

MOBILE CITY PLANNING COMMISSION MINUTES
MEETING OF OCTOBER 2, 2003 - 2:00 P.M.
AUDITORIUM, MOBILE GOVERNMENT PLAZA

Members Present

Robert Frost, Chairman
Terry Plauche, Vice-Chair
Victor McSwain, Secretary
Victoria L. Rivizzigno
Ann Deakle
John Vallas
Wendell Quimby
James Laier
Ernest Scott (S)

Members Absent

Clinton Johnson

Staff Present

Richard L. Olsen, Planner II
Margaret Pappas, Planner II
Tim Ashley, Planner I
Jennifer Henley, Secretary II
Val Manuel, Secretary II

Others Present

Wanda Cochran, Assistant City Attorney
David Daughenbaugh, Urban Forestry
Jennifer White, Traffic Engineering
Pat Stewart, County Engineering
Beverly Terry, City Engineering

Mr. Frost 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 #ZON2003-01918

O. A. Pesnell, Jr.

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

The request for a change in zoning from R-1, Single-Family Residential, to R-3, Multi-Family Residential, for a retirement home was considered.

The plan illustrates the existing and proposed structures and parking.

(Also see Case #ZON2003-01919 - **Brookview at Brookside Subdivision** – Below; and Case #SUB2003-00183 - **Brookview at Brookside Subdivision** – Below)

Mr. O.A. Pesnell, applicant, was present and addressed the Engineering Department's comments and the staff's remarks in the staff report. Regarding comments that the actual floodway and flood plains had been shifted to the east, he said the engineer who did the

October 2, 2003

flood plain delineation showed little difference from that which was on the FEMA maps. Regarding encroachment, Mr. Pesnell said that the existing site plan showed the building encroaching into the wetlands, however Rowe Surveying was currently doing a study which he said would show the wetlands and the flood plain and what impact, if any, the encroachment would have. The study was expected to show that the encroachment would not have an adverse impact on the flow capacity or velocity along the drainage facility. He noted that any approval would be based upon compliance with the City's stormwater regulations, the Corps of Engineers and ADEM's regulations. Mr. Pesnell noted that they were not building an assisted living facility as indicated in the staff report, rather these would be apartments for the elderly--65 years and older. Regarding comments about construction of a bridge in the floodway, Mr. Pesnell said that was false. He explained that they had laid logs across the creek to allow foot traffic as they were maintaining some underbrush. The logs placed across the creek were not the proposed bridge for which he was seeking approval through the Corps of Engineers, as this was a completely different and separate piece of property. While no application had been made to the City for construction of the proposed bridge, Mr. Pesnell said application would be made once Rowe Surveying finished the model study. The report hopefully would show that construction of the bridge would not affect the floodway or flood plain. The future bridge would cross Lot 9 of Moss Creek. Mr. Pesnell noted that this bridge was not a part of this application, but was just mentioned in the staff report. Regarding an 80-foot strip not included in the initial five-acre parcel as shown on the plat, he said he would like to include that 80-foot strip in the other five-acre parcel which he owned. He said he would have access to that five acres through Lot 9 of Moss Creek, which he planned to build his personal house on, so it would not be land locked. The 80-foot strip was contiguous with a 330-foot common line of the five acres he may want to use at some time in the future. Mr. Pesnell said the plan now showed the building encroaching on the wetlands, as well as the base flood elevation line. While not asking for approval to encroach on the wetlands or across the base flood elevation, he asked for approval contingent on the study done by Rowe Surveying showing no adverse affects to the encroachment. Regarding the use of Lot 9, Moss Creek, he said that this was a platted, deeded lot and had no bearing on this application.

Ms. Beverly Terry, City Engineering, stated that in their opinion everything Engineering stated in their comments was true and correct. Ms. Terry said that if the Commission was considering this for approval, one of the things they wanted to see was a master plan showing everything that had been constructed on the property from the beginning, because it had been submitted in three parts, and by three different engineering companies. She said there were three different bridges they were talking about; two of them on this submittal and they understood one had been submitted to the Corps of Engineers for a permit but had not been submitted to the City.

In discussion, Mr. Vallas suggested it may be appropriate to hold over this application until the applicant submitted the proper engineering surveys and topos.

Mr. Frost inquired if a holdover would be beneficial.

October 2, 2003

Ms. Terry said that the information submitted after the first holdover did not encompass the entire development. She said that they might be able to get some additional documentation. She stated that this particular site had been developed in three phases. She had visited the site and it appeared that some construction had taken place, but no permits had been issued.

Mr. Frost stated that the applicant was requesting approval contingent upon there being no environmental affects. He asked if the Commission had authority to do this.

Ms. Pappas stated that the recommendation of the staff relied heavily on the fact that the PUD approval was site plan specific, and that the Planning Commission, as a consistent matter of policy, had prohibited construction within the wetlands. Additionally, when requesting rezoning to R3, a typical condition was to tie it to the PUD. If consistent with policy, Ms. Pappas said the site plan had to be modified, therefore it could not be tied to it.

Mr. Frost asked that if the applicant were to bring in today a study that said this would not affect the wetlands, would the Planning Commission have the authority to approve that with the footprint in the wetlands?

Ms. Pappas stated that the Planning Commission could take into account unique features that were associated with the property, both in terms of approving a subdivision to create a legal lot of record, and more specifically with Planned Unit Development, which is site plan specific. She said the Commission did have that authority. The additional consideration was on the subdivision. While the applicant may own the lot or the property that was contiguous, there would still be 80 feet unaccounted for, and for all intents and purposes it would be land locked.

Mr. Olsen stated that with regard to the question of a possible hold over, the subdivision would have to be acted on today because of the length of time it had been heldover previously.

A motion was made by Dr. Rivizzigno and seconded by Mr. Quimby to recommend the denial of this change in zoning to the City Council.

The motion carried unanimously.

Case #ZON20023-01919

Brookview at Brookside Subdivision

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

The request for Planned Unit Development Approval to allow multiple buildings on a single building site was considered.

The plan illustrates the existing and proposed structures and parking.

October 2, 2003

(For discussion see Case #ZON2003-01918 – **O. A. Pesnell, Jr.** – Above; also see Case #SUB2003-00183 - **Brookview at Brookside Subdivision** – Below)

A motion was made by Dr. Rivizzigno and seconded by Mr. Quimby to deny this plan.

The motion carried unanimously.

Case #SUB2003-00183
Brookview at Brookside Subdivision

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

1 Lot / 6.5± Acres

(For discussion see Case #ZON2003-01918 – **O. A. Pesnell, Jr.** – Above; also see Case #ZON2003-01919 - **Brookview at Brookside Subdivision** – Above)

A motion was made by Dr. Rivizzigno and seconded by Mr. Quimby to deny this subdivision for the following reasons:

- (1) approval of the subdivision would not account for the 80' parcel to the West; and
- (2) approval of the subdivision would validate a land-locked metes and bounds parcel.

The motion carried unanimously.

EXTENSIONS:

Case #SUB2002-00225
Colonial Hills Subdivision, Unit 5

North terminus of Colonial Crossing
25 Lots / 10.0± Acres

Request for one-year extension of previous approval.

A motion was made by Dr. Rivizzigno and seconded by Dr. Laier to grant a one-year extension of previous approval for this application.

The motion carried unanimously.

Case #ZON2001-02021
Spring Hill College

4000 Dauphin Street (North side of Dauphin Street, 1800'± West of Interstate 65).

Planned Unit Development Approval of the Master Plan for an existing college in an R-1, Single-Family Residential district.

Request for one-year extension of previous approval.

October 2, 2003

A motion was made by Dr. Rivizzigno and seconded by Dr. Laier to grant a one-year extension of previous approval for this application.

The motion carried unanimously.

GROUP APPLICATIONS:

Case #ZON2003-02186

Alabama Realty Co., Inc.

Southeast corner of Halls Mill Road and McVay Drive, extending East and South to the North side of Bolton Branch and McLaughlin's 2nd Addition to Navco Road Subdivision.

The request for a change in zoning from R-1, Single-Family Residential, to B-3, Community Business, for a commercial subdivision was considered.

The site plan illustrates the proposed lot configuration, existing drainage easements and creeks.

(Also see Case #SUB2003-00200 – **Alabama West Subdivision** – Below)

Mr. Jerry Byrd of Byrd Surveying, Inc., was present on behalf of the applicant. Mr. Byrd requested a modification of condition #3 in the recommendation, changing "residential property" to "residentially developed property".

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

- (1) full compliance with the Engineering Comments as follows--corrected flood zone information; compliance with the minimum finished floor requirement for structures on any lot that is located within the Floodway; that Flood Zone AE and xshaded be shown on each lot; that the drainage easement along the detention pond (common area) and lots 14 and 15 be defined; compliance with all stormwater and flood control ordinances; and that any work performed in the right of way obtain a right of way permit;
- (2) full compliance with Urban Forestry Comments as follows--property to be developed in compliance with state and local laws that pertain to tree preservation and protection on both city and private properties (State Act 61-929 and City Code Chapters 57 and 64); all ingress and egress from Halls Mill Road to be coordinated with Urban Forestry; and all work on existing trees on city right of way obtain a permit from the Mobile Tree Commission;
- (3) the provision of a 25-foot wide buffer, exclusive of any easement(s), where the site adjoins residentially developed property;
- (4) the provision of a 3-foot high wall or vegetative hedge along McVay Drive to screen all parking from the residences across McVay Drive;
- (5) denial of access to McLaughlin Drive West;

October 2, 2003

- (6) dedication of adequate right-of-way to provide 35-feet from the centerline of Halls Mill Road;
- (7) the submission and approval of an Administrative PUD(s) for all curb cuts and internal circulation between lots; and
- (8) full compliance with all municipal codes and ordinances.

The motion carried unanimously.

Case #SUB2003-00200

Alabama West Subdivision

Southeast corner of Halls Mill Road and McVay Drive, extending East and South to the North side of Bolton Branch and McLaughlin's 2nd Addition to Navco Road Subdivision.

15 Lots / 26.2± Acres

(For discussion see Case #ZON2003-02186 – **Alabama Realty Co., Inc.** – Above)

A motion was made by Mr. McSwain and seconded by Mr. Vallas to approve this subdivision subject to the following conditions:

- (1) dedication of adequate right-of-way to provide 35-feet from the centerline of Halls Mill Road;
- (2) placement of a note on the final plat stating that access to McLaughlin Drive West is denied;
- (3) provision of 25-foot minimum building setback lines (from any dedication along Halls Mill Road); and
- (4) placement of a note on the final plat stating that all curb cuts must be approved by both the Urban Development Department (including Urban Forestry) and Traffic Engineering.

The motion carried unanimously.

Case #ZON2003-02188

Opus, Inc., c/o Crown Products

3107 Halls Mill Road (460'± East of Halls Mill Road, 330'± South of McVay Drive, extending to the Northeast side of Southern Oak Subdivision).

The request for a change in zoning from R-1, Single-Family Residential, to B-3, Community Business, for the expansion of an existing office and warehouse distribution facility was considered.

The site plan illustrates the existing buildings, parking, proposed building, lot configuration, and area to be rezoned.

(Also see Case #ZON2003-02187 – **Opus, Inc., c/o Crown Products** – Below; and Case #SUB2003-00202 – **Southern Oaks Subdivision, Resubdivision of and Addition to** – Below)

October 2, 2003

Mr. Jerry Byrd of Byrd Surveying, Inc., was present on behalf of the applicant. Mr. Byrd requested that a modification be made to #3 of the staff's recommendation for the rezoning and Planning Approval, changing "residential property" to "residentially developed property".

Mr. Michael Mitchell, a resident of 2530 McLaughlin Drive which adjoins the subject property, was concerned that development of this site with apartments or a business would spoil the peace and quiet of his property. Mr. Mitchell also said he and his wife worked at night and were concerned that noise from trucks going to and from the business would disturb their sleep.

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

- (1) subject to the Engineering Comments as follows--corrected flood zone information; compliance with minimum finished floor requirement for structures on any lot that is located within the Floodway, that Flood Zone AE and x-shaded be shown on each lot; compliance with all stormwater and flood control ordinances; and that any work performed in the right of way obtain a right of way permit;
- (2) full compliance with the Urban Forestry Comments as follows--property is to be developed in compliance with state and local laws that pertain to tree preservation and protection on both city and private properties (State Act 61-929 and City Code Chapters 57 and 64); continuation of preservation status given to two existing Live Oaks, 68" and 74" (preservation status requires Mobile Planning Commission approval to remove); and that all work under the canopy of these two trees be permitted and coordinated with Urban Forestry;
- (3) the provision of a 25-foot wide buffer, exclusive of any easement(s), where the property adjoins residentially developed property;
- (4) that the site be limited to the one existing curb cut to Halls Mill Road;
- (5) approval of the layout and circulation of the additional parking; and
- (6) full compliance with all municipal codes and ordinances.

Mr. Quimby inquired if part of the property was already developed.

Mr. McSwain replied yes.

The question was called. The motion carried unanimously.

Case #ZON2003-02187

Opus, Inc., c/o Crown Products

3107 Halls Mill Road (East side of Halls Mill Road, 300'± North of Fleetwood Drive North).

October 2, 2003

The request Planning Approval to amend a previously amended Planning Approval to allow the expansion of a distribution warehouse exceeding 40,000 square feet in a B-3, Community Business district was considered.

The site plan illustrates the existing buildings, parking, proposed building, lot configuration, and area to be rezoned.

(For discussion see Case #ZON2003-02188 – **Opus, Inc., c/o Crown Products** – Above; also see Case #SUB2003-00202 – **Southern Oaks Subdivision, Resubdivision of and Addition to** – Below)

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

- (1) subject to the Engineering Comments as follows--corrected flood zone information; compliance with minimum finished floor requirement for structures on any lot that is located within the Floodway, that Flood Zone AE and x-shaded be shown on each lot; compliance with all stormwater and flood control ordinances; and that any work performed in the right of way obtain a right of way permit;
- (2) full compliance with the Urban Forestry Comments as follows--property is to be developed in compliance with state and local laws that pertain to tree preservation and protection on both city and private properties (State Act 61-929 and City Code Chapters 57 and 64); continuation of the preservation status given to two existing Live Oaks, 68" and 74" (preservation status requires Mobile Planning Commission approval to remove); and that all work under the canopy of these two trees be permitted and coordinated with Urban Forestry;
- (3) the provision of a 25-foot wide buffer, exclusive of any easement(s), where the property adjoins residentially developed property;
- (4) that the site be limited to the one existing curb cut to Halls Mill Road;
- (5) approval of the circulation and layout of the additional parking; and
- (6) full compliance with all municipal codes and ordinances.

The motion carried unanimously.

Case #SUB2003-00202

Southern Oak Subdivision, Revision of and Addition to

3107 Halls Mill Road (East side of Halls Mill Road, 300'± North of Fleetwood Drive North).

1 Lot / 9.7± Acres

(For discussion see Case #ZON2003-02188 – **Opus, Inc., c/o Crown Products** – Above; and Case #ZON2003-02187 – **Opus, Inc., c/o Crown Products** – Above)

October 2, 2003

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

- (1) placement of a note on the final plat stating that the site is limited to one curb cut to Halls Mill Road, with the location and design to be approved by Traffic Engineering.

The motion carried unanimously.

Case #ZON2003-02195
Elcan & Associates, Inc.

1500 Government Street and 211, 213, 217, and 219 South Catherine Street (Northwest corner of Government Street and Etheridge Street, extending to the East side of Catherine Street, 175'± North of Government Street, and to the West side of Etheridge Street, 190'± South of Farmer Street).

The request for a change in zoning from B-2, Neighborhood Business, B-1, Buffer Business, and R-1, Single-Family Residential, to LB-2, Limited Neighborhood Business, for a retail shopping center was considered.

The plan illustrates the proposed building and parking.

(Also see Case #ZON2003-02200 – **Elcan & Associates, Inc.** – Below; and Case #SUB2003-00206 – **Shoppes of Midtown Subdivision** – Below)

Dr. Rivizzigno and Mr. Vallas recused from the discussion and vote regarding this matter.

Mr. Doug Anderson, attorney, was representing the applicant and provided the Commission with some booklets pertaining to this application. Mr. Anderson explained that the property consisted of six lots, five of which were on South Catherine Street and one on Government Street. The current zoning was R-1, B-1 and B-2, and they were proposing rezoning to R-1, LB-2 and B-2 for development of the site as a retail shopping center. The property at the corner of South Catherine and Government Street was currently used by the University of South Alabama for dormitories for some of its nursing students, which was very institutional in appearance. One building on South Catherine was used for a refugee assistance center by the Archdiocese of Mobile. There were three other R-1 properties on South Catherine Street. The house at 219 South Catherine was owned by his client and was currently vacant, and they planned to donate or sell the house so it could be relocated to another property within the City. The house on the next lot would be demolished. The house at 213 South Catherine would be moved to Lot 3 and that lot deeded to the current resident. Lot 1 would be adjacent to the Firestone Center on the east side. Mr. Anderson noted an Oak tree on the right side of the Catholic Services building that was referenced in the staff recommendation. He said they had met with Mr. Jackson of Urban Forestry, and would comply with all of the requests and requirements in saving the Oak tree. Regarding a letter provided the Commission from Devereaux Bemis, Mobile Historic Commission, Mr. Anderson said his client had met

October 2, 2003

with Mr. Bemis and discussed the two historic houses that they planned to relocate. He understood that the houses were not on a historic registry, but were simply older homes. With regards to the recommendation of the Architectural Review Board (ARB), to bring the building closer to the street, Mr. Anderson contended that this would not work for a development of this type, as they could not put parking in the rear of a retail store such as proposed for safety reasons. Mr. Anderson explained that the site would have buffering all around. They proposed a 6-foot high privacy fence, and a 10-foot wide landscape buffer where the property abutted R1. On Lot 3 there was an existing buffer that would remain, and they also planned to construct a privacy fence on the south side of Lot 3 to create an additional buffer. Mr. Anderson pointed out a green space just south of Lot 3 that they planned to keep as green space. With regard to what the building would look like, he said that since this site was in a historic district, the building would have to have approval of the ARB. They planned to have a parapet wall on the front and the building would be stucco and brick, but the type building and color would have to have approval of the ARB. Regarding the curb cut to Government Street, Mr. Anderson said they had only planned one curb cut to Government Street, which would be a shared access through Lot 1. He said they would work with Urban Forestry as to the location of the curb cut, as there were two trees at issue. There would be no access to Etheridge Street.

Mr. Frost noted that the staff addressed the access in its staff report, stating that ingress and egress to Government Street and South Catherine Street was to be coordinated with Urban Forestry.

Mr. Anderson was not aware that this was a condition. However, he said that they would make sure they met with Mr. Jackson to determine the proper thing to do with the location of those trees. He mentioned having access through Lot 1 as indicated in the staff report.

Mr. Olsen said that staff condition #5 did refer to the shared access through Lot 1 and was based on the original comments received from Urban Forestry.

Mr. Anderson thought that there might be some difficulty having an access between the two trees. He suggested possibly moving the curb cut slightly to the east, so that half of it would be on one lot and the other half on the other lot. If that were allowed he would have no objection to the limitation on curb cuts.

Mr. Albert Hartley of 511 Eslava Street was representing the University of South Alabama. Mr. Hartley stated that President Gordon Moulton and the governing Board of Trustees had approved the sale of this property. The property was surplus to the University's needs at this point in time and they were going to sell the property, if not to this developer to another developer in the future. He said they did not have the expertise on zoning matters, and would speak only for something that would be compatible with the neighborhood.

Ms. Renee Powell, a resident of the first house off of Government Street on Etheridge Street, stated that her residence faced the side of the existing building and it was an

October 2, 2003

eyesore. She felt this would be a good development for the neighborhood and might even encourage further growth in the area.

Mr. Olsen stated that he wanted to make a comment about a statement in an article in the newspaper that morning that indicated the staff had spoken with a representative of the Register and stated that the loss of those three residential structures on Catherine Street "was no big deal". He said he wanted to make it clear that the staff had never made that comment.

Mr. Dennis Knizley, attorney, was present on behalf of property owners and residents who lived adjacent to and surrounding the subject property who were opposed to this subdivision. Mr. Knizley said he knew many people in this community including his sister, Frances Palughi, who lived adjacent to the northern part of this property, and his mother, Florence Knizley, who lived on Etheridge Street. He presented a petition containing 278 signatures opposing the rezoning, and 110 signatures of people opposing the subdivision. Mr. Knizley pointed out that this was a historic district with a high density of older homes on small lots. This was in the midtown area which had become popular with young people with children, and the proposed change would give several negative aspects to the residential community--increased traffic, increased noise and odors associated with dumpsters. He said it would result in the elimination of the B-1 buffer zone to the north, which was designed to buffer a B-2 zone from residential. Mr. Knizley said the residents were opposed to the widening of Etheridge Street, which was used by children who routinely walked down the street to cross over to Leinkauf School. They contended the rezoning was not necessary because there were vacant, commercially zoned buildings for five or six blocks down Government Street, and ample B-1 zoned properties in the area that could accommodate this project. Mr. Knizley noted that there were 201 parking spaces proposed for this development, which would be 68 more spaces than required, and there was unexplained use of Lot 1. He contended this project could be encompassed in the present B-1 area or another B-1 area in close proximity. He also felt there was no need to change the zoning of the residential property at the back of the site.

Mr. Felix Vereen of 1750 Dauphin Street, President of the Old Dauphin Way Historic Association, stated that the Association was not against new business in the area, but was concerned about what type of business was proposed. They also felt that the two houses at 219 and 213 South Catherine were historic and should be saved and kept in the district. Mr. Vereen suggested the developer defer this rezoning request and hold a public meeting with the citizens of the district to explain what they were proposing.

Mr. Chris McFadyen, a resident of 1506 Farmer Street which was across the street from the north boundary of the subject property, stressed that each individual home owner was an investor in the neighborhood and wanted to protect their investments by maintaining the character of the neighborhood which they saw as a residential with a problematic piece of property in the middle of it. Mr. McFadyen expressed concern that this would be a strip mall and as indicated by Mr. Anderson, there would be no security. Mr. McFadyen also expressed concern about dumpsters and the noise associated with them during the

October 2, 2003

night, as well as problems that came along with an alley way. He said the residents had investments in the neighborhood and wanted to realize a return on them by continuing to live in the neighborhood, and they expected the Planning Commission to maintain the integrity of it.

Ms. Louise McClure, a resident of 208 South Catherine Street, stated that the developer had misstated a few facts and she wanted to clear them up. Regarding the three houses on South Catherine Street--one to be given away, one to be moved, and one to be demolished--Ms. McClure said the owner of the house to be moved did not live in that house and would not reside in it.

Mr. Terry Osborne, a resident of 71 Etheridge Street, presented a petition containing the signatures of 142 more people who were generally between the ages of 27 and 35 that lived in that area of downtown who were opposed to this development. Mr. Osborne was concerned at to what was to happen to the rear lot that adjoined his property. He said they were not against development, but wanted to see something developed for use of the current zoning such as a coffee shop, TCBY, or something not so retail oriented; something to bring in new taxes, but also that served the community.

In rebuttal, Mr. Anderson said he was not trying to mislead anyone, but he had been told by his client that Ms. Miller lived in the house designated to be moved. Regarding Mr. Knizley's comment about the rezoning of Lot 1, Mr. Anderson said they were not rezoning Lot 1; the lot was already zoned B-2 and would remain B-2. He noted that some of the neighbors did meet with his client several weeks ago on Ms. Palughi's front porch. Ms. Palughi would have an R-1 house adjoining her property rather than B-1. Mr. Anderson said the property today was an eyesore. Because the site was shown as commercial on the City's Comprehensive Plan, and the fact that it had been commercial since the 1960's, he felt there was nothing else that was going to be done with this property except commercial development. He felt that this was a good plan and would be good not only for the immediate neighborhood but for the City.

Mr. Frost asked Mr. Anderson if there was any information about the different types of user tenants going in.

Mr. Anderson replied that they did not have anyone under lease yet because they did not own the property and his client did not want to enter into any contracts without making sure this process was going to be successful, noting that it would still have to go before the City Council and the Architectural Review Board. He said they were talking with an office supply company for one building. The other ones would have national, reputable tenants. There would probably be 4 or 5 stores within that wing of the center.

Mr. Olsen asked those with petitions to submit them for the record.

Mr. Quimby asked Mr. Devereaux Bemis to address the Commission on the recommendation of the Historic Development Commission.

October 2, 2003

Mr. Devereaux Bemis stated that he wanted to make it clear that neither the Historic Development Commission nor the ARB had met on this matter. Their recommendations were staff recommendations only. Mr. Bemis said they looked at several things, first, the four buildings due for more or less demolition. One was a historic house and would be moved to Etheridge Street, and the other three buildings were due for demolition. He said the idea of giving one to a charitable organization to move rarely worked. The ARB felt that if the house left the historic district that it was in, it would be tantamount to a demolition because that neighborhood would have lost that historic fabric Mr. Bemis said of the four buildings, two would be considered very historic. One was going to Etheridge Street. They recommended that a second one be moved to about where on the plat it said "Lot 2", to the north end of the property. That would save it for the historic district. The other two buildings, one of which was historic but had been altered, the ARB might let that go. He said the ARB would be required to deny demolition. Contrary to what Mr. Anderson said, the two building they were talking about saving were on the National Register of Historic Places. Regarding moving the proposed building forward on the property, one of the things that they discussed because of the odd shape and the amount of building frontage, was that they L-shape the building so they could then create the internal parking and bring one wing of the building closer to the street and thereby meet their goals of having their parking, yet the ARB would meet their goals of creating more of a street scene in the tradition of Government Street. With reference to parking lot landscaping, the ARB wanted to see internal landscaping as well. Finally, because this was a pedestrian neighborhood, the ARB felt there needed to be some pedestrian access to this building and asked for sidewalks or some sort of internal planning to get to the building. He mentioned that Dr. Rivizzigno had attended one of their meetings a few weeks ago and he encouraged other Commission members to attend a meeting as well.

Mr. Frost gave Mr. Anderson an opportunity to respond.

Mr. Anderson said that it was not his intention to mislead anyone or misstate any of the facts.

In discussion, a motion was made by Ms. Deakle and seconded by Dr. Laier to recommend the approval of this change in zoning to the City Council subject to the recommendations made by the staff.

Mr. Quimby expressed concern about the fate of the historic houses on South Catherine Street.

Ms. Deakle compared the houses to be moved to several historic houses that were moved from Spring Hill Avenue to other locations in this district and said they worked very well.

Mr. Quimby had some concerns regarding trees on the site.

Regarding condition #5 in the staff's recommendation regarding access, Mr. Olsen stated that Mr. Jackson did meet with the applicant, and the staff would be willing to change

October 2, 2003

that condition to say "...shared access *with* Lot 1", to be coordinated with Urban Forestry".

Mr. Daughenbaugh noted that proper permits would be needed from the Tree Commission for any trees to be removed in City right-of-way.

Ms. Deakle and Dr. Laier amended their motion and second respectively. The final motion was to recommend the approval of this change in zoning to the City Council subject to the following conditions:

- (1) dedication of sufficient right-of-way along Etheridge Street to provide 25' from centerline;
- (2) provision of a privacy fence and landscaped buffer (as indicated on the plan submitted) along portions of the North and West property lines, where the site abuts existing residences;
- (3) the provision of buffering along Etheridge Street, where the site is across from residences, height and type of buffering to be coordinated with the ARB;
- (4) denial of access to Etheridge Street;
- (5) because of the size of existing trees on Government Street and the distance between them, all ingress and egress from Government Street is to be shared access with Lot 1 (Administrative PUD will be required prior to permitting);
- (6) the 40" Live Oak on the West side of the property (on South Catherine Street) be given preservation status; all work under the canopy would therefore have to be permitted and coordinated with Urban Forestry;
- (7) ingress and egress on Government and South Catherine Streets is to be coordinated with Urban Forestry; and
- (8) full compliance with all municipal codes and ordinances.

Mr. Plauche was opposed. Dr. Rivizzigno and Mr. Vallas recused. The motion carried.

Case #ZON2003-02200

Elcan & Associates, Inc.

West side of Etheridge Street, 100'± South of Farmer Street.

The request for a change in zoning from B-1, Buffer Business, to R-1, Single-Family Residential, to allow a single-family residence was considered.

The plan illustrates the proposed building and parking.

(For discussion see Case #ZON2003-02195 – **Elcan & Associates, Inc.** – Above; also see Case #SUB2003-00206 – **Shoppes of Midtown Subdivision** – Below)

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

October 2, 2003

- (1) dedication of sufficient right-of-way along Etheridge Street to provide 25' from centerline; and
- (2) full compliance with all municipal codes and ordinances.

Mr. Plauche was opposed. Dr. Rivizzigno and Mr. Vallas recused. The motion carried.

Case #SUB2003-00206

Shoppes of Midtown Subdivision

1500 Government Street and 211, 213, 217, and 219 South Catherine Street

(Northwest corner of Government Street and Etheridge Street, extending to the East side of Catherine Street, 175'± North of Government Street, and to the East side of Etheridge Street, 100'± South of Farmer Street).

3 Lots / 5.9± Acres

(Also see Case #ZON2003-02195 – **Elcan & Associates, Inc.** – Above; also see Case #ZON2003-02200 – **Elcan & Associates, Inc.** – Above)

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

- (1) dedication of sufficient right-of-way along Etheridge Street to provide 25' from centerline;
- (2) placement of a note on the final plat stating that all ingress and egress from Government Street is to be shared access with Lot 1;
- (3) placement of a note on the final plat stating that ingress and egress on Government and South Catherine Streets is to be coordinated with Urban Forestry;
- (4) placement of a note on the final plat stating that the 40" Live Oak on the West side of the property (on South Catherine Street) be given preservation status and all work under the canopy would therefore have to be permitted and coordinated with Urban Forestry; and
- (5) provision of a privacy fence and landscaped buffer (as indicated on the plan submitted) along portions of the North and West property lines, where the commercial site abuts existing residences.

Mr. Plauche was opposed. Dr. Rivizzigno and Mr. Vallas recused. The motion carried.

NEW SUBDIVISION APPLICATIONS:

Case #SUB2003-00201

Brooklyn's Way Subdivision

East side of Snow Road, 520'± South of Wulff Road.

71 Lots / 35.0± Acres

October 2, 2003

Mr. Matt Orrell of Polysurveying Engineering - Land Surveying, was present on behalf of the applicant and indicated the applicant was in agreement with the recommendations of the staff.

Ms. Jeanette Pierce, a resident of 3300-B Snow Road, expressed concern as to the effect this development would have on the environment, in particular wildlife and drainage.

Mr. Frost stated that he understood Ms. Pierce's concerns. He said that the Commission requires at the outset that applicant's follow all ordinances regarding those issues. He commented that unless there was some real data presented that showed there would be some sort of out of the ordinary problem, it was difficult for them to address it further.

A motion was made by Mr. Plauche and seconded by Mr. Vallas to approve this subdivision subject to the following conditions:

- (1) the dedication of sufficient right-of-way to provide 50-feet from the centerline of Snow Road;
- (2) the placement of a note on the final plat stating the access is denied to the private road (Grimes Road);
- (3) the placement of a note on the final plat stating the Lots 1 through 3 and Lots 41 through 43 are denied direct access to Snow Road;
- (4) the placement of a note on the final plat stating maintenance of all common areas is the responsibility of the property owners; and
- (5) the placement of a note on the final plat stating that any property developed commercially and adjoining residentially developed property will provide a buffer in compliance with Section V.A.7. of the Subdivision Regulations.

The motion carried unanimously.

Case #SUB2003-00199

Carol Plantation Subdivision, 4th Unit, Resubdivision of Farm 555

5921 Creel Road (East side of Creel Road, ¼ mile± South of Theodore Dawes Road).

2 Lots / 4.0± Acres

Mr. Matt Orrell of Polysurveying Engineering - Land Surveying was present on behalf of the applicant and indicated the applicant was in agreement with the recommendations of the staff.

There was no one present in opposition.

A motion was made by Mr. Plauche and seconded by Dr. Rivizzigno to approve this subdivision subject to the following condition:

October 2, 2003

- (1) the placement of a note on the final plat stating that a buffer, in compliance with Section V.A.7. will be provided where the site adjoins residentially developed property.

The motion carried unanimously.

Case #SUB2003-00203

Coastal Waters Federal Credit Union Subdivision

1106 Spring Hill Avenue (North side of Spring Hill Avenue, 100'± West of Pine Street).

1 Lot / 0.4± Acre

The applicant was present and requested that two curb cuts, rather than one as recommended by the staff, be allowed to Spring Hill Avenue. He explained that another cut was needed for their additional parking, and it would allow a driveway on the opposite side of the building for a drive-up window. He said with only one curb cut, people exiting the drive-through would have to cross back in front of the Credit Union and that would eliminate the handicapped parking. It would also be hazardous for people walking in and out of the front door.

Mr. Olsen said the applicant did not submit a site plan, but the survey showed that the existing curb cut was continuous. The overall site had 87.7 feet of frontage on Spring Hill Avenue, and typically the staff did not recommend more than one curb cut on a lot with that amount of frontage.

Mr. McSwain suggested that the applicant provide a site plan showing the existing curb cut.

The applicant stated that he did have a site plan.

Mr. Frost suggested that the application be heldover until the next meeting to allow the staff time to review the site plan.

Mr. Olsen said that the site plan should include the curb cuts, their size, location, as well as the parking area.

The applicant felt that a site plan could be submitted within a week.

Mr. Olsen said that the staff would need to see it by next Tuesday in order to have time to review it before the October 16, 2003, Commission meeting.

The applicant said that this was acceptable.

There was no one present in opposition.

In discussion, a motion was made by Mr. Frost and seconded by Dr. Rivizzigno to holdover this application until the meeting of October 16, 2003, to allow the staff time to review the site plan submitted at the meeting.

October 2, 2003

The motion carried unanimously.

Case #SUB2003-00198

Hillview Subdivision, Block 2, Resubdivision of Lot 5

4570 Hillview Drive (Northeast corner of Hillview Drive and Summit Drive).

2 Lots / 0.4± Acre

Mr. Tom Galloway, attorney, was representing residents of the subdivision. Mr. Galloway stated that the subdivision had restrictive covenants which prohibited resubdivision of the lots. Although he understood the Planning Commission had no authority to enforce restrictive covenants, he asked that they consider the covenants, so the residents did not have to go to the expense of going to court to enforce the covenants.

Mr. Matt Orrell of Polysurveying Engineering - Land Surveying, was present on behalf of the applicant. Mr. Orrell stated that his client had informed him that a precedent had been set in the subdivision with the division of lots. He pointed out three or four lots that he said looked like they had been resubdivided. He said his client just wanted to build a house on the additional lot.

Mr. Frost said that this was not a court of law and there were various facts that would come into play regarding restrictive covenants. It was the Commission's feeling that they were not the appropriate body to enforce such covenants. He said that restrictive covenants were enforced by circuit court. However, he felt that someone developing a piece of property would want to take them into consideration before making any final plans. He asked Mr. Orrell if he was aware of the restrictive covenants on the subdivision.

Mr. Orrell replied that he was not aware of them, and he did not think his client was either. He just knew there were other lots in the subdivision that had been resubdivided.

Ms. Deakle raised a question regarding condition #2 in the staff's recommendation, which stated that the house on Lot 2 would have to be torn down because it would be too close to the property line.

Ms. Pappas said that it *may* have to be torn down; however, if 8 feet was provided from the house to the new lot line, it would not have to be torn down.

Mr. Olsen noted that the lots were of sufficient size that if it had to be moved an additional 8 feet from where the line was shown on the plat submitted, both lots would still meet the minimum requirements with regard to frontage and minimum area.

Ms. Toni Brewton of 4568 Hillview Drive was present in opposition and indicated on the plat the neighbors who were opposed. She submitted a petition signed by residents of the subdivision who were opposed to this resubdivision. A long-time resident of the Hillview Subdivision, Ms. Brewton was concerned that the resubdivision would be out of

October 2, 2003

character with their old established, quiet neighborhood. She also expressed concerns about encroachment on their privacy as this would put two families right at her back fence and against her neighbor's bedroom. She felt this would depreciate property values. Further, she noted what appeared to be an encroachment of the house on the existing lot, and the plan did not show where the new house was to be located, the right-of-way or the setbacks.

Mr. Frost explained that the applicant was not required to provide detailed information at this time. The applicant was required only to meet the minimum requirements of the ordinances at this point.

Ms Pappas stated that the property was zoned R1, single-family residential, and only one house could be built on the lot and it would have to comply with standard setbacks.

Ms. Brewton asked that the application be heldover for 30 days to give the residents an opportunity to talk with the applicant about possible resolution, as they had not had the opportunity to meet with him yet and there were several residents that were not able to attend today's meeting. She was concerned that if the Commission did not address the restrictive covenants, the residents would have to pay the expense of taking this to court and it could take several years to resolve.

Mr. Frost stated that the applicant could not be forced to holdover the application unless the Commission had sufficient reason to force the issue. He sympathized with the neighbors concerns, but stressed that the Commission could not enforce restrictive covenants.

Ms. Brewton expressed concerns regarding traffic and noise. She did not want to see patio homes in this area. She stated that she had lived in this area for over 30 years.

Mr. Frost said that the applicant had indicated that there were previous subdivisions in this neighborhood.

Ms. Brewton stated that she was unsure.

Mr. Tom Moore, a resident of 288 Summit Drive, was also present in opposition and expressed concern about losing the character of the subdivision with its big, spacious lots. Mr. Moore said he understood the applicant was planning to move, but he would encourage him to just add on to his home instead, which would increase the value, and stay in the neighborhood.

Mr. Charles Muncaster, a resident of 258 Summit Drive, was present in opposition and raised a question regarding the setback which he said measured only 12-13 feet off of Summit Drive which did not conform to the 25-foot setback the applicant proposed. He said he was told by Mr. Caldwell Whistler that the staff was viewing that as a grandfathered issue.

October 2, 2003

There was further discussion about the setbacks. Mr. Frost explained that the applicant was actually drawing another line on that lot. The 25-foot setback has been violated, but there was nothing that could be done about that. However, something could be done about the 8-foot setback because he had come back and was creating a new lot.

Mr. Muncaster emphasized that the 25-foot setback was also the applicant's choice, and the residents would like the Commission to review it in that regard as well.

Mr. Quimby asked if the Commission had the authority to bring that lot into compliance.

Ms. Pappas replied that if it was legally grandfathered in, if it were prior to 1967, then no, the Commission did not have that authority.

Mr. Orrell noted that they were talking about a side setback, which was typically 25 feet. The new house that would go on the lot would be 25 feet back from the right-of-way to meet the City's requirements.

Mr. Olsen noted that the Zoning Ordinance required a minimum 20-foot side yard on a corner lot.

In executive session Mr. Vallas asked if the staff had found any documented resubdivisions in the Jackson Heights area.

Ms. Pappas stated that from the size of the lots there seemed to be two or three subdivisions, one of which they were not sure went through the Planning Commission.

A motion was made by Mr. Quimby and seconded by Dr. Rivizzigno to deny this subdivision.

Ms. Pappas stated that according to the State law, if an application was denied for subdivision, reasons had to be cited.

Mr. Quimby withdrew his motion.

Mr. Olsen said that the issue regarding a stated reason for subdivision denial came up during a subdivision application in Sunset Hills.

In further discussion Mr. Quimby asked if non-conformance with the neighborhood would be a sufficient reason.

Mr. Frost asked if denial could be based on restrictive covenants. He felt it would have to be in conjunction with other reasons, because as he stated previously, he did not believe this was an appropriate body to enforce the covenants.

Ms. Cochran agreed with Mr. Frost. She further stated that she questioned what standard should be applied in determining whether or not to grant a subdivision approval. The

October 2, 2003

Regulations did not really address what standards were to be applied when talking about subdividing an already developed neighborhood. She was concerned that there was no articulation of what the Commission was supposed to look at.

Mr. McSwain thought that it might be best to hold this over to allow the applicant to research any restrictive covenants and to meet with the surrounding neighbors.

A new motion was made by Mr. Quimby and seconded by Ms. Deakle to holdover this application until the meeting of October 16, 2003, to allow the applicant time to meet with the surrounding property owners and research any possible restrictive covenants that may apply.

The motion carried unanimously.

Case #SUB2003-00197

Patricia Drive Subdivision

3830 Patricia Drive (North side of Patricia Drive, 830'± East of Benson Road).

1 Lot / 0.5± Acre

Mr. Matt Orrell of Polysurveying Engineering - Land Surveying, was present on behalf of the applicant and indicated the applicant was in agreement with the recommendations of the staff.

There was no one present in opposition.

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

- (1) delineation of flood zone(s) shown on the final plat; and
- (2) that the minimum finished floor requirement shown on the plat.

The motion carried unanimously.

Case #SUB2003-00205

Sign-A-Rama Commercial Subdivision

7421 Airport Boulevard (South side of Airport Boulevard, 270'± West of Portside Boulevard, extending to the West side of Portside Boulevard, 330'± South of Airport Boulevard).

2 Lots / 1.4± Acres

The applicant was present and indicated he was in agreement with the recommendations of the staff.

There was no one present in opposition.

October 2, 2003

A motion was made by Ms. Plauche and seconded by Dr. Rivizzigno to waive Section V.D.3. (width to depth ratio), of the Subdivision Regulations, and approve this subdivision subject to the following conditions:

- (1) the placement of a note on the final plat stating that Lot 1 is limited to one curb cut to Airport Boulevard with the size, location and design to be approved by County Engineering;
- (2) the placement of a note on the final plat stating that Lot 2 is limited to one curb cut to Portside Boulevard with the size, location and design to be approved by County Engineering;
- (3) the placement of a note on the final plat stating that any lots which are developed commercially and adjoin residentially developed property must provide a buffer, in compliance with Section V.A.7. of the Subdivision Regulations; and
- (4) the placement of the 25-foot minimum setback line on the final plat.

The motion carried unanimously.

Case #SUB2003-00204

Toys-R-Us Subdivision

East side of Bel Air Boulevard, extending from Eslava Creek Parkway to Television Avenue and the North terminus of Broadcast Drive, and extending to the Southwest corner of Sage Avenue and Eslava Creek Parkway.

2 Lots / 13.9± Acres

Ms. Pappas stated that she wanted to make a point of clarification on the recommendation. Condition #1 should state that “the right-of-way for Television Avenue and Eslava Creek Parkway be specified on the final plat”.

Mr. Bobby McBryde, Rowe Surveying and Engineering Company, Inc., was representing the applicant and stated that the applicant was in agreement with the recommendations of the staff.

Mr. McSwain asked about the area on the plat indicated as “not included”.

Ms. Pappas stated that this was a utility sub station that had an existing easement to it.

Regarding the area just north of Television Avenue, Mr. McSwain asked if that was being cut out of the existing subdivision.

Ms. Pappas stated that it was a legal lot of record.

Mr. McSwain further asked how they could get the zoning cleaned up, and could it be done at this time?

October 2, 2003

Ms. Pappas stated that it could be a condition of approval that it must be completed prior to the issuance of the Certificate of Occupancy for the building if the Commission so desired.

Mr. McSwain felt this would be a good opportunity to do it.

Mr. McBryde said that if this was a good chance to do something that the staff would like to see done, he felt sure his client would be agreeable to it.

There was no one present in opposition.

A motion was made by Mr. McSwain and seconded by Mr. Plauche to approve this subdivision subject to the following conditions:

- (1) that the right-of-way for Television Avenue and Eslava Creek Parkway be specified on the final plat;
- (2) the flood zones be delineated on the plat as well as the minimum finished floor requirements of each lot;
- (3) that all drainage easement be defined on the final plat;
- (4) the placement of a note on the final plat stating that the size, number, location and design of all curb cuts be approved by Traffic Engineering;
- (5) the placement of the 25-foot minimum building setback lines on the final plat; and
- (6) that the zoning be brought into compliance with the lot lines prior to the issuance of a Certificate of Occupancy.

The motion carried unanimously.

NEW SIDEWALK WAIVER APPLICATION:

Case #ZON2003-02190

Precision Tune (Victor Vallas, Agent)

Southeast corner of Pleasant Valley Road and Magnolia Road.

The request to waive construction of sidewalks along Pleasant Valley Road and Magnolia Road was considered.

Mr. Vallas recused himself from the discussion and vote regarding this matter.

Mr. Jerry Byrd of Byrd Surveying, Inc., was present on behalf of the applicant and said they did not think dedication of the right-of-way and construction of the sidewalk was necessary. He noted that when this subdivision was recorded the right-of-way of Magnolia Road was shown on the subdivision plat. They felt if additional right-of-way was necessary it should have been acquired at that time. A building for Precision Tune was to be constructed on the site which would face Highway 90.

October 2, 2003

Mr. Frost said he understood his point, but they were now constructing something that was requiring the Commission to take another look at this issue.

Mr. Byrd pointed out that the property immediately south of this parcel, Enterprise Car Rental, was granted a sidewalk waiver on Magnolia Road. He said if they were required to build a sidewalk it would go nowhere.

Ms. Deakle asked if the street had any foot traffic from a school.

Mr. Byrd said the children crossed with the crossing guard at Pleasant Valley Road and Highway 90.

Ms. Deakle said that it did appear that the sidewalk would not connect to anything and there was only residence on the corner.

Mr. Quimby asked if the convenience store on the corner had a sidewalk.

Mr. Byrd replied that it did have a sidewalk on Pleasant Valley Road and on Highway 90.

Mr. Quimby said the sidewalk then would be tying into that; it would not go nowhere.

Mr. Byrd said this was correct.

Mr. Quimby was concerned about children crossing the street at the school.

Mr. Byrd said it would be the only sidewalk on Magnolia Road.

In discussion, a motion was made by Dr. Rivizzigno and seconded by Mr. Quimby to deny this request.

Mr. Frost inquired if there was a waiver granted for the car rental site as mentioned by the applicant.

Ms. Pappas stated that based on the documentation provided by the applicant, a waiver was granted there in 1997.

Dr. Rivizzigno felt that waivers should only be granted if it were physically impossible to construct a sidewalk as had been policy with the Commission for several years. She said that she did not want to see them change this precedent.

Mr. Olsen noted that the waiver request was only for Magnolia. It was not for Pleasant Valley Road.

The question was called. Mr. Vallas recused. Mr. Plauche, Mr. McSwain and Ms. Deakle were opposed. The vote was tied.

October 2, 2003

Mr. Frost wished to discuss this further. He thought that they had also approved waiver requests in the past for reasons other than they were impossible to construct. He felt that the Commission having waived the sidewalk requirement on the car rental property should be taken into consideration with this case. He inquired if a sidewalk could ever be required for the car rental site.

Mr. Olsen said that the site would have to be redeveloped.

Mr. Quimby said that his main concern was the Pleasant Valley Road side.

Mr. Olsen explained that the waiver was for Magnolia Road and not Pleasant Valley Road.

Mr. Quimby had not been aware that Pleasant Valley Road was not being considered with this application. In light of this he wished to oppose the previous motion. Therefore, the motion did not carry.

A new motion was made by Ms. Deakle and seconded by Mr. Plauche to approve the request to waive sidewalk construction along Magnolia Road.

Dr. Rivizzigno was opposed. Mr. Vallas recused. The motion carried.

OTHER BUSINESS:

New Planning Commission Member

Mr. Frost welcomed new Planning Commission Member Ernest Scott.

Idlewood Subdivision

Mr. Olsen said that the Commission had approved Subdivision and Planned Unit Development applications in Idlewood Subdivision off of Old Military Road in 2001. The neighboring property owners had appealed the approvals to the City Council and the Council basically upheld the appeal overturning the Commission's decision. The developer filed an action in Circuit Court. The applicant recently received an order for summary judgment overturning the Council's denial, so the Commission's decision and the approvals were now valid.

There being no further business, the meeting was adjourned.

APPROVED: January 8, 2004

/s/ Victor McSwain, Secretary

/s/ Robert Frost, Chairman

October 2, 2003

/ms and jh