

BOARD OF ZONING ADJUSTMENT MINUTES
MEETING OF AUGUST 7, 2006 - 2:00 P.M.
MOBILE GOVERNMENT PLAZA, AUDITORIUM

MEMBERS PRESENT

Stephen J. Davitt, Jr., Vice-Chairman
William Guess
Martha Collier
Vernon Coleman
Sanford Davis
J. Tyler Turner, III

MEMBERS ABSENT

Reid Cummings, Chairman

STAFF PRESENT

Frank Palombo, Planner II
Caldwell Whistler, Planner I
Mae Sciple, Secretary II

OTHERS PRESENT

David Roberts, Traffic Engineering
David Daughenbaugh, Urban Forestry
John Lawler, Assistant City Attorney

Vice-Chairman Davitt noted the number of members present constituted a quorum and called the meeting to order.

The notation *motion carried unanimously* indicates a consensus, with the Chairman voting.

APPROVAL OF MINUTES:

Mr. Davitt stated that the minutes of the meeting of July 10, 2006, indicated that on application #5362 – (Case #ZON2006-01244) – JJT, an Alabama General Partnership – 1147 East E-65 Service Road South – the vote was unanimous in favor of the motion. Mr. Davitt said he voted against the motion, and asked that the record be corrected accordingly.

Ms. Collier also stated that the minutes reflected her negative vote in two instances. She proposed that if her negative vote was going to be recorded only, that that was unfair, and the vote of each member should be noted. She felt that recording only one person's negative vote, although she was more than willing for her negative vote to be recorded, and she stood by it, it still might deter someone from the Board not voting negatively when they might want to follow the staff's recommendation and the fact that an applicant had not presented them with any facts that would be contrary to staff's recommendations.

Mr. Davitt asked Mr. Lawler if it was necessary to show how each member voted.

Mr. Lawler said he did not see anything wrong with that. As long as there was an accurate reflection of what the vote actually was and who made the motion and who seconded the motion, he did not know that it would void or make anything improper or not to indicate how each

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member voted. He suggested that the staff may just want to keep of record of who actually voted one way or the other.

After discussion Mr. Davitt stated that from now on the staff should keep track of who votes for and who votes against an application. For the minutes purposes, it was not necessary to indicate how each person voted, just the number of votes for and the number of votes against an application.

With regard to the two instances Ms. Collier referred to in the July 10, 2006 minutes, Mr. Davitt asked if she would be agreeable to changing the minutes to indicate there was one "nay" vote, and remove her name.

Ms. Collier said that would be fine.

After discussion a motion was made, seconded and so ordered to approve the minutes of the meeting of July 10, 2006, with corrections as stated by Mr. Davitt. The motion carried unanimously.

PUBLIC HEARINGS:

#5363

(Case #ZON2006-01424)

Blu Rabbit's Paradise

325 East I-65 Service Road South

(East side of East I-65 Service Road South, 2/10 mile± South of Emogene Street)

Sign Variance to allow a second wall sign (57 square feet) for one tenant (business) on a multi-tenant site; only one wall sign per business is allowed on a multi-tenant site.

The site plan illustrates the existing buildings, parking, and proposed sign location

Ishmael, general manager of Blu Rabbit's Paradise, 325 East I-65 Service Road South, stated that they currently had a sign at the entrance to the facility facing Belk's department store. They would like to erect another sign facing the I-65 Service Road, which would allow them to have more exposure for potential customers on that side. Right now they feel they were handicapped with only the one sign at the entrance.

Ronald Clark, one of the owners of Blu Rabbit's Paradise, also stated that they would like to erect a second sign facing the interstate and the service road, as they felt they were losing quite a bit of exposure from the passing traffic. He noted that Am South Bank had three signs, as well as a sign on the grass. Mr. Clark said they asked for permission to put a sign on the grass, but were denied. That was the reason for this variance request.

There being no one else to speak in favor of this request, Mr. Davitt asked if there was anyone who wished to speak against the request. There was no one.

In administrative session Mr. Palombo pointed out to the Board that recently they had denied a similar variance request for two wall signs on a multi-tenant site for All Tel.

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Mr. Coleman asked if the sign for Blue Rabbit's Paradise was put in the same location as the sign for the previous business at that location, BLP Paints.

The applicant said they put the sign at the main entrance where their customers come in. The sign actually sits on the canopy.

Mr. Coleman felt if they were interested in getting the people to come there, they should have put the sign where it would have been most visible, which would have been on the interstate side.

Mr. Clark pointed out that they were in the middle of the building, with Am South on both sides of them. Am South had three signs. They also asked to share the sign on the grass in front of the building, but were denied. Mr. Clark said all the businesses around them have two or three signs.

Mr. Palombo noted that the Am South location was previous to the 1992 Sign Ordinance.

Mr. Guess asked if Blu Rabbit's was actually in the mall complex.

Mr. Palombo said they were not. It was a separate stand-alone building with four tenant buildouts there.

Mr. Davitt asked if Logan's had only one sign.

Mr. Palombo explained that Logan's was a separate lot, so they were allowed two wall signs. It was a single tenant land lease. It was the same situation with David's Bridals, as well as Macaroni Grill and the new Raising Cain's. Blu Rabbit's was in a multi-tenant building and was allowed one wall sign not to exceed 30 percent of the face front.

Mr. Guess asked about the street sign.

Mr. Palombo said they were allowed a free-standing sign as well.

The applicant said there was a free-standing sign for the businesses around the lot by the book store that had all the separate signs for different places. There was also one closer to the gas station. There was one empty space on there that they had requested use of, but they were refused, being told that it was reserved for a bigger space that Toys-R-Us had let.

Mr. Guess asked if the applicant had pursued a free-standing sign of their own.

The applicant said no, it was not even a question. The mall would not allow it. Am South also had a free-standing sign close to their mortgage company, and Blue Rabbit's requested that they share that free-standing sign with them, but were denied.

Mr. Davis asked for clarification of what was allowed for a multi-tenant complex such as Blu Rabbit's was in, versus a single-tenant site.

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Mr. Palombo said a single tenant in a single building was allowed two wall signs, whereas a multi-tenant building, one or more tenants, was allowed only one wall sign.

After discussion a motion was made by Ms. Collier and seconded by Mr. Turner to deny a Sign Variance to allow a second wall sign (57 square feet) for one-tenant (business) on a multi-tenant site at the above referenced location.

The vote was four in favor of the motion, and one against. The motion carried.

#5315/5364

(Case #ZON2006-01397)

Bowden Architecture (Keith A. Jones, Owner)

200 Virginia Street

(Northwest corner of Virginia Street and South Conception Street)

Parking Ratio Variance to allow 32 parking spaces for a 2,762 square foot addition to an existing 8,146 square foot office building; the Zoning Ordinance requires 37 parking spaces.

The site plan illustrates existing buildings, proposed addition and parking.

Don Bowden, present representing Keith Jones, owner of the subject property, stated that they were requesting that the Board approve a previously approved variance for this site for parking. Mr. Bowden explained that they had a computer systems business located at this address and the owner would like to expand. Because their employees are dispatched all over the country and the world, they were not all there at one time, and for that reason they previously requested that they not have to meet within five spaces the existing parking requirement. The Board approved that request, and asked that they add some additional landscaping, which they complied with. Mr. Bowden said the reason they did not proceed with the construction was that at that time the Choctaw Point project came about. They took some land next door to this property and the owner wanted to wait and see the impact of that project on this business. The owner was now satisfied that it would not negatively impact his business and he would like to proceed. They were asking once again that they be granted a variance for the parking.

There being no one else to speak in favor, or against the request, Mr. Davitt asked if anyone on the Board had any questions.

Ms. Collier asked Mr. Bowden what percentage of the employees were at the place of employment at one time.

Mr. Bowden said that at any given point, there were probably no more than 40 percent. They did most of their work for various corporate clients throughout the world, and the people that used this particular office were usually dispatched and did not check into this office but weekly or monthly, so they were not actually reporting every day and then leaving. They just come in for a new assignment before they go to another client, and that may be a month or six months, or in some cases shorter periods.

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Since there were no further questions of the applicant, Mr. Davitt said the Board would go into administrative session. Mr. Davitt reminded the Board that they had approved this variance in August of 2005. He asked Mr. Palombo, however, if there was some green space to be provided with this also, versus the previous request.

Mr. Palombo said the applicant met the green space requirement. The only thing Urban Forestry was asking for was the replacement of the frontage trees.

Mr. Bowden said they had revised their plan to that effect, and those submitted plans had been approved.

Mr. Coleman asked if there was a question about the aggregate.

Mr. Palombo said no. This was an asphalt parking lot.

After discussion a motion was made by Mr. Guess and seconded by Ms. Collier to approve a Parking Ratio Variance to allow 32 parking spaces for a 2,762 square foot addition to an existing 8,146 square foot office building at the above referenced location, subject to the following conditions:

- (1) the provision of frontage trees (to be coordinated with and approved by Urban Forestry).

There being no further discussion, Mr. Davitt called for the vote.

The motion carried unanimously.

#5365

(Case #ZON2006-01434)

Fred D. Fambrough

1911 Dauphin Street

(Southeast corner of Dauphin Street and Van Heuval Street)

Side Yard Setback and Height Variances to allow the construction of an 8'-2" tall masonry privacy wall with 8'-9" columns setback a minimum of four inches from the Van Heuval Street (side street) property line; a 20' side yard setback is required along a side street (Van Heuval Street), and 8' is the maximum allowable wall height in an R-1, Single-Family Residential District.

The site plan illustrates existing buildings and proposed fencing.

Fred Fambrough, 1911 Dauphin Street, applicant, stated that he had constructed a concrete block wall around his back yard. More than a year before he constructed the wall, he consulted with Mr. Carl Broadhead and Mr. Richard Olsen, both of Urban Development. Mr. Broadhead gave him some instructions on more or less the construction, the type of footing he should put down, and that sort of thing. He talked to Mr. Olsen about zoning restrictions regarding the wall. Mr. Olsen informed him that since it was so far back from Dauphin Street, there would be no restrictions from that area, nor would there be any restrictions from the South and East, and the

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only thing he would have to look at would be any restrictions on the West. Mr. Fambrough said that since Mr. Olsen lived two blocks down the street, he was aware that he already had a fence, and said he would be grandfathered in on the setback. With this information, Mr. Fambrough said he had 236 feet of wall constructed. He submitted photos of the wall, pointing out that the Van Heuval Street (West) side encompassed 37 feet with a ten-foot opening for a gate. He explained that the property falls off on that side, and, evidenced by the photos with measurements on them, no other part of the wall exceeded 8 feet. It was only on the outside portion of the Van Heuval Street side that the wall exceeded 8 feet. The interior portion did not. Mr. Fambrough said when he went to apply for the variance, he asked what the procedure was in a case like this where the wall was lower inside and higher outside. He was told that they would measure both sides and divide by 2 and come up with an average of the wall height. Mr. Fambrough said he did that. The only portions of the wall on that side street that exceeded 8 feet were the four columns, which were from 8 ½ feet at the lowest to 8 feet, 6 inches at the highest. He said he was never trying to make a wall that exceeded 8 feet. He was trying to make a wall that would have a continuous level top, which it does now, and just for aesthetics only. The height of the wall runs anywhere from 6 feet, 11 inches high all the way to the 8 feet, 6 inch limit. Mr. Fambrough explained that he had a fence there but it was damaged by hurricane Ivan and then destroyed by hurricane Katrina. He considered and got several estimates for putting up an 8-foot privacy fence, but after he found out the cost, and taking into consideration the possibility of future storms damaging a fence, he decided to try to build something that could either withstand a hurricane, or either not sustain as much damage as a fence.

There being no questions of Mr. Fambrough by the Board, Mr. Davitt asked if there was anyone else who would like to speak in favor of this variance. There was no one.

Mr. Davitt asked if there was anyone who wished to speak against granting this variance.

Todd Edmiston, a resident of 7 Van Heuval Street which was directly adjacent to this property, said that being an orthopedic surgeon he saw children who were injured all the time, and he was concerned about the safety of this structure. He said that both he and his neighbor, Grace Lincks, who bordered this property and used the same driveway felt the same. Ms. Lincks could not be present due to medical issues. Dr. Edmiston pointed out that when backing out of this driveway the driver would not be able to see any portion of the sidewalk until the major portion of the car had gotten to it. His contended that high school students who used this sidewalk quite a bit traveling to and from school would not be able to see a vehicle backing out of the driveway, as the wall was so tall and so close to the sidewalk. He was concerned that someone could be injured. Dr. Edmiston noted that the previous fence had a chain link portion in it that you could see through. He submitted pictures he had taken from his driveway as well as from the street, which showed that you could not see a thing in the driveway. Dr. Edmiston felt it would be a much safer situation for the students or anyone using the sidewalk if the wall were set back further from the sidewalk.

Rhoda Vanderhart, a resident of 25 Van Heuval Street, which was at the other end of the block from where this structure had been built, said she was concerned about the aesthetics, because the wall was built so close to the street and it was so high. She felt it looked like a penitentiary wall. Ms. Vanderhart said the neighbors were happy when they saw the applicant was building a wall because the fence was falling down, and the gentleman owned a dog that was a little bit

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aggressive. The wall, however, was too high and too close to the sidewalk. She noted that there were many big mansions in Mobile that had walls around them, but they did not look so bad because they were set back further from the street. Ms. Vanderhart also expressed her concern, as well as that of several other neighbors who could not be here today, about the safety of pedestrians using this sidewalk. She also felt that if the wall were covered with vines or stucco or something, it might be more aesthetically pleasing.

There being no one else to speak in opposition, Mr. Davitt asked Mr. Fambrough if he would like to respond to the comments made.

Mr. Fambrough referred to a 1992 survey, which was provided in the members' packet he submitted, which showed an existing fence actually going over the property line on that side. He said the wall was constructed four to six inches behind the property line. It was further back than the fence that was there. The chain link fence that Dr. Edmiston referred to was along the city right-of-way, which runs the entire length behind his property. He pointed out that Dr. Edmiston's property was on the other side of the 10-foot easement. It was not adjacent to his property or next to his property. Mr. Fambrough said since the wall was set back quite a bit further than the fence that was there before, the view or line-of-sight was actually improved. He said the wall was not nine feet tall. He said he had already planted a creeping fig, which would cover the fence. Also, he noted that Ms. Lincks had a second driveway, which she uses quite often, that comes directly off Dauphin Street, and the only way she can get in there is to pull straight in and back out into Dauphin Street, which has much more pedestrian and vehicular traffic than Van Heuval. Mr. Fambrough submitted some photos of Ms. Lincks' driveway showing quite a bit of overgrowth all the way to the sidewalk. He contended that her line-of-sight was no better backing out of that driveway into Dauphin Street than it would be with his wall backing into Van Heuval Street, which had much less pedestrian and vehicular traffic. Regarding school children, Mr. Fambrough said that at the most he had seen three children go up and down Van Heuval after Murphy let out, and most of the time he had seen only one child. Most of the students from Murphy used South Street behind Murphy and Carlen Street in front of Murphy. Regarding the construction of the wall, Mr. Fambrough submitted photos he had taken of walls all over town, and said the construction method he used was taken from these walls. He noted that almost every one of the walls violated the city code in some way or another, but there were many walls that were identical to his.

Mr. Davitt asked Mr. Fambrough if he would again explain to whom he talked at the City regarding the construction of the wall.

Mr. Fambrough said he spoke with Carl Broadhead, who is the Chief Building Inspector with the City of Mobile, concerning the foundation and what he should do as far as any type of reinforcement. In the process of building the wall Mr. Fambrough said they unearthed a tremendous amount of rubble, which included two concrete posts and the bases to the previous posts. He said there must have been a fence at that location at least since the 1940's. They had about three truck loads of rubble, and before they put the cap locks on, the entire Van Heuval Street side of the wall and half of the side down the back, was filled with rubble.

Mr. Davitt asked Mr. Fambrough if he had gotten a permit to construct the wall.

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Mr. Fambrough said he did not get a permit. He explained that he had applied for one of the permits where the City had waived the fees. That was actually how his roof was constructed. He said the contractor he hired to construct the wall kept putting it off, and this went on for months. Finally, Mr. Fambrough said he hired Mr. Benjamin to construct the wall, and it never crossed his mind that Mr. Benjamin should have taken out a City permit. He did not, apparently, according to Urban Development. He said he did not find out until the complaint came in. When he then went to obtain a permit, he was given the application for a variance. At that time he looked at the permit he had for the construction due to Katrina damages, and found that there was an expiration date on that permit.

Mr. Davitt asked if anyone on the Board had any questions of Mr. Fambrough.

Ms. Collier noted that the fact that Mr. Fambrough found other violations regarding walls in historic districts did not mean he could have violations. She said there were ordinances setting out the requirements for height and the set back of fences, and this Board had to uphold those ordinances, unless there was some very good reason not to. Even though Mr. Fambrough had only seen one student from Murphy using the sidewalk, one student hit by a car would be too many. Ms. Collier said it was unfortunate that Mr. Fambrough had gone to the expense to construct something that he thought would be there long after he died, and that he was trying to do something very permanent that would weather any storm that would come. She asked if he thought he was given misinformation from the people he consulted.

Mr. Fambrough said if the fact that he had an existing fence did not qualify him from being exempt from the 20-foot setback, then he did.

Ms. Collier felt the Board needed to consult with their counsel about this.

John Lawler stated that this would come under the category of a non-conforming use - something that was there in the beginning that could be replaced. But he could only replace the fence that was there. He could not replace it with something different.

Mr. Collier asked if he could add to it.

Mr. Lawler said he could not. A request for a variance indicates that there is some kind of hardship of the property that would require a variance for construction of the fence. It was his understanding that the wall that had been built, however, was substantially different from the fence that was there.

Mr. Guess noted that some of the neighbors had complained about the aesthetics. He asked if Mr. Fambrough had any plans to change the aesthetics.

Mr. Fambrough said did not plan to do anything other than have the creeping fig cover the entire wall. He said he had seen this in Church Street East, and in two years the creeping fig covered the entire base of the wall.

Mr. Guess further asked if Mr. Fambrough had considered the engineering review and perhaps changing the gates or changing the layout of the entrance and exits to try to maybe improve the

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safety for those who would be coming into that area when he was trying to back in or out of the driveway.

Mr. Fambrough stated that his driveway comes off of Dauphin Street, not Van Heuval. He said he left the 10-foot gate on the side just for utility purposes. With reference to hardship, Mr. Fambrough said if he was subject to a 20-foot setback, his kitchen door would actually come outside the wall if he had to set the wall back that far, and his other back door, which comes out of a sunroom, would come into the wall inside the property. It would actually encompass about 25 percent of his back yard.

Ms. Collier suggested there may be some sort of compromise.

Mr. Coleman asked what would be required to satisfy Traffic Engineering.

Mr. Roberts stated that Traffic Engineering had looked at the location and found that the wall obstructs line-of-sight visibility along the sidewalk for drives exiting the alley. The provision of a 45-degree angle from the gate to the property line may alleviate that concern. Mr. Roberts said they would be willing to work with the applicant in this regard.

Mr. Turner stated that he had talked to Mr. Palombo a few days ago concerning this application, as this property was his wife's former family residence and they sold it to Mr. Fambrough. He said he promised Mr. Palombo that they would go back in the records and see if they could find anything that would show evidence for this large fence. He said they were not able to do that. Mr. Turner said he asked his wife, who had lived there, how high the fence was, and she said it was six feet. He further stated that he applauded Mr. Fambrough for building the wall, but the problem was that he did not apply for it before he built it. He was now asking the Board to give him a variance for something that he neglected to get proper permission for in the beginning.

In administrative session Mr. Palombo stated that the applicant did have documentation that a fence was there prior to the construction of the block wall. He did not get the proper permits. The height of the wall exceeded the height of the previous fence. In essence, Mr. Palombo said all he would have to do now would be to remove the height of the wall to six feet, and provide non-conforming documentation for the fence that was there before Katrina, and this would be a done deal. The applicant was requesting a height variance over the six-foot privacy fence that was there before.

After further discussion a motion was made by Ms. Collier and seconded by Mr. Turner to deny this request for Side Yard Setback and Height Variances to allow the construction of an 8'-2" tall masonry privacy wall with 8'-9" columns setback a minimum of four inches from the Van Heuval Street (side street) property line at the above referenced location.

The motion carried unanimously.

#5366

(Case #ZON2006-01476)

Barry Lowe

West side of West I-65 Service Road South, 270'± North of Government Boulevard

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Maneuvering Surface and Access Variances to allow aggregate maneuvering areas for the storage of accessory structures and an 18-foot access in a B-3, Community Business District; maneuvering areas must be asphalt, concrete, or an approved alternative paving surface, and two-way access must be a minimum of 24 feet wide in B-3, Community Business Districts.

Barry Lowe, applicant, stated that he had read the staff report, and he did not have a problem with meeting any city ordinance that was required. He said he did not know of these requirements until after the fact. The laydown yard for the storage buildings he would be selling was what he was asking to have a variance granted for a certain type of asphalt or concrete and use a gravel base. Mr. Lowe said what he wanted to have was the same type of business as his neighbor, and basically he was just asking to copy him. He did not have a problem with meeting the driveway and parking requirements. He submitted photos of his neighbor's business, and wanted a variance to have the same type of laydown yard.

Mr. Guess asked Mr. Lowe to explain "laydown yard".

Mr. Lowe said that he ordered his buildings from the manufacturer, and when they came in he would stage them in that yard to show the customers. When the customer purchased a building, he would pick it up on the delivery truck and deliver it to their residence or business.

Mr. Guess asked if he understood that Mr. Lowe was willing to have a paved drive area and widen the entrance/exits.

Mr. Lowe said that was correct. He said the site was previously used by another company for their laydown yard, and in one of the photos submitted you could see some existing gravel that was there previously. Mr. Lowe said he would improve the area with better looking gravel or something to make it more presentable if required.

With reference to the substandard entrance off of the I-65 Service Road, Mr. Davitt asked if he would improve that entrance to make it 24 feet.

Mr. Lowe said he would bring the entrance up to the standard 24 feet. He would also provide two or three more parking spaces, if required.

Mr. Davitt asked how much space was in the area identified as the laydown yard.

Mr. Lowe said the entire area was less than three quarters of an acre, and the laydown yard would be 50-60 percent of the lot.

Mr. Davitt said that one of the biggest problems the Board had with substandard surfaces like aggregate was the fact that rainwater tends to make it run, and in this case there was a creek right there. He asked Mr. Lowe what he thought about providing a concrete curb to contain the runoff to that area.

Mr. Lowe said he would agree to that.

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Mr. Turner noted that the staff report indicated that two parking spaces would be provided, one of which he assumed would be for Mr. Lowe and the other for one customer. He asked where other customers would park.

Mr. Lowe noted that the Ordinance required one space for every 300 feet of office space. The office building was 288 square feet, so he was only required to provide one parking space, although he provided two.

Mr. Turner said that according to the staff report, the parking spaces provided did not allow for open sales or displaying.

It was asked if Mr. Lowe planned to remove the existing paving.

Mr. Lowe said he would have to get with the landlord to see if he would want it removed. He could incorporate it into the establishment as presented and it could also serve as parking if needed. He noted that his neighbor only had four parking spaces.

Regarding questions about parking and the display area, Mr. Palombo stated that typically a display area of this nature would be something like a Wal Mart with display for outside plants and such. If the Board desired, they could require more parking spaces, but it would not be reasonable to include this three-quarters of an acre as display area and require that type of parking.

Mr. Turner felt this was more of an engineering question.

Mr. Lowe said he spoke with the Engineering Department and was told that as long as he did not disturb any of the soil, they would not have to be involved as far as constructing something.

Mr. Turner said he was just saying that this is Mobile, and if the ground gets wet and people are out there driving on it, it was going to disturb the soil.

Mr. Lowe said that everything on there would be gravel or aggregate in a containment area. The only driving that would take place in this area of the site would be done by his delivery truck, or the delivery truck from the manufacturer. The customers and everybody else would be contained to the asphalt driveway in the parking area.

Mr. Palombo pointed out that prior to permits being let, the applicant would have to provide a site plan showing the building, land use, trees, and since he was adding some asphalt for parking and the building, Engineering would require some type of water retention.

Mr. Lowe said he would be addressing that issue with Rowe Engineering later in the week.

There was further discussion about the number of parking spaces required and the need for approval from Engineering. Mr. Palombo said the Engineering Department was not represented at this meeting because the question before the Board was a request for a variance to allow gravel. If this variance was granted, the next step would be Planning Approval, which

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Engineering would get involved with regarding the surface, whether it was gravel, asphalt, or whatever.

After discussion a motion was made by Mr. Coleman and seconded by Mr. Guess to approve this request for Maneuvering Surface and Access Variances to allow aggregate maneuvering areas for the storage of accessory structures in a B-3, Community Business District at the above referenced location, subject to the following condition:

- (1) full compliance with the landscaping and tree planting requirements of the Zoning Ordinance, to be coordinated with and approved by Urban Forestry.

In further discussion it was asked if the motion included approval of the 18' access drive. Mr. Coleman said his motion would require that the access be widened to the minimum 24 feet width for the access.

Mr. Turner also noted that they still did not have the correct number of parking spaces.

Mr. Palombo suggested that the applicant coordinate with Land Use on the parking.

There being no further discussion, Mr. Davitt called for a vote on the motion, which included a condition that the access drive be widened to a 24' minimum width.

The motion carried unanimously.

#4409/5367

(Case #ZON2006-01447)

Roe Robertson Construction, Inc. (William & Patricia Patton, Owners)

210 Roper Street

(Northwest corner of Roper Street and Palmetto Street)

Side (Street) Yard Setback Variance to allow the construction of a 6-foot high masonry privacy wall, with 7-foot columns, 0.5 feet from a side (South) street property line; a 20-foot side (street) yard setback is required along a side street in an R-1, Single-Family Residential District.

Brian Robertson, with Roe Robertson Construction, presented this request which would allow the construction of a six-foot wall with seven-foot columns.

Dr. Chris Patton, owner of the subject property, stated that a tree fell on the previous 4 – 4 ½ foot lattice-work fence during Hurricane Katrina and practically demolished it. He presented photos of a wall located at 210 Roper Street that he liked and wanted the same type of aesthetically pleasing construction for his wall. It would be in the same location and the same distance from the street as the previous fence. The site was in an historic district and had been approved by the historic society. Dr. Patton said the existing fence was less than six feet from the property line, which was technically inside the sidewalk, so he could not even put a swing set there for his two-year-old. Regarding concerns about traffic, Dr. Patton said he had a garage face but did not use it because it was not big enough to put a car in, so that was really not an issue. He submitted

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additional photos of other fences in the neighborhood set back the same distance from the sidewalk as he was proposing.

There was no one else present to speak in favor or against this application.

Mr. Davitt asked if the applicant had seen the staff's recommendation.

Mr. Robertson said he had not.

Mr. Davitt read the staff's recommendation. Mr. Robertson said they would have no problem complying with the conditions of approval as stated.

Mr. Guess asked how far the wall would be from the sidewalk.

Mr. Robertson said it would be about six inches from the sidewalk.

Mr. Guess asked what the setback was on the wall Mr. Robertson constructed on Rapier Avenue.

Mr. Robertson said that wall went all the way to the property line. There was no sidewalk on Rapier. The sidewalk stopped at 1206 Palmetto, and does not pick up until you cross Rapier. Mr. Robertson said he actually moved that wall in about two inches to make sure it did not butt the property line.

Mr. Collier noted that the applicant stated that he would not use his garage for a car. She asked if there were any other reasons why the line-of-sight might be an issue here.

Dave Roberts, with Traffic Engineering, stated that when they looked at the location they were looking at the applicant backing from the garage and the limited site clearance, but since the applicant did not plan to use the garage to park his car, they did not see any problem.

After discussion a motion was made by Mr. Coleman to approve the request for a Side (Street) Yard Setback Variance to allow the construction of a six-foot high masonry privacy wall, with seven-foot columns, 0.5 feet from a side (South) street property line at the above referenced location, subject to the conditions as recommended by the staff.

In further discussion, Mr. Roberts asked if the Board could require that Dr. Patton close off the carport.

Dr. Patton said the carport could be enclosed, but it was beneficial for him to have the actual gate there in order to be able to get his garbage can out to the street. He said that eventually he did want to have the carport enclosed so he would have some storage space.

After discussion Mr. Davis seconded Mr. Coleman's motion, which was subject to the following conditions:

- (1) the carport not be used for vehicle parking;

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- (2) approval from the Architectural Review Board prior to the issuance of any permits;
and,
- (3) coordination with Urban Forestry on the wall foundation to minimize any damage to heritage tree root systems.

The motion carried unanimously.

#5368

(Case #ZON2006-01328)

T-Mobile (Messina & Harris, Inc., Owner)

South side of Government Street, 95'± East of Park Terrace

Height, Setback, and Buffer Separation Variances to allow the construction of a 70' Monopole Telecommunications Tower, setback 6.89' from a lease parcel line, and 6.89' from residentially zoned property; the maximum allowable height is 45', a 70' tower must be setback at least 70' from a lease parcel line, and a minimum separation of 200' (150% of the height of the tower or 200', whichever is greater) is required from residentially zoned property in a B-1, Buffer Business District.

Dave Wilkins, P.O. Box 1406, Mobile, was present on behalf of the applicant. Mr. Wilkins said they agreed with the staff's recommendation to hold over this request until the September meeting.

After discussion a motion was made by Mr. Davis and seconded by Mr. Coleman to hold over this application until the September 11, 2006 meeting.

The motion carried unanimously.

#5369

(Case #ZON2006-01329)

T-Mobile

2801 Knollwood Drive

(East side of Knollwood Drive, 575'± North of Brierfield Lane)

Use, Height, Setback, Buffer Separation, and Access/Maneuvering Surface Variances to allow the construction of a 150' Monopole Telecommunications Tower, setback 25' from a lease parcel line, setback 25' from residentially zoned property, with a gravel drive and parking; telecommunications towers are allowed only in commercial districts with Planning Approval or industrial districts by right, the maximum allowable height is 35', a 150' tower must be setback 150' from a lease parcel line, a minimum separation of 225' (150% of the height of the tower) is required from residentially zoned property, and access/maneuvering areas for towers must be asphalt, concrete, or an approved alternative paving surface, in an R-1, Single-Family Residential District.

Dave Wilkins, P.O. Box 1406, Mobile, was present on behalf of the applicant. Mr. Wilkins said they agreed with the staff's recommendation to hold over this request until the September meeting. Mr. Wilkins said they planned to meet with the Faith Baptist Church this coming Saturday to see if they can move the site to a more acceptable location on the property.

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Mr. Palombo also noted that Urban Forestry had some issues with the placement of the access road easement to the site. It could incur removing some trees along the southern buffer that buffers the site from residential development.

After discussion a motion was made by Mr. Coleman and seconded by Mr. Davis to hold over this application until the September 11, 2006 meeting.

The motion carried unanimously.

OTHER BUSINESS:

Proposed Meeting Schedule

A Proposed Meeting Schedule for the next fiscal year was submitted to the Board for their consideration.

After discussion a motion was made by Mr. Coleman and seconded by Mr. Davis to accept the schedule as proposed.

Side Bar

Mr. Coleman referred to the side bar discussion among two or three of the members today when discussing an application. Mr. Coleman said the other members of the Board could not hear the discussion, and he felt that they, as well as the general public, should be able to hear any discussion going on in the public hearing session.

Mr. Lawler agreed that since this was an open meeting, all of the members of the Board, as well as the public, needed to be able to hear whatever was going on.

It was also asked that the members speak into their microphones so they could be heard.

There being no further business, the meeting was adjourned.

APPROVED: September 11, 2006

Stephen J. Davitt, Jr.
Vice-Chairman

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