

MOBILE CITY PLANNING COMMISSION MINUTES
MEETING OF OCTOBER 16 2003 - 2:00 P.M.
AUDITORIUM, MOBILE GOVERNMENT PLAZA

Members Present

Terry Plauche
Robert Frost
Vic McSwain
Victoria L. Rivizzigno
Ann Deakle
John Vallas
James Laier (S)
Ernest Scott

Members Absent

Wendell Quimby
Stephen Nodine
Clinton Johnson

Staff Present

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

Others Present

Wanda Cochran, Assistant City Attorney
Ron Jackson, 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 #SUB2003-00203 (Subdivision)

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

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

There was no one present in opposition.

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

- 1) the placement of a note on the final plat stating that the development is limited to one curb to Spring Hill Avenue, with the size, location and design to be approved by Traffic Engineering;

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- 2) 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; and
- 3) placement of the required 25-foot minimum building setback line on the final plat.

The motion carried.

Case #SUB2003-00198 (Subdivision)

Hillview Subdivision, Block 2, Resubdivision of Lot 5

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

2 Lots / 0.4+ Acre

Matt Orrell of Polysurveying, representing the applicant, asked that this application be held over, because the applicant still had not had an opportunity to meet with the neighbors.

There was debate as to whether or not the application should be held over again. Mr. Frost explained that many of the neighbors had taken time out of their schedules to come down to speak. Although the Commission had heard most of their comments at the last meeting, Mr. Frost agreed to hear the neighbors if they had something new to add.

Reggie Copeland, Councilperson, District 5, speaking on behalf of the residents, said that contrary to what Mr. Orrell said, they had met with the applicant since the last meeting.

Laura Clarke noted that if the Commission chose not to hold the application over and acted on it today, and if it was denied, the applicant could turn around and apply again tomorrow.

Mr. Orrell pointed out that a precedent had been set in this subdivision when two lots to the north and one lot to the south of the subject property had been subdivided. He noted that this subdivision met all the requirements of the Subdivision Regulations.

Tom Galloway, attorney, was present representing the neighbors. He stated that since this subdivision was developed in 1947 the City had adopted a Comprehensive Plan, and that the Comprehensive Plan encompasses this subdivision. Under the Comprehensive Plan it is required that the applicant give a reason to vary the plan, which had not been done. In the absence of a given reason under the Comprehensive Plan, he contended that this application should be denied.

Mr. Frost stated that if the applicant had the opportunity to subdivide his property as long as he met the requirements of the Subdivision Regulations. He noted that this was discussed at the last Planning Commission meeting, that the Planning Commission's counsel was asked to research this issue.

Wanda Cochran, Assistant City Attorney, said she had researched the matter and put together a brief memo. She stated that the Alabama Code gives the Commission very broad authority to regulate subdivisions. The Commission, however, had not undertaken to adopt any specific regulations concerning the resubdivision of property in existing neighborhoods. Absent any specific regulations addressing the resubdivision of property in a developed area, the Commission must look to its regulations in considering an application. Ms. Cochran said Mr.

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Galloway was right, that any subdivision application must conform to the City's Comprehensive Plan. However, the Commission must observe whether the proposed application meets the minimum requirements of the Subdivision Regulations. In determining whether to grant or deny, the evidence the Commission relies upon to make that determination must be related to a stated regulation. Ms. Cochran cited the case of *Smith vs Mobile Planning Commission*, which involved the resubdivision of lots in the Spring Hill area. The Alabama Supreme Court found that the Commission might have the power to consider neighborhood character and those sorts of things, but unless those decisions were embodied in a specific regulation the Commission could not do it on an ad hoc basis. To summarize, the Commission's responsibility is to view the application and test the evidence in light of the published regulations, because land use law is based on expectation and uniformity of application to everyone.

Mr. Frost stated that he was at a loss to understand how the Comprehensive Plan played a part in this when they were dealing just with a subdivision, not with any zoning issues.

Richard Olsen explained that the only real way the Comprehensive Plan would affect this is the General Land Use Component of the Comprehensive Plan, which deals with residential, commercial, and industrial areas. This area is shown as residential on the Comprehensive Plan. The use of the property is residential, so it's really not in conflict with the Comprehensive Plan.

Mr. Frost stated that the Comprehensive Plan had no bearing on this application, as this is dealing solely with a residential subdivision to be divided for residential purposes.

Mr. Galloway contended that nothing had been shown as to why this lot should be divided just because the applicants wanted to divide it. Based on this, Mr. Galloway asked that the application be denied.

Mr. Copeland stated that he became involved in this matter after receiving some phone calls from the neighbors. He said he had represented Jackson Heights for a number of years and did not know of any other resubdivisions that had occurred in this subdivision. Referring to one of the proposed lots, he said he did not know how the City could allow a structure to back up to someone else's residence where it would be within eyesight of their kitchen or living room right next door. Mr. Copeland said that since the last meeting the applicant did meet with the neighbors, but he was not present today to tell why he wanted to subdivide the property. He noted that the staff's report stated that a structure *seemed* to be constructed near the proposed property line. Mr. Copeland said a structure was *already* near the property line, which violated the Zoning Ordinance.

Mr. Frost stated that this was addressed at the last meeting, stating that it was a non-conforming structure.

Mr. Copeland noted that this was not the first issue to come up regarding restrictive covenants. He noted item 20 on the agenda, Irene-Stillwood Subdivision, was recommended for denial because the proposed subdivision would be out of character with the surrounding development and would result in one home looking into the rear of another home. Mr. Copeland asked that

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the Commission deny this application in order to protect the people in the subdivision. He asked for a show of hands of those present in opposition to this subdivision.

In executive session, Ms. Cochran referred to the regulations at issue, which states “the size, width, depth, shape and orientation of lots and the minimum building setback line shall be appropriate to the location.” Ms. Cochran noted that “appropriate” was not defined. She concluded that if there was to be a finding of inappropriateness it needed to be tied to a specific fact that had been presented to the Commission.

Mr. Frost asked if he understood what she was saying; that the Commission could not necessarily say out of character, but could say that the lot configuration was inappropriate.

Ms. Cochran said that was correct. She said she did not mean to say that the Commission would never have any discretion or there would never be any room for judgement, but her legal point was that if the Commission was going to make a finding that something was out of character, it needed to be tied to specific characteristics of the neighborhood which were demonstrated by facts that the Commission had heard at the podium.

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

- 1) the dedication of a 25’ radius at the intersection of Hillview Drive and Summit Drive; and
- 2) the illustration on the final plat that the existing structure on Lot 2 is setback a minimum of eight-foot from the proposed property line and a minimum of eight-foot from the rear property line, or the removal of the structure prior to the recording of the final plat.

Mr. Scott was opposed. The motion carried.

EXTENSIONS:

Case #SUB2002-00246 (Subdivision)

File #S95-130

Creekline Subdivision

Northwest corner of Higgins Road and Shipyard Road, and running through to Interstate 10.

28 Lots / 227.0± Acres

Request for a one-year extension of previous approval.

Don Coleman, Rester and Coleman Engineering, was present on behalf of the applicant.

There was no one present in opposition.

A motion was made by Mr. McSwain and seconded by Dr. Rivizzigno to approve a one-year extension of previous approval for this subdivision.

The motion carried.

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Case #SUB2002-00245 (Subdivision)

Fincher's Addition to Riverview Subdivision

Northeast corner of Old Rangeline Road and Riverview Point Drive.

49 Lots / 113.9± Acres

Request for a one-year extension of previous approval.

Don Coleman, Rester and Coleman Engineering, was present on behalf of the applicant.

A motion was made by Mr. McSwain and seconded by Dr. Rivizzigno to approve a one-year extension of previous approval for this subdivision.

The motion carried.

Case #SUB2001-00269 (Subdivision)

File #S99-253

Springfield Subdivision

Northwest corner of proposed future Dawes Road and proposed future Grelot Road and extending through to Twelve Oaks Drive.

91 Lots / 57.9± Acres

Request for a one-year extension of previous approval.

There was no one present in opposition.

Don Coleman, Rester and Coleman Engineering, was present on behalf of the applicant. Mr. Coleman explained that when the subdivision was proposed it was north of the Augusta and Woodberry properties. There were three subdivisions all tied together that were owned by the same person. The Springfield Subdivision was landlocked. They had constructed Augusta, bringing the access further north to adjoin Springfield to the south. Woodberry would soon be constructed giving additional access to the subject property. Mr. Coleman said Springfield would probably be started within the next year of approval. They were therefore asking for extension of approval for another year because they were just getting access to it. He noted that Grelot Road runs to the south part of it and the new extension from Dawes Road up to Airport is on the east side of it.

Mr. Frost noted that this application had been extended three times. The applicant was warned the last time that it would be the last extension. He asked if the Commission had any authority to extend it further.

Richard Olsen replied that it basically had been the policy of the Commission that two or three extensions were the maximum. There were some things that were a little extenuating in this case, however, with Augusta Subdivision under construction to the south. Mr. Olsen also noted that if this were denied, they could reapply tomorrow.

A motion was made by Ms. Deakle and seconded by Mr. Vallas to approve a one-year extension of previous approval for this subdivision.

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In further discussion Mr. McSwain expressed concern that granting another extension would be a change in policy on extensions.

Mr. Vallas noted that there were some changing factors mentioned.

After discussion Mr. Frost called for a vote in this matter. The motion carried. Mr. McSwain voted no.

GROUP APPLICATIONS:

Case #ZON2003-02279 (Rezoning)

Dirt, Inc.

5401 Bear Fork Road (South side of Bear Fork Road, 900'± East of University Boulevard).
The request for a change in zoning from R-1, Single-Family Residential, to I-2, Heavy Industry, for a junkyard and borrow pit was considered.

The plan illustrates the existing structures and the proposed lots.

(Also see Case #ZON2003-01299 – Dirt Inc. (Planning Approval) – Below and Case SUB2003-00215 – Bear Fork Industrial Park Subdivision – Below)

Mr. Frost stated that the rezoning and subdivision were recommended for denial, and the subdivision was recommended for approval.

Don Coleman, Rester and Coleman Engineering, was present on behalf of the applicant. Mr. Coleman stated that the applicant told him this property had been a borrow pit for over 40 years. The applicant had researched the property and made the following statement, as read by Mr. Coleman: "...this property was used as Hammac Garage and Wrecker Service from approximately 1971 to 1981, and during this period of time Mr. Don Hammac maintained a license to do business there. This is even noticed on our property tax bill. In 1977, on the same property, Walley Electric operated a licensed electrical contracting business from 1977 to 2001. During this period of time that Walley Electric was operating this business, AAA Auto was operating an auto storage business. This property was annexed into the City of Mobile and was zoned R-1 even though it was being used as a borrow pit. The tax bill they get shows taxes due for borrow pit and auto wrecking service." Mr. Coleman did not know how long the tax records reflected a borrow pit. He said the City had told the owner that he needed to get it rezoned for the use. The owner had made this application to comply with the City's request.

Mr. Vallas asked if it was the junkyard or the borrow pit that required an I-2 zoning.

Mr. Olsen replied that they both did, and a junkyard also required Planning Approval. It was currently being used as a borrow pit with a salvage office right in front of it.

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Dr. Rivizzigno asked if she understood this wasn't an issue until a complaint was filed with the Action line.

Mr. Olsen replied that this is what brought the uses to the attention of the City Land Use staff were not able to find documentation that supported a legal non-conforming use and a salvage yard, which was why the applicant was informed that the documentation submitted was not sufficient, and it was recommended that the applications be filed.

Eddie Sanders was present in opposition and stated that his property had been in his family for about 30 years. He had moved there four months ago. Mr. Sanders said there was no fencing or anything shielding the property. It was very much exposed to Bear Fork Road. He did not want I-2 adjoining his property. He felt it would affect his property value. Runoff was also a concern, because he has a two-acre pond on his property. Mr. Sanders said he had not noticed too much activity going on now with trucks going in and out. As far as the salvage business was concerned, he could not tell that there was any activity at all. Mr. Sanders said he was concerned and asked that the Commission deny this request.

Laura Brown, a resident of 5213 Kline Circle N., stated that she was president of the Mitternight Park Neighborhood Association, which encompassed over 400 homes with over 1,000 residents. She expressed their concerns regarding the dangerous traffic situation with dump trucks going through their neighborhood. She felt the development of an industrial park in this area would increase truck traffic and the noise level. Ms. Brown noted that according to the Planning Commission staff's report, the use of the property as proposed actually began several months ago, without approval of the Planning Commission. Dirt, Inc. appeared to be in clear violation of the City of Mobile's ordinances. She said the members of the Mitternight Neighborhood Association adamantly opposed the rezoning and planning approval for the Dirt, Inc.'s Bear Fork industrial subdivision. Mrs. Brown submitted packets of information to the Commission.

Regarding the increase in truck traffic over the last several months, the commission asked if Mrs. Brown was able to determine if the trucks were from the dirt pit or just some other construction site in the area.

Mrs. Brown replied that they had seen trucks carrying junk cars to the site, but did not know from where the dump trucks were originating. She said this was a hazard and several accidents had been reported with this type of thing. She said the truck traffic had become almost unbearable over the past six months.

Cathy McGuire, a resident of 9842 Old Pascagoula Road, was present representing the Boys and Girls Clubs, which owns a 150-acre tract adjoining this property. Her main concern was ground water contamination from the proposed salvage yard. They have a lake on the property and it is used for different camping functions for the Boys and Girls Clubs. She was concerned that radiator leaks and oil and such could contaminate the ground water.

A motion was made by Mr. Plauche and seconded by Dr. Rivizzigno to deny this change in zoning.

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In further discussion Mr. Vallas asked if there was any documentation that this had been a salvage yard and dirt pit for all that time referred in Mr. Coleman's remarks.

Mr. Olsen replied that there was not, and in fact the initial documentation that the applicant submitted referred to the electrical company as the last user. There was no reference to any type of auto work or borrow pit. There had not been a license at that location for that type facility, so there was not documentation sufficient for the staff to consider the site having a legal non-conforming status. Mr. Olsen said the junkyard presently operating on the site was determined to have been established in the last year or so. He further explained that when any property is annexed into the City of Mobile it is annexed as R-1, single-family residential property. If there was a commercial use, the use, the would be considered non-conforming, or grandfather in, but specifically relating to salvage yards and junk yards, the ordinance has an attrition period of three years and at the end of that three years salvage yard must cease operation. The annexation of this area occurred back in the late 1980's.

There being no further discussion Mr. Frost called for a vote in this matter.

A motion was made by Mr. Plauche and seconded by Dr. Rivizzigno to deny this change in zoning.

The motion carried.

Case#ZON2003-01229 (Planning Approval)

Dirt, Inc.

5401 Bear Fork Road (South side of Bear Fork Road, 900'± East of University Boulevard).

The request for Planning Approval to allow a junkyard and a borrow pit in a proposed I-2, Heavy Industry District was considered.

The plan illustrates the existing structures and the proposed lots.

(Also see Case #ZON2003-02279 – Dirt, Inc. (Rezoning) – Above and Case SUB2003-00215 – Bear Fork Industrial Park Subdivision – Below)

After discussion a motion was made by Mr. Plauche and seconded by Dr. Rivizzigno to deny this request.

The motion carried.

Case #SUB2003-00215 (Subdivision)

Bear Fork Industrial Park Subdivision

5401 Bear Fork Road (South side of Bear Fork Road, 900'± East of University Boulevard).

2 Lots / 39.5± Acres

(For discussion see Case #ZON2003-02279 – Dirt, Inc. (rezoning) – Above and Case #ZON2003-01229 – Dirt, Inc. (Planning Approval) – Above)

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

- 1) placement of a note on the final plat stating that each lot is limited to one curb cut, size, location and design to be approved by Traffic Engineering;
- 2) placement of a note on the final plat stating that the 64" oak and a 37" oak be given preservation status, with all work under the canopy to be permitted and coordinated with Urban Forestry, and removal to be permitted by Urban Forestry only in the case of disease or impending danger; and
- 3) placement of a note on the final plat stating that the remaining trees that are larger than 24" be protected, and require permitting for removal.

The motion carried.

Case #ZON2003-02273 (Rezoning)

M. D. Bell III

157 North McGregor Avenue (West side of McGregor Avenue, 100' ± North of Austill Lane)
Rezoning from R-1, Single-Family Residential, to B-1, Buffer Business, for professional offices.

The plan illustrates the proposed structure, parking and landscaping.

Mr. Vallas recused from discussion and voting in this matter.

(Also see Case #SUB2003-00210 – M. D. Bell Subdivision – Below)

David Bell of 9 Drury Lane, applicant, presented this proposal which would allow him to construct a building on this site to be used for a real estate office. He felt the traditional style building would enhance the value of the properties adjacent and nearby. Mr. Bell said he had four letters from property owners located within 300 feet who were in favor of this proposal.

Margaret Pappas noted that the rezoning application was recommended for denial. The subdivision, however, met the minimum requirements and was recommended for approval. A condition on the subdivision should be the provision of adequate setback to allow for McGregor Avenue. Ms. Pappas explained that setback was typically required for residential property; however, if the Commission recommended approval of the rezoning for commercial use, it would be recommended that dedication be required along McGregor Avenue rather than simply setback.

Mr. Bell stated that would be no problem.

Parr Benstrom with Stokke Realty, 656 St. Francis Street, was present in support of this application. He showed photos of the site, which is across the street from an electrical substation, and has an 8-foot fence on one side, a wooden fence on the north side, and a 12-foot brick wall on the other side. Mr. Benstrom pointed out B2 zoning to the east and west on Old Shell Road and on McGregor Avenue. He said the proposed building would be a residential

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style that would blend in with the area. It would not be a retail type business where there would be a lot of traffic in and out. The curb cut requirement was no problem. After combining the two lots, the property the lot would be ½ acre, which was not typical for a residential lot in the Spring Hill area. He felt the fact that the area was growing and there was no more B-1 or B-2 lots to build on in the area warranted a change in zoning. Mr. Benstrom felt the proposed office building would be the highest and best use for this block given the surrounding substation and retail. Another point was that there was no ingress or egress to this lot from any other street except McGregor Avenue. Access would not be through residential neighborhood. Noting that the property next door was R-3, Mr. Benstrom felt that R-3 zoning would create more traffic than the proposed B-1 use.

Lee Hoffman, a resident of 3804 Austill Lane since 1964, said that his property abutted the subject property. Mr. Hoffman was opposed because he felt this would be spot zoning, as the property is bounded on three sides by residential. Although the applicant planned to put an office there, he was concerned that later someone else could come in with another B-1 use. He noted the commercial zoning on McGregor from Old Shell Road to Stein Street, and on the west side of McGregor it was all residential north of Austill Lane to Museum Drive. The north side of Old Shell Road was business from McGregor to White's Lane. Mr. Hoffman felt the business development along Old Shell Road showed a domino effect. He did not want to see that happen along McGregor Avenue. He was concerned that a business use would bring additional trash, noise, and an increase in traffic to Austill Lane. He also said it would further reduce the quality of life and property values on Austill Lane. Mr. Hoffman suggested a higher density residential design would be a more appropriate use of this property, and would be more in keeping with the residential character of the Spring Hill Neighborhood.

John Mency, owner of 1 N. Hathaway, was present in opposition. Mr. Mency said that while he did not oppose a higher-density, upscale, townhouse type development on this property, he was very much opposed to the spot approach to rezone this property. He also expressed concern about the possibility of the B-1 use changing in the future. Mr. Mency felt there was no need for more business space in this area, and asked the Commission to not allow this spot zoning, and encourage a more proper use such as townhouses.

Mr. Bell pointed out that there were no properties zoned R-1 on the West side of McGregor Avenue North of Old Shell Road and South of Museum Drive that face McGregor Avenue. He also stated that the two neighbors directly to the south were present in favor of this rezoning.

After discussion a motion was made by Mr. Plauche and seconded by Dr. Rivizzigno to deny this request.

The motion carried.

Case #SUB2003-00210 (Subdivision)

M. D. Bell Subdivision

157 North McGregor Avenue (West side of McGregor Avenue, 100'± North of Austill Lane)

1 Lot / 0.5± Acre

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(For discussion see Case #ZON2003-02273 – M. D. Bell (Rezoning) – Above)

Mr. Vallas recused from discussion and voting in this matter.

A motion was made by Mr. Plauche and seconded by Dr. Rivizzigno to approve this 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, with the location and design to be approved by Traffic Engineering; and
- 2) the provision of a 75' setbacks from the centerline of McGregor Avenue, a planned major street.

The motion carried.

Case #ZON2003-02280 (Planned Unit Development)

Joe Bullard Cadillac Subdivision

1407 and 1419 East I-65 Service Road South (Southeast corner of East I-65 Service Road South and Pleasant Valley [Road] Circle).

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

The site plan illustrates the proposed structures, paving and landscaping.

(Also see Case #SUB2003-00216 – Joe Bullard Cadillac Subdivision – Below)

Don Coleman, Rester and Coleman Engineering, was present representing the applicant. Mr. Coleman asked that condition #2 of the staff's recommendation be revised to say that a drainage easement would be provided along the route of the public storm water for Pleasant Valley Road Circle and Pleasant Valley Road. The reason for this was because they were going to cover up the ditch and might relocate it, so he did not want to tie the location to the existing ditch.

Mr. McSwain asked about the status of the dedication, noting that the original intent was to vacate Pleasant Valley Road Circle.

Mr. Coleman stated that they were not asking for it to be vacated.

Mr. Olsen said that Beverly Terry of City Engineering was okay with the rewording of the condition to read something to the effect of provision of a drainage easement that receives public storm water discharge from Pleasant Valley Road Circle and Pleasant Valley Road.

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

- 1) that the development will be required to comply with Part I (Land Disturbance requirements) and Part II (Construction within a Flood Plain) of the COM's Storm Water Drainage Ordinance;

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- 2) provision of a drainage easement that receives public storm water discharges from Pleasant Valley Road Circle and Pleasant Valley Road;
- 3) provision of a certified survey on Bolton's Branch prior to any permits being issued for this property (the survey to be performed by a licensed surveyor and coordinated with the Engineering Department prior to any clearing or other construction on the site), and a survey after all construction is complete to determine any impact on the flood handling capacity of the stream;
- 4) that the development will be held to the highest possible standards to prevent further degradation of the flood-handling capacity of the stream and the downstream properties;
- 5) developer to obtain all necessary federal, state and local approvals prior to the issuance of any permits;
- 6) the site is limited to the three proposed curb cuts, all existing cuts shall be closed, paving materials removed, and curbing and landscaping materials to be installed;
- 7) no parking of vehicles on landscaped or unpaved areas (Zoning Ordinance requires all parking areas to be paved); and
- 8) full compliance with all municipal codes and ordinances.

The motion carried.

Case #SUB2003-00216 (Subdivision)

Joe Bullard Cadillac Subdivision

1407 and 1419 East I-65 Service Road South (Southeast corner of East I-65 Service Road South and Pleasant Valley [Road] Circle).

1 Lot / 6.3± Acres

(For discussion see Case #ZON2003-02280 – Joe Bullard Cadillac Subdivision (PUD) – Above)

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

- 1) that the development be required to comply with Part I (Land Disturbance requirements) and Part II (Construction within a Flood Plain) of the COM's Storm Water Drainage Ordinance;
- 2) provision of a drainage easement that receives public storm water discharges from Pleasant Valley Road Circle and Pleasant Valley Road;
- 3) provision of a certified survey on Bolton's Branch prior to any permits being issued for this property (the survey to be performed by a licensed surveyor and coordinated with the Engineering Department prior to any clearing or other construction on the site), and a survey after all construction is complete to determine any impact on the flood handling capacity of the stream;
- 4) the development will be held to the highest possible standards to prevent further degradation of the flood-handling capacity of the stream and the downstream properties;
- 5) developer to obtain all necessary federal, state and local approvals prior to the issuance of any permits; and

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- 6) placement of a note on the final plat stating that the site is limited to the three proposed curb cuts, all existing cuts shall be closed, paving materials removed, and curbing and landscaping materials to be installed.

The motion carried.

Case #ZON2003-02282 (Planned Unit Development)

Scheuermann Commercial Subdivision

855 Holcombe Avenue (Northeast corner of Holcombe Avenue and Halls Mill Road).
Planned Unit Development Approval to allow multiple buildings on a single building site.

The plan illustrates the existing building, along with the proposed building and parking.

(Also see Case #SUB2003-00219 – Scheuermann Commercial Subdivision – Below)

The applicant was present and presented his proposal to put a 2400 square foot metal building on this site.

Mr. Frost stated that this application had been recommended by the staff for a holdover because there were some technical aspects of the plan that needed to be addressed. This involved some parking issues and broken asphalt in the driveway. There were no objections necessarily, but just the need to get to get it right on paper before it came back to the Commission.

The applicant stated that he had a revised plat with him.

Mr. Frost said there was no way the Commission could act on this application today because they had not reviewed the revised plat.

Mrs. Scheuermann said they had the revisions and they talked to Mr. Branch yesterday. He said that as soon as these issues were addressed they could get approval to put the building up.

Mr. Frost explained the procedure for reviewing plats prior to the meetings.

Margaret Pappas explained that the applicant may have spoken with Mr. Branch who is in the Code Administration office, and he would address the issue and accept plans regarding building codes. In terms of site plan, it was site-plan specific so those issues needed to be addressed, and the Commission should have the plans to look at, which would necessitate the holdover until the November 6 meeting.

Mr. Frost suggested the applicant gets with the staff and discuss the issues with them and see if it could be handled at the November 6 meeting.

A motion was made Mr. Frost and seconded by Dr. Rivizzigno to holdover this application until the meeting of November 6, 2003 to allow the staff time to review a revised site plan.

The motion carried.

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Case #SUB2003-00219 (Subdivision)
Scheuermann Commercial Subdivision

855 Holcombe Avenue (Northeast corner of Holcombe Avenue and Halls Mill Road).
1 Lot / 0.6± Acre

(Also see Case #ZON2003-02282 – Scheuermann Commercial Subdivision (PUD)– Above)

A motion was made Mr. Frost and seconded by Dr. Rivizzigno to holdover this application until the meeting of November 6, 2003 to allow the staff time to review a revised site plan.

The motion carried.

Case #ZON2003-02283 (Rezoning)
Metcalf & Company

5835 Old Shell Road (Southeast corner of Old Shell Road and Allen Drive).
Rezoning from R-1, Single-Family Residential, to B-1, Buffer Business, for a church-sponsored, college student center.

The site plan illustrates the proposed building, parking, curb cuts, lot configuration, along with existing trees and curb cuts.

(Also see Case #SUB2003-00212 – Wesley Place Subdivision – Below)

Adam Metcalfe, Metcalfe and Company, was present representing USA Wesley Foundation. Mr. Metcalfe said they would like to build a student center on this property. He said they still had a couple of issues they needed to work out with the staff, and asked that the application be held over until the November 20 meeting.

After discussion a motion was made by Mr. Frost and seconded by Dr. Rivizzigno to holdover this application until the November 20, 2003 meeting at the applicant's request.

The motion carried.

Case #SUB2003-00212 (Subdivision)
Wesley Place Subdivision

5835 Old Shell Road and 65 Allen Drive (Southeast corner of Old Shell Road and Allen Drive).
2 Lots / 2.2± Acres

(Also see Case #ZON2003-02283 – Metcalfe & Company – Above)

After discussion a motion was made by Mr. Frost and seconded by Dr. Rivizzigno to holdover this application until the November 20, 2003 meeting at the applicant's request.

The motion carried.

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Case #ZON2003-02281 (Rezoning)

Franklin Primary Health Center, Inc. (Tommie L. Anderson, Agent)

North side of Dr. Martin Luther King, Jr. Avenue, 100'± East of Peach Street, extending to the East side of Peach Street, 110'± North of Dr. Martin Luther King, Jr. Avenue.

The application requests a change in zoning from R-1, Single-Family Residential, to B-1, Buffer Business, for a parking lot expansion for an existing health care clinic.

The site plan illustrates the proposed parking spaces, proposed curb cuts, existing fencing, concrete, curb cuts, sidewalks, and trees.

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

There was no one present in opposition.

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

- 1) limited to the accompanying PUD.

The motion carried.

Case #ZON2003-02297 (Planned Unit Development)

Franklin Primary Health Center, Inc. (Tommie L. Anderson, Agent)

North side of Dr. Martin Luther King, Jr. Avenue, 100'± East of Peach Street, extending to the East side of Peach Street, 110'± North of Dr. Martin Luther King, Jr. Avenue.

A request for Planned Unit Development approval to allow off-site parking on multiple lots.

The site plan illustrates the proposed parking spaces, proposed curb cuts, existing fencing, concrete, curb cuts, sidewalks, and trees.

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

There was no one present in opposition.

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

- 1) limited to the accompanying PUD.

The motion carried.

NEW ZONING APPLICATION:

Case #ZON2003-02278

Bay Side Properties

4575 Higgins Road (South side of Higgins Road, 250'± East of Rangeline Service Road).

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The request for a change in zoning from R-1, Single-Family Residential, to B-5, Office-Distribution, for professional offices and warehousing was considered

The plan illustrates the proposed building and parking, along with the future building.

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

There was no one present in opposition.

After discussion a motion was made by Mr. Plauche and seconded by Dr. Rivizzigno to approve this plan subject to the following conditions:

- 1) full compliance with the landscaping and tree planting requirements of the Ordinance;
- 2) that the 36' Live Oak located in the southeast corner be given preservation status (any work around, including trimming or removal of this, tree would require approval from the Mobile Planning Commission) and all work under the canopy of the tree be coordinated with Urban Forestry;
- 3) that the site be limited to one curb cut to Higgins Road, with the location and design to be approved by Traffic Engineering; and
- 4) full compliance with all municipal codes and ordinances.

The motion carried.

NEW PLANNED UNIT DEVELOPMENT APPLICATION:

Case #ZON2003-02275

Trinity Evangelical Lutheran Church

2668 Berkley Avenue (Northeast corner of Berkley Avenue and Main Street).

A request for Planned Unit Development Approval to amend a previously approved Planned Unit Development to allow multiple buildings on a single building site was considered.

The plan illustrates the existing structure and parking, along with the proposed building and parking.

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

There was no one present in opposition.

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

- 1) the site be brought into compliance with the landscaping and frontage tree requirements with this project, with future PUD approvals requiring the site to be brought into full compliance;
- 2) completion of the required parking;
- 3) completion of the sidewalk along the Berkley Avenue frontage; and

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- 4) full compliance with all municipal codes and ordinances.

The motion carried.

NEW SUBDIVISION APPLICATIONS:

Case #SUB2003-00218

Augusta Subdivision, Unit Four

North terminus of Stonebridge Court, adjacent to the West side of Augusta Subdivision, Unit Two, Phase Two.

15 Lots / 9.9± Acres

Don Coleman, Rester and Coleman Engineering, was present on behalf of the applicant and concurred with the staff's recommendations.

Connie Turpin, 10046 Woody Lane, Irvington, was present and pointed out her property to the west of the subject property. Mrs. Turpin expressed concern about drainage and whether or not she would have access to her property through this new subdivision.

Mr. Frost stated that Mrs. Turpin would not have access. She had no access now.

Mrs. Turpin pointed out that her property was actually in two pieces. There was a natural creek bed that went through it. This was the south part of the property next to this subdivision, and there was really no access through there other than through the via proposed subdivision, which adjoined her property. Mrs. Turpin said if this subdivision did not allow her access to her property, she was against it.

Mr. Frost explained that under the State law, there was a statute that landlocked could force a person to sell an access point to their property under certain situations. He asked Mr. Olsen if this subdivision would create a land locked situation.

Mr. Olsen stated that this was not creating additional land locked properties. Any properties that were going to be land locked after this subdivision were currently land locked. He noted the location of the future Grelot Road Extension, which Mrs. Turpin would have frontage on when it was constructed.

Mrs. Turpin said that would give her access to the north part of her property, but there would not be access to the south part because of the natural creek bed.

Mr. Olsen stated that in cases like this it would be the property owner's responsibility to provide the access to their own property. If there was a drain across his property, this developer would have to be doing that. If there was a private easement for Mrs. Turpin to have access to her property, that would not be something necessarily that would come before the Planning Commission, but that would be a private agreement between individuals.

Mr. Frost suggested Mrs. Turpin gets a lawyer to discuss her rights in regard to getting access.

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

- 1) the site be brought into compliance with the landscaping and frontage tree requirements with this project, with future PUD approvals requiring the site to be brought into full compliance;
- 2) completion of the required parking;
- 3) completion of the sidewalk along the Berkley Avenue frontage; and
- 4) full compliance with all municipal codes and ordinances.

The motion carried.

Case #SUB2003-00220

Bridgemill Subdivision, Phase 2 (formerly Saybrook Subdivision)

South termini of Fenwick Loop, extending to the East terminus of Meadow Wood Drive.

40 Lots / 18.5± Acres

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

Craig Raines, 4108 Oak Briar Drive West, expressed concern about the area in Phase II marked “common area”. He wanted to know exactly what the common area would be used for. Drainage was also a concern, and Mr. Raines asked about the retention pond.

Mr. Frost noted that the common area on the south part of the property would be the detention area. He said the applicant would have to follow all the Mobile County Flood Damage Prevention Ordinances and the engineer would be responsible for making sure that the detention pond was put in correctly.

William Edwards of 7429 Meadow Grove Court, president of the Meadows Home Owners Association, said he was present to speak in favor of the proposed three-point turnout at the end of Meadow Wood Drive. Mr. Edwards read a letter from the Meadows Home Owners Association requesting that the Commission keep the current plan concerning this turnout. Further, they asked that the Commission not consider any connection between Meadow Wood Drive and the future development of Bridgemill Subdivision. They felt this would benefit the residents of both the Meadows and Bridgemill by not creating a thoroughfare through this area, and also not interrupting the flow of storm drainage water that spills from detention ponds in this area.

Ms. Pappas noted that in condition #1 in the staff report referred to a “temporary” turn around. She said this should be a “modified” turn around.

John Avent, with Engineering Development Services LLC, stated that they were very conscious of storm water detention and drainage. There had been some issues downstream of this development with which they had concerns. The applicant asked that they basically oversize the detention pond and try to eliminate, or hold back a little more water to reduce any kind of

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downstream effect. They were required to design for a 25-year storm event, but in this case they were designing the storm water detention for a 100-year storm event.

Pat Stewart with County Engineering stated that unless the County had changed their criteria, they needed to design for a 10-year event.

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

- 1) the construction of a modified turn around for Meadow Wood Drive (as illustrated on the plat) prior to the recording of the final plat;
- 2) the placement of a note on the final plat labeling the detention area as such and a note stating that the maintenance of the common area is the responsibility of the property owners; and
- 3) 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.

Case #SUB2003-00209

Credit America Used Car Sales Subdivision

Northeast corner of Spring Hill Avenue and Union Avenue.

1 Lot / 0.4± Acre

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

There was no one present in opposition.

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

- 1) the placement of a note on the final plat stating that the development is limited to one curb to Spring Hill Avenue and one curb cut to Union Avenue, with the size, location and design to be approved by Traffic Engineering; and
- 2) placement of the required 25-foot minimum building setback line on the final plat.

The motion carried.

Case #SUB2003-00217

Dawes Lake Estates Subdivision, Resubdivision of Lot 29

Southeast corner of Dawes Lake Road North and Dawes Lake Road South.

2 Lots / 0.5± Acre

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

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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 conditions:

- 1) the placement of a note on the final plat stating that the maintenance of the common area is the responsibility of the property owners association;
- 2) 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; and
- 3) the developer obtain any necessary approvals from all applicable federal, state and local agencies prior to the issuance of any permits.

The motion carried.

Case #SUB2003-00213

Irene – Stillwood Subdivision

409 Stillwood Lane (West side of Stillwood Lane, 135'± South of Irene Street, extending to the South side of Irene Street, 100'± West of Stillwood Lane).

4 Lots / 0.9± Acre

Don Williams with Williams Engineering, agent for the applicant, was present. He noted that the staff had recommended denial because the subdivision would be out of character with the surrounding development, and Lot 3 did not comply with the width to depth ratio of Sec. V.D.3. of the Subdivision Regulations. With regards to the out of character issue, Mr. Williams said they had addressed that in two different ways and from the street it would look like one house faced the roadway. They also considered sharing one driveway between lots 3 and 4, and there was some vegetation along the property line to the north that they intended to keep. He said the house behind was not even going to come into play because of the mature trees and the vegetation, so he did not feel it would be that much out of character. With regard to the flag-shaped lot, they planned to back garage-to-garage on lots 3 and 4, which minimized one house looking into the other house. With the shared driveway situation, they felt that architecturally they could handle that aspect so they would not have a house looking into the front house.

Mr. Harry Schaub, a resident of 297 Stillwood Lane, stated that he did not object to the proposed subdivision as it was drawn with four lots.

Steve Hand, 3518 W. Stillwood Lane, stated that he was present on behalf of his family and other families on West Stillwood and Stillwood Lane who were opposed to the subdivision as planned. Mr. Hand said they were concerned that this would set a negative precedent just stacking in more and more residential density into the lots. He said that right now they have a neighborhood where all the homes are located along the perimeter of the road. He felt this would create a situation where there would be a neighborhood within a neighborhood and that is what they were opposed to.

Scott Hunter stated that he was present on behalf of his law partner, Michael Gillman, who was out of town and could not make it to the hearing. Mr. Gillman and his wife had lived at 206

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Stillwood Lane since 1975 and were concerned about the changing character of the street and the neighborhood. They did not feel this subdivision would fit in with the rest of the lots in this neighborhood. They were also concerned about the traffic situation and the excess traffic flow that would occur by adding two houses and one driveway. Curbside parking was also a concern. Mr. Hunter said the neighbors that lived directly across the street had not received any information from the applicant about this proposal. The first they heard of it was a notice of hearing from the Planning Commission. On behalf of Mr. and Mrs. Gillman, he asked that the Commission deny this subdivision.

Mr. Williams stated that they do meet the minimum requirements of the subdivision regulations regarding square footage and frontages. Additionally, he felt the streetscape would look and feel the same along Stillwood and Irene Street. It would look like one driveway and one house. It would be close to the street with vegetation taking care of the rest.

A motion was made by Mr. McSwain and seconded by Dr. Rivizzigno to deny this request for a four-lot subdivision for the following reason:

- 1) Lot 3 does not comply with Section V.D.3 (width to depth) of the Subdivision Regulations.

After further discussion Mr. McSwain amended his motion to approve a three-lot subdivision subject to the following conditions:

- 1) that Lots 3 and 4 be combined into one lot; and
- 2) a dedications along Irene Street and Stillwood Lane to provide 25 feet from centerline.

Dr. Rivizzigno seconded the motion. The motion carried.

Case #SUB2003-00221

Mobile County Water, Sewer & Fire Protection Authority

North side of Theodore Dawes Road, 650' ± West of US Highway 90.

1 Lot / 4.0 ± Acres

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

There was no one present in opposition.

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

- 1) the placement of a note on the final plat stating that the size, number, location and design of all curb cuts must be approved by County Engineering;
- 2) 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
- 3) the placement of the 25-foot minimum setback line on the final plat.

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The motion carried.

Case #SUB2003-00207

Mobile South Business Park Subdivision, Unit One, Resubdivision of Lot 28

East side of Business Parkway, 320'± North of Kooiman Road.

2 Lots / 1.7± Acres

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

There was no one present in opposition.

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

- 1) the placement of a note on the final plat stating that each lot is limited to one curb cut to Business Park Way with the size, location and design to be approved by County Engineering;
- 2) 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
- 3) the placement of the 25-foot minimum setback line on the final plat.

The motion carried.

Case #SUB2003-00208

Ranch Hills Subdivision, Resubdivision of Lot 7

8073 Hilltop Street (South side of Hilltop Street, 260'± East of Leroy Stevens Road).

3 Lots / 3.0± Acres

Matt Orrell, Polysurveying, was present on behalf of the applicant and requested that this application be held over until the meeting of November 20.

There was no one present in opposition.

A motion was made by Dr. Rivizzigno and seconded by Mr. McSwain to holdover this application until November 20, 2003 at the applicant's request.

The motion carried.

Case #SUB2003-00214

Riverwood Subdivision

North side of Rabbit Creek Drive, 330'± West of Dog River Road.

66 Lots / 29.0± Acres

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

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There was no one present in opposition.

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

- 1) the placement of a note on the final plat stating that Lot 66 is denied access to Rabbit Creek Drive;
- 2) placement of a note should on the final plat stating that corner lots (8, 28, 39, 54, 61 and 66) are limited to one curb cut each, with the design, size and location to be approved by County Engineering;
- 3) all common areas be indicated on the final plat with a note stating that the maintenance thereof is the responsibility of the property owners association;
- 4) 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
- 5) the placement of the 25-foot minimum setback lines on the final plat.

The motion carried.

Case #SUB2003-00211

SU Subdivision

5900 Hillview Road (West side of Hillview Road, 125'± South of Helton Road).

2 Lots / 0.8± Acre

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

There was no one present in opposition.

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

- 1) the placement of a note on the final plat stating that Lots 1 and 2 are limited to one curb cut each to Hillview Road with the size, location and design to be approved by County Engineering;
- 2) 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
- 3) the placement of the 25-foot minimum setback line on the final plat.

The motion carried.

NEW SIDEWALK WAIVER APPLICATIONS:

Case #ZON2003-02267

Brinker Alabama, Inc. (Palmer Engineering, Agent)

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3250 Airport Boulevard, B-6 (North side of Airport Boulevard, 400'± West of the North terminus of Bel Air Boulevard).

Request to waive construction of a sidewalk along Airport Boulevard.

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

There was no one present in opposition.

In discussion a motion was made by Dr. Rivizzigno and seconded by Mr. Scott to approve this request.

The motion carried.

Case #ZON2003-02277

Dennis Langan Construction

South side of Halls Mill Road, 2/10 mile± East of Azalea Road.

Request to waive construction of a sidewalk along Halls Mill Road.

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

There was no one present in opposition.

In discussion a motion was made by Dr. Rivizzigno and seconded by Mr. Scott to approve this request.

The motion carried.

OTHER BUSINESS:

Ms. Clarke asked if the Commission would be interested in pursuing a change to the Subdivision Regulations to establish criteria for denial when an application was “out of character” or “inappropriate”. She suggested the staff could do the research and come up with a draft proposal to present to the Commission.

Mr. Frost agreed and instructed the staff to proceed.

There being no further business, the meeting was adjourned.

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APPROVED: January 8, 2004

/s/ Victor McSwain, Secretary

/s/ Robert Frost, Chairman

vm