

MOBILE CITY PLANNING COMMISSION MINUTES
MEETING OF SEPTEMBER 3, 2009 - 2:00 P.M.
AUDITORIUM, MOBILE GOVERNMENT PLAZA

Members Present

Terry Plauche, Chairman
William G. DeMouy, Jr.
William D. Curtin
Stephen J. Davitt, Jr.
Nicholas H. Holmes, III
Mead Miller
Roosevelt Turner
John Vallas

Members Absent

Clinton Johnson
Victoria L. Rivizzigno, Secretary
Herbert C. Jordan
James F. Watkins, III

Urban Development Staff Present

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

Others Present

John Lawler,
Assistant City Attorney
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.

APPROVAL OF MINUTES:

Mr. Plauche moved, with second by Mr. DeMouy, to approve the minutes from the following, regularly held, Planning Commission meetings:

- Dec. 4, 2008
- Dec. 18, 2008
- Jan. 8, 2009
- Jan. 22, 2009
- Feb. 5, 2009
- Feb. 19, 2009
- March 5, 2009
- March 19, 2009
- April 2, 2009

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The motion carried unanimously.

HOLDOVERS:

Case #SUB2009-00112 (Subdivision)

Grady Buick Commercial Center Subdivision, Re-subdivision of

3001 Government Boulevard

Southwest corner of Government Boulevard Service Road and Macmae Drive

Number of Lots / Acres: 2 Lots / 3.5± Acres

Engineer / Surveyor: Byrd Surveying, Inc.

Council District 4

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. Vallas, with second by Mr. Miller, to waive Section V.D.9. of the Subdivision Regulation, and approve the above referenced subdivision, subject to the following conditions:

- 1) **placement of a note on the final plat stating that the site is limited to one curb cut to each street, with the size, location, and design to be approved by Traffic Engineering and in conformance with AASHTO standards;**
- 2) **provision of an adequate radius at the corner of Government Boulevard Service Road and Macmae Drive;**
- 3) **labeling of the lots with their sizes in square feet, or the provision of a table on the final plat with the same information;**
- 4) **depiction of all existing structures on the final plat to verify compliance with Section 64-3.E.3 of the Zoning Ordinance;**
- 5) **the applicant receive the approval of all applicable federal, state, and local environmental agencies would be required prior to the issuance of any permits or land disturbance activities; and,**
- 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.**

The motion carried unanimously.

Case #ZON2009-01739 (Planned Unit Development)

Valenti Southeast Realty

3215 Airport Boulevard

South side of Airport Boulevard extending to the North side of Airport Boulevard Service Road, 670'± West of Bel Air Boulevard

Planned Unit Development Approval to allow reduced front yard setbacks for a restaurant
Council District 5

The Chair announced the application had been recommended for approval.

Catherine Clark, Gulf States Engineering, 4110 Moffett Road, Mobile, AL, spoke on behalf of the applicant. She advised she had spoken with the City's Traffic Engineering department regarding the crosswalk on the northeast corner and an agreement had been reached to remove that crosswalk altogether. She also stated that the applicant was in agreement with all other conditions listed by the staff.

Mr. Olsen asked Ms. White with Traffic Engineering to confirm striking the portion of Traffic Engineering comments that related to that crosswalk.

Ms. White stated the applicant had agreed to supply the crosswalk across Airport Boulevard, but not the one proposed across the side street, so modifying the comments was acceptable.

In deliberation, Mr. Davitt asked for clarification that the developers would not be responsible for the crosswalk on the Mall service road, but would be responsible for the crosswalk across Airport Boulevard.

Ms. White stated that was correct.

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

- 1) **the site is limited to the two proposed curb cuts to the Airport Boulevard Service Road;**
- 2) **subject to the Traffic Engineering comments: (*Driveway number, size, location, and design to be approved by Traffic Engineering and conform to AASHTO standards. Handicap ramps and crosswalks will be the responsibility of the developer, with their location and design to be coordinated with Traffic Engineering. The crosswalk on the northeast side of the development should be relocated to the northwest side of the development, crossing Airport Boulevard only, where there are existing pedestrian signals. Handicap ramps should meet current ADA requirement and City of Mobile standards. Crosswalks and any other proposed striping changes should meet MUTCD standards*);**

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- 3) existing curb cuts are to be closed with curbing and landscaping to match adjacent right-of-way;
- 4) the site is denied any curb cuts onto Airport Boulevard;
- 5) full compliance with the landscaping and tree planting requirements; and,
- 6) subject to the Engineering Comments: *(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 #SUB2009-00120

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 announced the matter had been recommended for denial.

Matt Orrell, Polysurveying of Mobile, spoke on behalf of the applicant saying:

- A. reminded the Commission that the back one-third of the property was NWI wetlands and un-useable;
- B. the applicant wants to divide the property into 10-acre lots;
- C. regarding the staff's recommendation to reduce the lot size, to do so would add approximately 6 acres to each lot, making them difficult to sell in this market due to price;
- D. it was felt that as proposed by the applicant more sellable property is created and that might, in turn, create interest in purchasing two lots of mostly uplands, combine them, and develop a subdivision;
- E. it was noted that the Planning Jurisdiction line runs just inside the applicant's property line and it is only due to this fact that the matter has to come before the Planning Commission for review at all; and,
- F. requested that the width-to-depth ratio requirement and the flag lot requirement be waived as well due to its rural nature.

Mr. Vallas asked which portion of the property was referenced when saying "one-third of the property is wetlands."

Mr. Orrell stated that portion was located at the back of the two, large, flag-shaped lots.

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Mr. Holmes asked if the applicant was acceptable with the 60 foot driveway for each of those two large lots, to which Mr. Orrell stated it was 30 feet each. Mr. Orrell stated he didn't see the purpose for each driveway to be 60 foot each in width because only 60 feet is needed for a road, so the additional 60 feet proposed would be wasted land.

Mr. Olsen stated the staff's reason for recommending the 60 foot drive for each of the back properties was due to the large size of the properties and the real possibility of future subdivision of the same, as the plat does not indicate wetlands or how much of the property said wetlands might take up.

Mr. Orrell countered by saying that the 60 foot drive was usually created by 30 feet from each lot and that was what was traditionally requested from the applicant, and the applicant had no problems with that.

Mr. Vallas asked if it would be easier to require a 30 foot strip with the additional condition that there would be no further subdivision of said lots.

Mr. Orrell stated his client would be agreeable with that.

The Chair asked if the staff had any other recommendations.

Mr. Olsen stated the staff had several other recommendations and that he would like to reiterate to the Commission the staff's professional position is that the application, with the lots as they are currently configured and proposed, would be recommended for denial. He reminded the Commission that:

- A. the lots, as proposed, exceed the "width to depth" ratio by a significant amount;
- B. they are not characteristic of the surrounding area; and,
- C. there are more appropriate ways for the property to be subdivided that would comply with the Subdivision Regulations.

Mr. Orrell stated his disagreement with Mr. Olsen's position.

Mr. Vallas asked Mr. Olsen the lots exceeded the "width to depth" ratio by how much.

Mr. Olsen advised it was close to 7.5 times.

Mr. Vallas wondered aloud if moving the south line in on the 19 acre lot, the 12 acre lot, and the 14 acre lot, would create a more amicable situation regarding the "width to depth" ratio issue.

Mr. Orrell said his client would agree to a slight reduction in lot length, however, he stated that when one is discussing the subdivision of 150 acres of land, it is difficult to come up with a compromise to please everyone, especially if one's financial resources were limited.

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Mr. Lawler commented that the typical land purchase scenario was a purchaser came to a land owner and stated they want to buy a certain amount of property for a given amount. He reminded the Commission there was no necessary reason to divide all of the property up that day and that it could be done as the property was sold, with lot size determined at that time.

Mr. Orrell disagreed with that position.

Mr. Davitt asked what percentage of the large back lots were wetlands.

Mr. Orrell said that probably more than three-quarters of that property was designated as wetlands.

Mr. Davitt wondered if there was a way that the applicant could get 11 lots along Ben Hamilton Road, then make the two large lots one very large lot with 60 feet of road frontage between lots 5 and 6 and include with that the stipulation that there be no further subdivision of the lot without the creation of a county standard road.

Mr. Orrell stated he felt his client would be agreeable to Mr. Davitt's suggestion.

In deliberation, Mr. Miller stated he did not feel the applicant's current plan would work, however, he did think it would be beneficial to give the applicant time to re-work their plan and come back before the Commission with revisions.

Mr. Vallas noted that there seemed to be some type of compromise discussed by the applicant's representative and staff. He also queried if the matter might be better served if it were held over.

Mr. Olsen said the Commission could rule on the matter that day or choose to hold it over. He also said the staff had some other options they would be happy to show Mr. Orrell, however he added, the applicant might not be interested in those options.

Mr. Turner reminded the Commission that they had held the matter over already and stated if the parties were not communicating that an additional holdover might serve no purpose.

Mr. Holmes wondered if there was any way to have a better idea as to the degree of wetlands on the property, other than using the maps currently presented.

Mr. Lawler advised the Commission that one of the requirements when making application for a subdivision is to show all of the wetlands, etc., on the plat. If that information has been omitted it should not have been, as it is required by the Subdivision Regulations.

Mr. Orrell stated he was agreeable with the holdover.

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Hearing no opposition or further discussion, a motion was made by Mr. Miller, with second by Mr. Vallas, to hold the matter over until the October 1, 2009, meeting, with a revised plat to be submitted to the Planning staff by Friday, September 11, 2009.

The motion carried unanimously.

EXTENSIONS:

Case #SUB2008-00190

Spring Grove Subdivision, Unit Four

West side of Dawes Road at the West terminus of Willow Oak Drive, extending to the North terminus of Nan Wright Way

Number of Lots / Acres: 34 Lots / 11.5± Acres

Engineer / Surveyor: Rester and Coleman Engineers, Inc.

County

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 Mr. Turner, to approve the above referenced request for extension, and the applicant should also be advised that future extensions are unlikely without the addition of some road construction progress, or some units being recorded.

The motion carried unanimously.

NEW SUBDIVISION APPLICATIONS:

Case #SUB2009-00124

Zoghby Subdivision

2208 Springhill Avenue

North side of Springhill Avenue, 230'± West of Woodlands Avenue

Number of Lots / Acres: 1 Lot / 0.4± Acre

Engineer / Surveyor: Don Williams Engineering

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. Davitt, with second by Mr. Turner, to approve the above referenced subdivision, subject to the following conditions:

- 1) **revision of the plat to depict the right-of-way width for Springhill Avenue, and dedication if necessary to provide 50-**

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- feet from centerline;
- 2) placement of a note on the final plat stating that the lot is limited to one curb-cut onto Springhill Avenue, with the size, design, and location of the curb-cut to be approved by Traffic Engineering and ALDOT, and to comply with AASHTO standards; and,
 - 3) depiction and labeling of a 25-foot minimum building setback line.

The motion carried unanimously.

Case #SUB2009-00125

Logsdon Subdivision

11765 Tanner Williams Road

South side of Tanner Williams Road, 2/10 mile± West of Old Tanner Williams Road East

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

Engineer / Surveyor: McCrory Williams Engineers Surveyors
County

The Chair announced the application had been recommended for approval.

Merlin Miller, McCrory and Williams, spoke on behalf of the applicant. He expressed he had some confusion over recommendation 5 and made the following points:

- A. Mobile Area Water and Sewer Services was acquiring property from owners in that area to add to the lands they maintained around Big Creek Lake Reservoir and the purpose of these subdivisions was to transfer ownership of said properties to Mobile Area Water and Sewer Services;
- B. the first four conditions recommended by the staff were already illustrated on the drawing when it was submitted to the staff;
- C. regarding drainage, the note on the drawing previously submitted referred to any future development and not anything currently taking place, as there is no development currently on the property;
- D. requiring a letter by a licensed engineer certifying compliance with the city's stormwater and flood control ordinances prior to issuing any permits at this time was unnecessary due to there being none, however, the applicant would be comfortable if the word "future" was included in the condition.

Mr. Olsen responded by saying the intent of saying "prior to the issuance of any permits" was to cover future development as there were no permits required for what was currently in existence, but future development would require permits and a letter of certification. He stated that the staff would be comfortable including the verbiage "any future permits."

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

- 1) retention of the note on the excluded portion stating that no development shall occur until a legal lot of record is created and adequate frontage on a public street is provided;
- 2) placement of a note on the final plat stating that the subdivision is limited to one curb cut to Tanner Williams Road, with the size, location, and design to be approved by County Engineering and in conformance with AASHTO standards;
- 3) 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;
- 4) placement of a note on the final plat stating that any lots developed commercially and adjoin residentially developed property shall provide a buffer in compliance with Section V.A.8 of the Subdivision Regulations; and,
- 5) placement of a note on the final plat stating requirement of submission of a letter from a licensed engineer certifying compliance with the City of Mobile's stormwater and flood control ordinances to the Mobile County Engineering department and the Planning Section of Mobile Urban Development prior to issuance of any future permits.

The motion carried unanimously.

Case #SUB2009-00126
Hill Forest Subdivision

1900 Shelton Beach Road Extension

East side of Shelton Beach Road Extension, ½ mile± North of Moffett Road

Number of Lots / Acres: 1 Lot / 15.3± Acres

Engineer / Surveyor: McCrory Williams Engineers Surveyors

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. Turner, with second by Mr. DeMouy, to approve the above referenced subdivision, subject to the following conditions:

- 1) dedication of sufficient right-of-way, to provide a minimum 50-

- feet as measured from the centerline of Shelton Beach Road Extension;
- 2) placement of a note on the Final Plat stating that the development is limited to one curb cut along Shelton Beach Road Extension, unless due to safety concerns, other departments require extra curb cuts, with the sizes, design, and locations to be approved by Traffic Engineering and conform with AASHTO standards;
 - 3) the labeling of the lot with its size in square feet, or placement of a table on the plat with the same information;
 - 4) provision of a revised PUD site plan to the Planning Section prior to signing of the Final Plat;
 - 5) provision of a note stating that development of the site will be undertaken in compliance with all local, state, and Federal regulations regarding endangered, threatened, or otherwise protected species;
 - 6) placement of a note on the Final Plat stating that the maintenance of the detention and/or common area is the responsibility of the property owners;
 - 7) the depiction of the 25-foot minimum building setback on the Final Plat; and,
 - 8) full compliance with all other municipal codes and ordinances.

The motion carried unanimously.

NEW SIDEWALK WAIVER APPLICATIONS:

Case #ZON2009-01975

The Village at Midtown LLC

South side of Pleasant Avenue, 208'± East of Stanton Road extending to the East side of Stanton Road 272'± South of Pleasant Avenue
Request to waive construction of a Sidewalk along Pleasant Avenue
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.

In deliberation, Mr. Miller asked the staff for confirmation of their recommendation as he is a staunch supporter of the sidewalks in the city and received the same.

Hearing no opposition or discussion, a motion was made by Mr. Turner, with second by Mr. Miller, to approve the above referenced request for sidewalk waiver along Pleasant Avenue.

The motion carried unanimously.

OTHER BUSINESS:

A Public Hearing to consider amendments to the Zoning Ordinance waiving site plan requirements for zoning applications in the Theodore Annexation until December 31, 2009, was opened. The Chair invited anyone who wished to speak on the matter to do so at that time.

John Williams, 3905 St. Andrews Loop West, Mobile, AL, Mobile City Council person, District 4, spoke in favor of the amendments.

In deliberation, Mr. Miller asked for staff input.

Mr. Olsen stated that staff did not support the amendment and made the following points for that position:

- A. zoning studies are done regularly without site plans for the area being considered for zoning/rezoning;
- B. the staff took a great deal of time and effort in reviewing the area to create the proposed zoning areas;
- C. in addition to reviewing aerial photographs and the land use plan in the system, GIS department and the GIS section of Urban Development made a number of site visits and drove every street of the annexed area to create the comprehensive zoning proposal brought before the Planning Commission and the City Council;
- D. some of the areas that have issues with the proposed zoning classifications were intended by the staff to be “grandfathered” in because there was either a street or natural feature that the staff felt as an appropriate line of demarcation for zoning districts or that the zoning pattern was more appropriate, however, regardless of the reasons, those usages were “grandfathered” in but without the option of expansion;
- E. the numbers of properties in “dispute” is not that many and most probably have site plans, from the time construction was permitted or a survey from when the property was acquired;
- F. there was no such waiver put in place when the City annexed the West Mobile/Mobile Terrace area; and,
- G. the Zoning Ordinance does not require a survey, but simply a “drawn to scale” site plan.

Mr. Lawler added the following points in opposition as well:

- A. the Zoning Ordinance is comprehensive in nature because to be legal it must zone the city in its entirety;
- B. site plans are required in all parts of the city as well for the same reason, as there can not be regulations that apply to one part of the city and not apply to another part of the city;

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- C. if the proposed matter were adopted, it would mean that one part of the city was not bound by the same rules and regulations as the rest of the city, which constitutes unequal protection of the law; and,
- D. it is his legal opinion that based upon the facts just given, it would be unconstitutional to adopt such a measure.

Mr. Vallas stated as it was suggested that the matter be adopted and only be in effect until December 31, 2009, the period in question would only be approximately 4 months.

Mr. Olsen advised that it would come before the City Council on October 4, 2009, which would only have it in effect for a few months, however, Mr. Williams had made a statement about it being in effect for 6 months.

Mr. Vallas said that based upon this it would be approximately two months and then wondered how many applications would likely be seen in that period.

Mr. Olsen stated that would be difficult to guess.

Mr. Vallas said that in his recollection they had only seen one application to date in the effected area.

Mr. Olsen said there had been 4 or 5 so far in the effected area based upon his memory.

Mr. Turner queried what the potential impact would be if the Commission supported adoption of the proposal.

Mr. Olsen responded with the following:

- A. increases in the potential for applications of undeveloped land presented for review and approval without site plans, which the Commission has previously held to be speculative in nature; and,
- B. amending an ordinance for a period of only two months does not, in his opinion, make a great deal of sense, as it would be in effect for such a short period of time, thus not being of any real effect.

Mr. Miller, in thinking back over the past few years and the City's annexation efforts, wondered where the Theodore area annexation fell in that time line.

Mr. Olsen stated it took place approximately a year after the West Mobile annexation and was the latest one.

Mr. Miller stated he would feel more comfortable extending these benefits if there were other annexed areas that could be included, however, as there had been too much time in between the annexations, he was not comfortable doing so. He added, that based upon Mr. Lawler's comments, he felt even more uncomfortable approving such a proposal.

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Mr. Turner asked Mr. Olsen if he had any suggestions on the matter besides amending the ordinance.

Mr. Olsen stated he did not and agreed with Mr. Lawler's comments. He also pointed out there had been five public hearings prior to the final adoption of the recommended zoning of the area by the City Council, two before this body and three before the City Council. He added there were legal ads run regarding the matter in the *Mobile Press-Register*, as well, and felt that to adopt such a matter did not set a good precedent for future annexations.

Mr. Lawler then reminded the Commission of the following:

- A. all property, when annexed into the City, comes in under "non-conforming use" and that non-conforming use, under the City's Ordinance, can continue or be changed to another non-conforming use of equal or lower rank *ad infinitum*;
- B. his opinion that the only need any property owner would have to change a zoning would be if they wanted to go to a higher level of use, but the current use would be completely unaffected;
- C. concern over allowing someone to come in with a bare piece of property and no site plan and how it would destroy the opportunity to use the Commission as a valuable tool to the City in considering zoning applications;
- D. people who had been annexed in had suffered no negative impact or change in their ability to use their property; and,
- E. they can continue to use their property without any interference as long as they don't abandon that use, however, if the use is abandoned for 2 years or more, then the non-conforming status is lost.

Mr. Miller stated his recollection as only a couple of people came in with zoning objections and by his recollection those individuals were accomodated.

Mr. Vallas asked if the Planning Commission made the final ruling on the matter.

Mr. Olsen stated the Planning Commission only made recommendations which were forwarded to the City Council with regards to zoning/rezoning, with City Council making the final decision.

Mr. Vallas voiced his opinion that as City Council had final say on the matter and as a City Council member had come before the Commission to voice his support of the matter, that the Commission should approve it and send it to City Council, where the final decision would be made upon the matter.

Mr. Davitt asked if the Commission recommended denial on the matter, did the matter stop at Planning Commission or did it automatically go to the City Council.

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Mr. Olsen advised it would go to City Council for a final decision regardless of how the Commission voted on the matter.

After hearing no further opposition or discussion, a motion was made by Mr. Miller, with second by Mr. Davitt, to recommend denial of the amendment to the Zoning Ordinance waiving site plan requirements for zoning applications in the Theodore Annexation until December 31, 2009.

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

Hearing no further business, the meeting was adjourned.

APPROVED: November 5, 2009

Dr. Victoria Rivizzigno, Secretary

Terry Plauche, Chairman

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