

MOBILE CITY PLANNING COMMISSION MINUTES
MEETING OF AUGUST 20, 2009 - 2:00 P.M.
AUDITORIUM, MOBILE GOVERNMENT PLAZA

Members Present

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

Members Absent

Clinton Johnson
Nicholas H. Holmes, III

Urban Development Staff Present

Bert Hoffman,
Planner II
Frank Palombo,
Planner II
Carla Scruggs,
Planner I
Joanie Stiff-Love,
Secretary II

Others Present

John Forrester,
City Engineering
Jennifer White,
Traffic Engineering

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

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

HOLDOVERS:

Case #SUB2009-00067 (Subdivision)

Regency Executive Park Subdivision, Unit Three, Re-subdivision of Lot 2

South side of Grelot Road, 225'± West of University Boulevard
Number of Lots / Acres: 2 Lots / 14.7± Acres
Engineer / Surveyor: Rester and Coleman Engineers, Inc.
Council District 6

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

The Chair announced the matter had been recommended for approval.

Don Coleman, Rester and Coleman Engineers, Inc., spoke on behalf of the applicant and asked that the matter be held over.

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Hearing no opposition or discussion, a motion was made by Mr. Plauche, with second by Dr. Rivizzigno, to hold the matter over until the September 17, 2009, meeting, per the applicant's request.

The motion carried unanimously.

Case #SUB2009-00097 (Subdivision)

Miller Creek Estates Subdivision, Re-subdivision of Lot 1

North terminus of Foxgate Road, adjacent to the North side of Alderbrook Subdivision, extending to the South terminus of Sasser Lane

Number of Lots / Acres: 2 Lots / 38.4± Acres

Engineer / Surveyor: Byrd Surveying, Inc.

County

The Chair announced the matter had been recommended for denial.

Jerry Byrd, Byrd Surveying, Inc., spoke on behalf of the applicant and made the following points in favor of approval:

- A. it consists of two legal parcels of property, one being a 37 acre tract in a recorded subdivision and a 50 foot wide by 900 foot long strip of property;
- B. both parcels have frontage to Sasser Lane, a private road;
- C. the subdivision proposes taking 10 acres off of the eastern side of the 37 acre tract and attaching it to the 50 foot wide strip;
- D. it will not increase the number of lots currently on Sasser Lane;
- and,
- E. the reason behind the flag-shaped lot is to create a useable piece of property out of a court ordered strip of land that currently would not be useable.

Mr. Vallas asked for clarification regarding the lot size information.

Mr. Byrd stated the 1 acre parcel was the 50 foot strip and the 37 acre parcel discussed still retained the 10 acres the applicant desired to put with the 50 foot strip.

Mr. Watkins asked if the applicant's representative had discussed any possible requirements regarding the matter with the Planning staff.

Mr. Hoffman stated that Mr. Byrd had come to the office to discuss the matter; however, Mr. Hoffman added that Mr. Byrd had not stated whether or not the conditions were amicable. He reminded the Commission of their previous recommendation that the area not be subdivided again until Sasser Lane becomes a publicly maintained, county standard road.

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Mr. Byrd responded by saying the cul-de-sac was mentioned in the original report. At that time, the applicant stated they would have no issue with dedicating right-of-way for the cul-de-sac.

Mr. Hoffman advised the Commission that he had spoken to Urban Development's Deputy Director of Planning, Richard Olsen, who was not able to attend that day's meeting. Mr. Olsen advised that should the Commission be so inclined to approve this request, the staff would request the dedication for the cul-de-sac and then recommend that neither lot be subject to any additional subdivision until such time as Sasser Lane were improved to county standards. These recommendations would be in addition to the recommendations already stated for approval.

Mr. Byrd stated the applicant would be agreeable to all of those.

Mr. Davitt asked if that would include access to lot 1B.

Mr. Hoffman stated that access to lot 1B would only be to Sasser Lane.

Hearing no opposition or further discussion, a motion was made by Mr. Vallas, with second by Mr. Miller, to approve the above referenced re-subdivision, subject to the following conditions:

- 1) **revision of the plat to show provision and dedication of a 120-diameter cul-de-sac at the terminus of Sasser Lane, and revision of lot sizes to accommodate the cul-de-sac;**
- 2) **placement of a note on the final plat stating that each lot is limited to one curb-cut onto each street frontage, with the size, design, and location to be approved by Mobile County Engineering;**
- 3) **placement of a note on the plat stating that no additional subdivision of either lot is allowed until additional frontage on a paved public street is provided, and no further subdivision of Lot 1-A is allowed that would increase the number of lots fronting onto Sasser Lane until such time it is paved in its entirety, and a paved cul-de-sac is provided;**
- 4) **depiction of the 25-foot minimum building setback line as discussed in the report (The required setback should be depicted around any portion of Lot 1-A abutting a street-stub, and around that portion of Lot 1-B where the "pole" meets the "flag" portion of the lot.);**
- 5) **placement of a note on the plat stating that: *"Development must comply with the Mobile County Flood Damage Prevention Ordinance. Development shall be designed to comply with the stormwater detention and drainage facility requirements of the City of Mobile stormwater and flood control ordinances, and requiring submission of certification from a licensed engineer***

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- certifying that the design complies with the stormwater detention and drainage facility requirements of the City of Mobile stormwater and flood control ordinances prior to the issuance of any permits.”;*
- 6) **placement of a note on the plat stating that development of the site must be undertaken in compliance with all local, state, and Federal regulations regarding endangered, threatened, or otherwise protected species;**
 - 7) **placement of a note on the plat stating that development on the site must be undertaken with the approval of all applicable federal, state, and local agencies for floodplain and wetland issues prior to the issuance of any permits or land disturbance activities; and,**
 - 8) **placement of a note on the plat stating that any lots which are developed commercially and adjoin residentially developed property must provide a buffer, in compliance with Section V.A.8. of the Subdivision Regulations.**

The motion carried unanimously.

Case #SUB2009-00108 (Subdivision)

White Estates Subdivision

2001 Point Legere Road

South side of Point Legere Road, 330'± East of Canal Lane

Number of Lots / Acres: 2 Lots / 3.3± Acres

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

Council District 4

The Chair announced the matter had been recommended for denial.

Bobby McBryde, Rowe Surveying and Engineering Co., Inc., spoke on behalf of the applicant and requested the matter be held over.

Hearing no opposition or discussion, a motion was made by Mr. Plauche, with second by Mr. DeMouy, to hold the matter over until the September 17, 2009, meeting, per the applicant's request.

The motion carried unanimously.

EXTENSIONS:

Case #ZON2008-01709 (Planned Unit Development)

Amity Missionary Baptist Church

2451 St. Stephens Road

South side of St. Stephens Road, extending from Strange Avenue to Como Street, and Southwest corner of St. Stephens Road and Como Street

Planned Unit Development Approval to allow off site parking for a proposed church
Council District 1

The Chair stated the applicant was agreeable with the recommendations and asked if anyone wished to speak on the matter to do so at that time.

Hearing no opposition or discussion, a motion was made by Mr. Plauche, with second by Dr. Rivizzigno, to approve the above referenced request for extension, however, it should be noted that a new application for the appropriate variance(s) will be required prior to any requests for land disturbance or building permits.

The motion carried unanimously.

NEW SUBDIVISION APPLICATIONS:

Case #SUB2009-00117

Haven of Hope for Women Subdivision

7631 Moffett Road

Southeast corner of Moffett Road and Temple Road

Number of Lots / Acres: 1 Lot / 2.3± Acres

Engineer / Surveyor: Goodwyn, Mills & Cawood, Inc.

County

The Chair stated the matter had been recommended for approval.

Curt Clayton, Goodwyn, Mills and Cawood, Inc., spoke on behalf of the applicant regarding conditions 5 and 6, and made the following points:

- A. the intended use for the site is as a thrift store and facility to receive donations for the same;
- B. limiting the access to Temple Road and/or limiting the curb cuts to Moffett Road would place a burden on the property and the facility proposed with regards to how trucks would be able to make deliveries to the site; and,
- C. the applicant felt comfortable limiting the Temple Road access to “exit only” usage and having only one curb cut to Moffett Road.

Mr. Miller asked if the applicant could have their way, they would be pleased with one curb cut to Temple Road and one curb cut to Moffett Road and Mr. Clayton responded

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yes.

Mr. Clayton told the Commission the applicant simply needed a route to transition traffic through the site and back onto Moffett Road and one access point would not allow that.

The Chair asked if, in lieu of the one curb cut on Temple Road, could the applicant work with two (2) curb cuts on Moffett Road.

Mr. Clayton said the applicant could function with two (2) access points on Moffett Road and none on Temple Road.

The following people spoke in opposition to the matter:

- Grady Hammock, 3235 Temple Road, Semmes, AL; and,
- Belinda Timothy, 3180 Temple Road, Semmes, AL.

They made the following points in opposition to the project:

- A. Temple Road is used as a “cut thru” street from Schillingers Road to Moffett Road and currently has a large volume of traffic;
- B. the applicants do not seem to keep their area as clean as such groups as Goodwill;
- C. it is in a residential area and the residents around it would like to see it remain residential; and,
- D. concern regarding the increase in traffic and how it will impact the safety of the many children who live and play along Temple Road.

Mr. Palombo stated that as it is in the county it falls under no zoning ordinances, and Mr. Hoffman reminded everyone that the buffer requirements between residential and business still apply in the county.

Laura J. Clarke, Director of Urban Development, addressed the Commission and advised that as this was in the county the Commission had no jurisdiction over the concerns voiced by the residents that day. She reminded all that it would be in the citizens’ best interest to contact the Mobile County Commission regarding the concerns addressed.

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

- 1) provision of labeling of the lot size, in square feet, on the final plat, or provision of a table on the final plat with the same information;**
- 2) dedication sufficient to provide 50 feet from the centerline of**

Moffett Road;

- 3) dedication sufficient to provide compliance with Section V.B.16 of the Subdivision Regulations regarding curb radii at the intersection of Moffett Road and Temple Road;**
- 4) depiction of the 25-foot minimum building line wherever the site fronts a public street;**
- 5) placement of a note on the final plat denying the site access to Temple Road;**
- 6) placement of a note on the final plat limiting the lot to two (2) curb cuts to Moffett Road, with the size, design, and location of all curb cuts to be approved by Mobile County Engineering and ALDOT and conform to AASHTO standards;**
- 7) placement of a note on the final plat stating that the development will be designed to comply with the stormwater detention and drainage facility requirements of the City of Mobile stormwater and flood control ordinances, and requiring submission of certification from a licensed engineer certifying that the design complies with the stormwater detention and drainage facility requirements of the City of Mobile stormwater and flood control ordinances prior to the issuance of any permits. Certification is to be submitted to the Planning Section of Urban Development and County Engineering;**
- 8) placement of a note on the final plat stating that development of the site must be undertaken in compliance with all local, state, and Federal regulations regarding endangered, threatened, or otherwise protected species; and,**
- 9) 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.8 of the Subdivision Regulations.**

The motion carried unanimously.

Case #SUB2009-00122

Knollwood Place Subdivision

5495 Girby Road

Southwest corner of Girby Road and Arrington Drive

Number of Lots / Acres: 1 Lot / 0.9± Acre

Engineer / Surveyor: Frank A. Dagley & Associates, Inc.

Council District 4

The Chair stated the matter had been recommended for approval.

Frank Dagley, Frank A. Dagley and Associates, spoke on behalf of the applicant and expressed some concern regarding access to the site, saying the applicant needed

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temporary access to the site via Arrington Drive. He added the application before them that day was simply to give the applicant authority to clear the site. The report currently gave access to the site via Girby Road, however, along that portion of Girby Road there was 6-10 foot drop from the road down to the property. He added that in order to clear the property correctly, they would need a temporary access to the site from Arrington Drive.

Mr. Palombo said temporary access to Arrington Drive would be fine but that it would be limited to the development permit.

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

- 1) **revision of the plat to label the rights-of-way widths of both streets (100' for Girby Road, 50' for Arlington Drive), with dedication as needed;**
- 2) **placement of a note on the final plat stating that the subdivision is limited to one curb cut to Girby Road, with the size, location, and design to be approved by Traffic Engineering and in conformance with AASHTO standards;**
- 3) **placement of a note on the final plat stating that the subdivision is denied direct access to Arrington Drive, with access only allowed during the site development process (access to be eliminated prior to site development permit expiration or the issuance of a certificate of occupancy);**
- 4) **the depiction on the final plat of the 25' minimum building setback lines along both Girby Road and Arrington Drive;**
- 5) **labeling of the lot with its size in square feet (in addition to acreage), or the provision of a table on the final plat with the same information;**
- 6) **placement of a note on the plat stating that the site must be developed in compliance with all local, state, and Federal regulations regarding endangered, threatened, or otherwise protected species; and,**
- 7) **compliance with Engineering comments: *(A drainage easement shall be provided to the City of Mobile along the rear of the property, the size and location of the easement is subject to the approval of the City Engineer. Must comply with all stormwater and flood control ordinances. Any work performed in the right-of-way will require a right-of-way permit. Drainage from any new dumpster pads cannot discharge to storm sewer; must have connection to sanitary sewer).***

The motion carried unanimously.

Case #SUB2009-00123

New Springhill Estates Subdivision Unit 2, Re-subdivision of Lot 26

4179 Carmel Drive North

Southeast corner of Carmel Drive North and Ursuline Drive

Number of Lots / Acres: 1 Lot / 0.3± Acre

Engineer / Surveyor: Don Williams Engineering

Council District 7

The Chair stated the applicant was agreeable with the recommendations and asked if anyone wished to speak on the matter to do so at that time.

Hearing no opposition or discussion, a motion was made by Mr. Turner, with second by Mr. DeMouy, to approve the above referenced re-subdivision, subject to the following conditions:

- 1) **placement of a note on the plat stating that the site is denied direct access to Carmel Drive North and limited to one curb cut to Ursuline Drive, with the size, location, and design to be approved by Traffic Engineering and in conformance with AASHTO standards;**
- 2) **labeling of the lot with its size in square feet, or the provision of a table on the final plat with the same information;**
- 3) **revision of the plat to illustrate a 7.5' Utility and Drainage easement along the South and East property lines;**
- 4) **placement of a note on the final plat stating that no construction is allowed within the Utility and Drainage easement;**
- 5) **depiction of an adequate radius at the intersection of Carmel Drive North and Ursuline Drive;**
- 6) **placement of a note on the plat stating that the site must be developed in compliance with all local, state, and Federal regulations regarding endangered, threatened, or otherwise protected species; and,**
- 7) **compliance with Engineering comments: *(Must comply with all stormwater and flood control ordinances. Detention must be provided for any increase in impervious area added to the site since 1984 in excess of 4000 square feet. If detention is required, the location of the detention system shall be shown on the final plat. Any work performed in the right-of-way will require a right-of-way permit).***

The motion carried unanimously.

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Case #SUB2009-00120

D. L. Atchison Subdivision

North side of Ben Hamilton Road at the North terminus of March Road.

Number of Lots / Acres: 13 Lots / 148.0± Acres

Engineer / Surveyor: Polysurveying Engineering – Land Surveying
County

The Chair stated the matter had been recommended for denial.

Matt Orrell, Polysurveying of Mobile, spoke on behalf of the applicant and made the following points in favor of approval:

- A. the property is 148 acres located in a very rural part of the county and just barely falling within the Planning Commission's jurisdiction;
- B. the applicant has been trying to sell the property for over 3 years;
- C. the issues of width to depth ratio and flag shaped lots has been overlooked many times in areas as rural as this; and,
- D. the applicant offered to not re-subdivide the two proposed much larger back lots until a road was constructed to county standards giving that property access to Ben Hamilton Road.

Mr. Hoffman felt that creating conditions during the Commission meeting was not appropriate and expressed his desire to have the Commission hold the matter over until the next meeting to allow the staff to develop those. He also gave the option of the applicant returning with a different proposal to be heard at the typical two (2) meeting layover in an effort to get around the width to depth ratio issue and the flag shaped lot issue.

Mr. Orrell said the problem with reducing the number of lots available meant increasing the size of those lots. That increase in size, he added, created lots of such a price as to dissuade potential buyers. He also said he and the applicant would have no problem holding the matter over to allow the staff time to create recommendations for the application.

Hearing no opposition or further discussion, a motion was made by Mr. Plauche, with second by Mr. DeMouy, to hold the matter over until the September 3, 2009, meeting, to allow the staff time to develop possible conditions of approval.

The motion carried unanimously.

GROUP APPLICATIONS:

Case #SUB2009-00121 (Subdivision)

Noble Drive East Subdivision, Re-subdivision of Lots 1 & 2

5275 Noble Drive North

Southwest corner of Noble Drive North and Noble Drive East

Number of Lots / Acres: 1 Lot / 0.8± Acre

Engineer / Surveyor: Don Williams Engineering

Council District 4

(Also see **Case #ZON2009-01865 (Planned Unit Development) Noble Drive East Subdivision, Re-subdivision of Lots 1 & 2**, below)

The Chair stated the matter had been recommended for approval.

Don Williams, Williams Engineering, spoke on behalf of the applicant saying:

- A. the plan is for a multi-family development with shared parking in the back;
- B. the six (6) parking spaces located in the back of the property would be 18 feet wide because no one would be parking directly off that parking and there would be no backing into the road from the development;
- C. the applicant would prefer a 20 foot driveway entrance as opposed to 24 feet because the larger driveway would cause the buildings to encroach on large trees they would like to keep; and,
- D. due to tree issues, they would like some flexibility with regards to the proposed buildings giving them the ability to move the proposed duplex building back some 15 feet from the road way.

Mr. Watkins was not sure he had ever seen a Planned Unit Development plan that allowed for this much flexibility.

Mr. Palombo said the staff had no problem with being flexible in small increments however 15 feet was a bit more than they were comfortable with.

Mr. Williams stated he had no problem with noting that final location of the building had to be coordinated with Urban Forestry.

Mr. Hoffman asked if it was certain that the tree in question was located on this site or was it, in fact, located on the adjacent property.

Mr. Williams stated he was not sure if the tree was in fact on the applicant's property or on the adjacent property, however, he stated it was a big tree and his client wanted to assure its safety. He also said they would submit a revised site plan noting final locations of all items in question.

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Hearing no opposition or further discussion, a motion was made by Mr. Davitt, with second by Dr. Rivizzigno, to approve the above referenced re-subdivision, subject to the following conditions:

- 1) **labeling of the lot size, in square feet, on the plat, or provision of a table on the plat with the same information;**
- 2) **provision of dedication sufficient to provide 30 feet of right-of-way from the centerline of both Noble Drive North and Noble Drive East;**
- 3) **compliance with Section V.B.16 of the Subdivision Regulations regarding curb radii;**
- 4) **revision of the 25-foot minimum building setback line to reflect any required dedication;**
- 5) **placement of a note on the final plat limiting the site to the existing number of curb cuts (two) with the size, location, and design of all curb cuts to be approved by City of Mobile Traffic Engineering and conform to AASHTO standards;**
- 6) **placement of a note on the final plat stating that development of the site must be undertaken in compliance with all local, state, and Federal regulations regarding endangered, threatened, or otherwise protected species;**
- 7) **compliance with Engineering comments: (*Must comply with all stormwater and flood control ordinances. Detention must be provided for any increase in impervious area added to the site excess of 4000 square feet. The location of the detention area(s) shall be shown on the final plat. Any work performed in the right-of-way will require a right-of-way permit*); and,**
- 8) **full compliance with all municipal codes and ordinances.**

The motion carried unanimously.

Case #ZON2009-01865 (Planned Unit Development)
Noble Drive East Subdivision, Re-subdivision of Lots 1 & 2

5275 Noble Drive North

Southwest corner of Noble Drive North and Noble Drive East

Planned Unit Development Approval to allow multiple buildings on a single building site

Council District 4

(Also see **Case #SUB2009-00121 (Subdivision) Noble Drive East Subdivision, Re-subdivision of Lots 1 & 2**, above)

Hearing no opposition or further discussion, a motion was made by Mr. Davitt, with second by Dr. Rivizzigno, to approve the above referenced Planned Unit Development, subject to the following conditions:

- 1) **completion of the Subdivision process;**

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- 2) relocation of the proposed building a maximum of 15-feet to the South, to be coordinated with Urban Forestry;
- 3) revision of all curb cuts and access ways to a minimum width of 20 feet, subject to approval by Traffic Engineering;
- 4) provision of a buffer compliant with Section 64-4.D.1 of the Zoning Ordinance along the South and West property lines;
- 5) depiction of a dumpster on the site plan showing compliance with all enclosure, buffer, access, and maneuvering, and setback requirements, or a note on the site plan be provided indicating that no dumpster will be included as part of the development and waste removal will occur by curbside pickup;
- 6) full compliance with all landscaping and tree planting ordinances;
- 7) depiction of sidewalks or submittal of a successful sidewalk waiver application;
- 8) compliance with Engineering comments: *(Must comply with all stormwater and flood control ordinances. Detention must be provided for any increase in impervious area added to the site excess of 4000 square feet. The location of the detention area(s) shall be shown on the final plat. Any work performed in the right-of-way will require a right-of-way permit);*
- 9) revision of the site plan to show compliance with all conditions and submittal of two copies of said revised site plan to the Planning Section of Urban Development prior to the issuance of any permits; and,
- 10) full compliance with all municipal codes and ordinances.

The motion carried unanimously.

Case #SUB2009-00118 (Subdivision)

Wesley Avenue Subdivision

East side of Wesley Avenue, 400' ± South of Airport Boulevard, extending to the West side of Henckley Avenue

Number of Lots / Acres: 7 Lots / 1.0± Acres

Engineer / Surveyor: Engineering Development Services LLC

Council District 6

(Also see **Case #ZON2009-01858 (Planned Unit Development) Wesley Avenue Subdivision**, **Case #ZON2009-01859 (Sidewalk Waiver) B C Daniels Inc.**, and, **Case #ZON2009-02036 (Rezoning) Wesley Avenue Subdivision**, below)

The Chair stated the matter had been recommended for approval.

Mr. Palombo advised the Commission that as lots 1 and 7 would be adjacent to single family residential, R-1 zoning, the staff was requiring the standard setback on the southern portion of the property, with lot 7 being setback 8 feet and lot 1 being setback 7.4 feet.

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David Diehl, Engineering Development Services, LLC, spoke on behalf of the applicant saying they were in agreement with the recommendations; however, they did have some questions regarding the detention.

Mr. Forrester, City Engineering, addressed the detention issue saying that a note on the final plat would be fine rather than requiring the applicant to show the location for stormwater detention.

The following people spoke with concerns over the matter:

- Carla St. Paul, 771 Henckley Avenue, Mobile, AL;
- Helen Guy, 804 Wesley Avenue, Mobile, AL; and,
- Billy Robinson, 768 Henckley Avenue, Mobile, AL.

They made the following statements:

- A. the area neighbors wanted to know what type of project was planned;
- B. concern regarding the waiver of the sidewalk in the area;
- C. concern regarding a small house in the area that has been “staked off” and whether it, too, is part of this project;
- D. interest in the price range of the houses to be built;
- E. is there recourse available to the area residents if the proposed development has negative impact on their properties;
- F. what reason had been given by the applicant for the need to revise the lot setback lines;
- G. concerns that the proposed houses would be “jammed” into the lots for simple financial gain and those houses would not be in character with the others in the neighborhood; and
- H. concern that the wishes of the neighbors came at the cost of the desires of the developer.

Mr. Palombo addressed the concerns by saying:

- A. the project was for single family, residential homes of a garden/patio style with 1300 to 1400 square footage;
- B. it was recommended that the sidewalk be waived as there were none in the subdivision and the waiver was consistent with previous applications in the subdivision; and,
- C. the R-2, two-family residence, rezoning had been requested due to density, as they wished to get 7 lots on one acre of property (i.e. 50 foot wide lots reduced to 40 foot wide lots).

Dr. Rivizzigno commented on the sidewalk waiver by saying she thought the Commission had decided to only waive sidewalks when it was physically impossible to

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put them in.

Mr. Palombo said that was true, however, in the Pinehurst subdivision the Commission had waived the requirement of sidewalks in previous applications, so to maintain consistency in that neighborhood the staff had recommended waiving this sidewalk.

Mr. Vallas also commented that the neighborhood was probably too fully developed to begin putting in sidewalks at this juncture.

Ms. Clarke added that both Dr. Rivizzigno and Mr. Vallas were correct in their statements and that should sidewalks be put in place in the Pinehurst subdivision, they would be done as part of a public works project.

Mr. Diehl responded that the small house mentioned as “staked out” was not part of his client’s proposed development.

The Chair advised that the value, type, etc., of the proposed houses was not something that fell within the purview of the Commission and that those questions should be taken up with the applicant’s engineer.

Ms. Clarke advised regarding possible avenues of recourse that could be taken by residents regarding any perceived negative impact that the City did not control price ranges or things of that nature. She stated that any issues area residents might have along those lines would be considered civil and they were free to pursue civil litigation concerning those, if they so chose.

Mr. Davitt reminded all that regarding the matter of rezoning, the City Council had final say, and inasmuch, any concerned residents could always appeal to the City Council along those lines.

Michael Daniels, the developer, addressed the Commission. He stated it was his hope to develop residential homes marketed toward the first time home buyer. In an effort to do so, he had opted for smaller lots, which were part of the current trend in home building. He stated that it was his opinion that those houses would be in character with the other homes in the area and that a very real effort was being made to match setback lines on his proposed development with those of adjacent properties. He acknowledged that some of the proposed developments would also be in close proximity to commercial properties, making them difficult to sell, which was one of his reasons for creating the type and style of development presented to the Commission that day.

In deliberation, Mr. Davitt raised the issue of detention and its location.

Mr. Palombo stated that it had been determined that each lot owner should be responsible for their own.

Mr. Forrester stated that Engineering would be comfortable requesting that a note

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regarding each lot owner being responsible for their own stormwater detention be included on the final plat.

Mr. Davitt asked that staff's recommendation regarding detention be included as a condition for approval and the Commission agreed.

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

- 1) **completion of the rezoning process prior to the issuance of a Certificate of Occupancy;**
- 2) **revision of the plat to depict revised side yard setbacks for Lots 1 and 7, where they abut existing residential lots, so that Lot 7 has an 8-foot side yard setback along its southern boundary, and Lot 1 has a 7.4 foot setback along its southern boundary;**
- 3) **placement of a note on the site plan stating that each lot is limited to one curb cut, with the size, design, and location to be approved by Traffic Engineering and in conformance with AASHTO standards;**
- 4) **labeling of the lots with their maximum site coverage (45%), or the provision of a table with the same information;**
- 5) **placement of a note on the plat stating that the site must be developed in compliance with all local, state, and Federal regulations regarding endangered, threatened, or otherwise protected species; and,**
- 6) **submission of a revised PUD site plan to the Planning Section of Urban Development prior to signing the Final Plat.**

The motion carried with only Dr. Rivizzigno voting in opposition.

Case #ZON2009-01858 (Planned Unit Development)

Wesley Avenue Subdivision

East side of Wesley Avenue, 400' ± South of Airport Boulevard, extending to the West side of Henckley Avenue

Planned Unit Development Approval to allow reduced lot widths, reduced setbacks and increased site coverage

Council District 6

(Also see **Case #SUB2009-00118 (Subdivision) Wesley Avenue Subdivision**, above, **Case #ZON2009-01859 (Sidewalk Waiver) B C Daniels Inc.**, and, **Case #ZON2009-02036 (Rezoning) Wesley Avenue Subdivision**, below)

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

- 1) **completion of the rezoning process prior to the issuance of a**

Certificate of Occupancy;

- 2) revision of the plat to depict revised side yard setbacks for Lots 1 and 7, where they abut existing residential lots, so that Lot 7 has an 8-foot side yard setback along its southern boundary, and Lot 1 has a 7.4 foot setback along its southern boundary;
- 3) placement of a note on the site plan stating that each lot is limited to one curb cut, with the size, design, and location to be approved by Traffic Engineering and in conformance with AASHTO standards;
- 4) labeling of the lots with their maximum site coverage (45%), or the provision of a table with the same information;
- 5) placement of a note on the PUD site plan that any air conditioning unit over 3-feet in height will be required to be in compliance with the Zoning Ordinance;
- 6) placement of a note on the site plan stating that the site must be developed in compliance with all local, state, and Federal regulations regarding endangered, threatened, or otherwise protected species; and,
- 7) submission of a revised PUD site plan to the Planning Section of Urban Development prior to signing the final plat.

The motion carried with only Dr. Rivizzigno voting in opposition.

Case #ZON2009-01859 (Sidewalk Waiver)

B C Daniels Inc.

East side of Wesley Avenue, 400' ± South of Airport Boulevard, extending to the West side of Henckley Avenue

Request to waive construction of a sidewalk along Henckley Avenue and Wesley Avenue

Council District 6

(Also see Case #SUB2009-00118 (Subdivision) Wesley Avenue Subdivision, Case #ZON2009-01858 (Planned Unit Development) Wesley Avenue Subdivision, and, Case #ZON2009-02036 (Rezoning) Wesley Avenue Subdivision, below)

The Chair stated the matter had been recommended for approval.

In deliberation, Mr. Miller asked if there were sidewalks involved in the commercial properties adjacent to the subdivision.

Mr. Palombo advised none had been developed to date but they would be required, however, those applicants might come before the Commission at that time requesting a waiver of those sidewalks.

Hearing no further opposition or discussion, a motion was made by Mr. Davitt, with second by Mr. Vallas, to approve the above referenced request for a sidewalk waiver.

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The motion carried with only Mr. Miller, Dr. Rivizzigno, and Mr. Watkins voting in opposition.

Case #ZON2009-02036 (Rezoning)

Wesley Avenue Subdivision

East side of Wesley Avenue, 400' ± South of Airport Boulevard, extending to the West side of Henckley Avenue

Rezoning from R-1, Single-Family Residential District, to R-2, Two-Family Residential District, to allow a single family residential subdivision

Council District 6

(Also see Case #SUB2009-00118 (Subdivision) Wesley Avenue Subdivision, Case #ZON2009-01858 (Planned Unit Development) Wesley Avenue Subdivision, and, Case #ZON2009-01859 (Sidewalk Waiver) B C Daniels Inc., above)

Hearing no opposition or discussion, a motion was made by Mr. Vallas, with second by Mr. Turner, to approve the above referenced request for rezoning, subject to the following conditions:

- 1) **completion of the Subdivision process; and,**
- 2) **rezoning limited to an approved Planned Unit Development.**

The motion carried with only Dr. Rivizzigno voting in opposition.

Case #SUB2009-00119 (Subdivision)

McMurray Place Subdivision

6351 Johnston Lane

South side of Johnston Lane, 260' ± East of Hillcrest Road, extending to the unvacated portion of McMurray Street, 100' West of Schaub Avenue

Number of Lots / Acres: 58 Lots / 12.3± Acres

Engineer / Surveyor: Rester and Coleman Engineers, Inc.

Council District 6

(Also Case #ZON2009-01861 (Planned Unit Development) McMurray Place Subdivision, see below)

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

Bryan Maisel, developer for McMurray Place, discussed the staff's request to hold the matter over, which he felt was based upon only minor changes to a previously approved Planned Unit Development, and thereby, unnecessary.

Mr. Hoffman stated the request for hold over by the staff was based upon the previous ruling by the City Council regarding the previous rezoning. He stated that the City Council had added an additional condition for approval when the matter was before them that stated "that the development of the site is limited to PUD approved on January 3, 2008, by the Planning Commission," and, therefore, with the rezoning being specific

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to a Planned Unit Development approved on a specific date by the Planning Commission meant that the new Planned Unit Development application should also include a new rezoning application as well.

Mr. Maisel stated the following in response to Mr. Hoffman's remarks:

- A. the hold over created a long, expensive, and unnecessary delay to a project that had already incurred delays;
- B. the change to the original Planned Unit Development was very minor and had resulted in a smaller subdivision, (58 lots compared to the original 61) with larger detention areas and common areas;
- C. there was no known opposition to the changes;
- D. since the change is only to the number of lots, it was not understood why there was a need to hold the matter over as, in his opinion, it was virtually the same PUD;
- E. to hold the matter over until the October 1, 2009, meeting, was punitive in nature and would incur unnecessary financial hardship on the applicant.

Mr. Hoffman responded with:

- A. the previously approved subdivision application originally was submitted as a 61 lot subdivision, however, it was reduced to the 58 lot subdivision;
- B. in January 2008, the staff encountered an issue with a portion of a parcel and with a vacated right-of-way, which appeared to have been omitted from the original application;
- C. when the current application came in, based on information available to the staff, it appeared that a "chunk" of property had been left out of the proposed development;
- D. it was determined, after the fact, that one of the property owners in question had sold a lot to the development company, yet had retained 25 feet of that property, all without going through the proper subdivision process, resulting in the staff's request that the piece either be included in the application or submitted separately, thus making it a legal lot of record;
- E. it appears that when the right-of-way was vacated in approximately 2005, and was placed on previous applications, it does not appear that the applicants own it; and,
- F. regarding removing the condition that the City Council had placed upon the property, limiting it to a specific site plan, while noting that they are not that dissimilar, the staff was still bound by that zoning condition, even though the staff nor the Planning Commission created that condition.

Mr. Watkins then asked if the applications were so similar, why the Commission had the

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matter before them that day.

Mr. Hoffman stated it was due to the fact that Mr. Maisel wanted to change the front setbacks lines and interior side setback lines. He added that Mr. Maisel also wanted to provide free standing, single family homes on the lots. Mr. Hoffman acknowledged that the project had gone through several changes since its original review in 2005 and each time had been before the Planning Commission and received approval from the same.

Mr. Watkins asked if Mr. Lawler had been asked his legal opinion on the matter and was advised he had not been as Mr. Lawler was out of town.

Mr. Palombo added that precedent was if the City Council gave a condition for approval then it had to go back for rezoning to either remove that condition or change it.

Mr. Hoffman also pointed out that a previous rezoning of this site required that a masonry wall be built around the property and so the previous application came back into remove the specifics of it being a masonry wall, so that the developer could chose to build either a masonry wall or a wooden fence.

In deliberation, Mr. Watkins stated for clarification that the Planned Unit Development application had previously been before the Commission and approved. He added that the City Council had previously approved the rezoning as part of that Planned Unit Development, specifically stating that the rezoning was subject to that specific Planned Unit Development application. He asked if it meant that as the applicant had come back to the staff and stated he wanted to simply move the location of a building on the Planned Unit Development and nothing more, he was still being required to go through the process of having the entire site re-approved for rezoning.

Mr. Hoffman stated that was correct, noting that the condition at issue was added by City Council. He also added that the staff had advised the applicant that if the rezoning application was submitted by the September 1, 2009, deadline, that the Planned Unit Development and Subdivision applications could be heard on the September 17, 2009, meeting, and potentially be approved at that time, subject to the approval of the rezoning application at the October 1, 2009, meeting. He stated that approval of the rezoning application would then take the matter for final approval before the City Council. Mr. Hoffman then offered that the applicant should submit the rezoning application by the September 1, 2009, deadline, then have all of the applications associated with the proposed development would have been heard and possibly approved by the October 1, 2009, meeting.

Mr. Davitt asked if the Planned Unit Development for the 58 lots included the vacated property.

Mr. Hoffman stated that the previously approved Planned Unit Development did include that vacated property.

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Mr. Davitt then asked for clarification that the revised Planned Unit Development before them that day excluded that vacated property.

Mr. Hoffman stated that was correct because, technically, the applicant did not own the property.

Mr. Davitt stated that was a change from what had been before the Commission previously.

Mr. Hoffman stated, that based upon what he had seen, it appeared, according to tax records, that the applicants did not own the strip in question during the original application and does not own it currently, hence it is no longer shown on the plat.

Regarding the date of the hold over, Mr. Hoffman stated the applicant had already missed the September 17, 2009, meeting deadline, however, if they got the rezoning application in by September 1, 2009, the staff would feel more comfortable about the Commission making a decision on the Subdivision and Planned Unit Development applications at the September 17, 2009, meeting. He added it would be ideal if all of the matters could have been heard as one large group application, but that the staff would be fine with the currently proposed hold over on these matters to the September 17, 2009, meeting.

Hearing no opposition or further discussion, a motion was made by Mr. Turner, with second by Dr. Rivizzigno, to hold the matter over until the September 17, 2009, meeting, so the following items could be addressed:

- 1) revision of the Subdivision application, with appropriate postage and fees, to include the residential lot fronting Schaub Avenue, so that portion of parcel R022808283000056. can be incorporated into the residential lot fronting Schaub, with revised information due by August 28th; or,**
- 2) if option 1 is not desired, submission of a separate application to create a new legal lot from that portion of parcel R022808283000056. and the lot fronting Schaub Avenue, by the September 1, 2009 filing deadline; and,**
- 3) submission of a Zoning application to address the City Council's limiting condition, by the September 1, 2009 filing deadline.**

The motion carried unanimously.

Case #ZON2009-01861 (Planned Unit Development)
McMurray Place Subdivision

6351 Johnston Lane

South side of Johnston Lane, 260' ± East of Hillcrest Road, extending to the unvacated portion of McMurray Street, 100' West of Schaub Avenue

Planned Unit Development Approval to amend a previously approved Planned Unit Development to allow reduced lot widths, lot sizes, setbacks and increased site coverage
Council District 6

(Also see **Case #SUB2009-00119 (Subdivision) McMurray Place Subdivision**, above)

Hearing no opposition or further discussion, a motion was made by Mr. Turner, with second by Dr. Rivizzigno, to hold the matter over until the September 17, 2009, meeting, so the following items could be addressed:

- 1) submission of a Zoning application to address the City Council's limiting condition, by the September 1, 2009 filing deadline.**

The motion carried unanimously.

Case #ZON2009-01862 (Planned Unit Development)
St. Luke's Episcopal Upper School

1400 South University Boulevard

South side of University Boulevard, 490' ± East of Grelot Road

Planned Unit Development Approval to amend a previously approved Planned Unit Development to show new orientation of softball field

Council District 6

(Also see **Case #ZON2009-01860 (Planning Approval) St. Luke's Episcopal Upper School**, below)

The Chair stated the matter was recommended for approval.

Doug Anderson, Burr and Foreman Law Firm, spoke on behalf of the applicants and requested the application be withdrawn.

Robert Peter, 5308 Oakbend Court, Mobile, AL, asked for clarification regarding what was approved for St. Luke's Episcopal Upper School the last time they were before the Commission, as there were no current official minutes from that meeting.

Mr. Palombo stated he was not sure of the status for official, approved minutes of the meeting in question; however, the speaker and others were notified regarding how to contact the appropriate staff member to set up an opportunity to hear the discussion from that meeting.

Mr. Peter stated that had been done and the tape was heard but wanted to have the official version.

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Hearing no opposition or discussion, the Planning Commission allowed the application to be withdrawn, per the applicants' request.

Case #ZON2009-01860 (Planning Approval)

St. Luke's Episcopal Upper School

1400 South University Boulevard

South side of University Boulevard, 490'± East of Grelot Road

Planning Approval to amend a previously approved Planning Approval to show new orientation of new softball field

Council District 6

(Also see **Case #ZON2009-01862 (Planned Unit Development) St. Luke's Episcopal Upper School**, above)

The Chair stated the matter was recommended for approval.

Doug Anderson, Burr and Foreman Law Firm, spoke on behalf of the applicants' and requested the application be withdrawn.

Hearing no further opposition or discussion, the Planning Commission allowed the application to be withdrawn, per the applicants' request.

OTHER BUSINESS:

The Chair welcomed the new Planning Commissioners, Mr. Herb Jordan and Rev. Bill Curtin, again. He also asked Mr. Palombo to introduce the new member of the Planning Staff.

Mr. Palombo introduced Mrs. Carla Scruggs, from Huntsville, AL, as the new Planner I for the department.

The Chair also recognized Shayla Jones-Vico, a former staff member, and her student. Mrs. Jones-Vico stated the student was a political science major at Springhill College and was very interested in city planning. The Chair wished the young lady well in her studies.

Hearing no further business, the meeting was adjourned.

APPROVED: November 5, 2009

Dr. Victoria Rivizzigno, Secretary

Terry Plauche, Chairman

jsl