004-00072

McIntosh Subdivision

Southeast corner of Dr. Martin Luther King, Jr. Avenue and Stone Street.

2 Lots / 0.5± Acre

Mr. Plauche stated that the applicant was present and concurred with the staff recommendations.

There was no one present in opposition.

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A motion was made by Dr. Rivizzigno and seconded by Mr. Vallas to approve the above referenced subdivision subject to the following conditions:

- 1) the placement of a note on the final plat stating that both lots are limited to one curb cut each, with the location, size, and design to be approved by Traffic Engineering;
- 2) Lot B increased to 7,200 square feet to meet requirement of Section V.D.2.; and
- 3) the dedication of a 25' radius at the intersection of Dr. Martin Luther King, Jr. Avenue and Osage Street.

The motion carried unanimously.

Case #SUB2004-00070

Michael-Montlimar Subdivision, Resubdivision of Lot 2

Northeast corner of Michael Boulevard and Montlimar Drive.

2 Lots / 4.3± Acres

Bill Barnhill, a resident of 39 Signal Hill Road, Spanish Fort, AL, was present representing the owners of the subject property. Mr. Barnhill asked for clarification of the staff's recommendation regarding the curb cuts. It was stated that Lot 1 would have a curb cut, and Lot 2 would have a curb cut to be determined in the future as to size and location.

Ms. Pappas stated that the location of the curb cuts either to Michael Boulevard or Montlimar Drive, would be the developer's choice with the approval of City and Traffic Engineering.

Ms. Clarke noted that if the applicant had a preference, they could stipulate that in the condition.

Mr. Vallas asked if there was any reason why Lot 2 couldn't have two curb cuts, one on each street.

Ms. Clarke explained that, typically, that had always been discouraged. When the lot sells, or if there was a specific development proposal and it was based on that tenant's dire need to have two cuts, they could come back to this Commission and seek to justify a second cut.

Mr. Barnhill said that this a corner lot and commercial, it almost needed a cut on Michael Blvd as well as on Montlimar Drive. He noted that there was very little traffic on Michael Blvd going east.

Mr. Olsen asked if Traffic Engineering had an opinion.

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Ms. White stated that it was not unusual to have two curb cuts, but they usually like to approve them so that they do not line up but are staggered to discourage cut-through traffic.

After discussion a motion was made by Dr. Rivizzigno and seconded by Mr. Vallas to approve the above referenced subdivision subject to the following condition:

- 1) the placement of a note on the final plat stating that Lot 1 is limited to one curb cut to Montlimar Drive and Lot 2 is limited to two curb cuts (one to Montlimar Drive and one to Michael Boulevard), with the size, location and design to be approved by Traffic Engineering.

The motion carried unanimously.

Case #SUB2004-00073

O'Reilly Subdivision

West side of Dauphin Island Parkway, 120'± South of Levene Road.

1 Lot / 0.8± Acre

Mr. Plauche stated that the applicant was present and concurred with the staff recommendations.

Anna Marie McDade, 1619 Levene Road, was present to learn what was proposed for this site. She was also concerned as to whether this would create an increase in traffic and whether a traffic light might be required.

Mr. Olsen stated that the lot would be used for a commercial business. Currently there were two lots and the purpose of this application was to combine them into one so there would be one business on that piece or property. As for a traffic light, that would be determined by Traffic Engineering as well as the Alabama Department of Transportation, since Dauphin Island Parkway was a State highway. He did not see, however, that this subdivision would increase traffic sufficient to justify a traffic light.

Ms. McDade asked if they would have an easement onto Levene Road and on Dauphin Island Parkway.

Mr. Olsen explained that there would not be an easement to Levene Road. They were not dealing with the two lots adjacent to Levene Road.

There was no one present in opposition.

After discussion a motion was made by Mr. Vallas and seconded by Dr. Rivizzigno to approve the above referenced subdivision subject to the following conditions:

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- 1) the placement of a note on the final plat stating that the size, number, location and design of all curb cuts to Dauphin Island Parkway must be approved by Traffic Engineering and ALDOT; and
- 2) the submission of an Administrative PUD for any shared access between lots.

The motion carried unanimously.

Case #SUB2004-00066

River Forest Cove Subdivision

2325 River Forest Road (West side of River Forest Road, 4/10 mile± South of Alba Club Road).

7 Lots /25.1± Acres

Mr. Plauche stated that the applicant was present and concurred with the staff recommendations.

There was no one present in opposition.

A motion was made by Mr. Vallas and seconded by Dr. Rivizzigno to waive Section V.D.3. and approve the above referenced subdivision subject to the following condition:

- 1) the approval of all applicable federal, state and local agencies.

The motion carried unanimously.

OTHER BUSINESS:

Request for Vacation in Mobile County

South side of Old Government Street Road, 450'± West of Willow Pointe Drive (unnamed/unopened right-of-way).

Mr. Olsen explained that this was an unopened right-of-way that the applicant was requesting to be vacated. There were three lots adjacent to the east, two of which fronted Old Government Street Road, and then another fronting on the right-of-way to be vacated. All three of those properties were under the same ownership, but they were legal lots of record so they could be sold at any time. He said the Commission could either deny the request for vacation because it would create a land locked parcel, or agree to the vacation subject to the property owner submitting a one-lot subdivision to incorporate those three parcels into one lot.

After discussion a motion was made by Dr. Rivizzigno and seconded by Mr. Vallas to approve this request subject to the staff recommendation that the property owner submit a one-lot subdivision to incorporate the three parcels into one lot.

The motion carried unanimously.

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There being no further business, the meeting was adjourned.

APPROVED: June 3, 2004

Victor McSwain, Secretary

Terry Plauche, Chairman

vm