

**BOARD OF ZONING ADJUSTMENT MINUTES**  
**MEETING OF NOVEMBER 6, 2006 - 2:00 P.M.**  
**MOBILE GOVERNMENT PLAZA AUDITORIUM**

**MEMBERS PRESENT**

Reid Cummings, Chairman  
Stephen J. Davitt, Jr.  
William Guess  
Martha Collier  
Vernon Coleman  
Sanford Davis  
J. Tyler Turner

**MEMBERS ABSENT**

**STAFF PRESENT**

Frank Palombo, Planner II  
Caldwell Whistler, Planner I  
David Daughenbaugh, Urban Forestry Coordinator  
Mae Sciple, Secretary II

**OTHERS PRESENT**

David Roberts, Traffic Engineering

Chairman Cummings 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:**

A motion was made, seconded, and so ordered to approve the minutes of the meetings of September 11, 2006, and October 2, 2006 as submitted.

**PUBLIC HEARINGS:**

**#5384**

**(Case #ZON2006-01651)**

**Cathy Humber-Barfield**

**1216 Government Street**

(Northeast corner of Government Street and South Georgia Avenue).

**Use and Off-Site Parking Variances to allow the courtyard area of an existing single-family dwelling to be used for receptions in a R-1, Single-Family Residential District, and to allow off-site parking; the Zoning Ordinance requires a minimum B-2, Neighborhood Business for receptions, and all required parking be located on site of the activity.**

*The site plan illustrates existing buildings, drives, sidewalks, and landscaping.*

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Mike Box stated that he was present on behalf of the applicant, Mrs. Cathy Barfield. Mr. Box stated that in the staff report concerns were raised about parking. He explained that Mr. and Mrs. Barfield had reached an agreement to purchase the adjoining property, and requested that this matter be postponed to allow them time to properly prepare the site plan for that vacant lot.

Mr. Cummings asked Mr. Box if 30 days would be sufficient, or would they need 60 days. The next meeting would be December 4, and the deadline for submitting applications for that meeting was tomorrow.

After conferring with his client and the staff, Mr. Box requested a 60-day holdover.

Mr. Cummings said the Board would agree to a 60-day holdover. He asked if there was something driving this, such as an MOT or just opposition.

Mr. Palombo said he thought there was opposition. Also, the applicant was considering purchasing the lot at the corner of Georgia Avenue for parking, rather than having off-site parking. That may require a Parking Surface Variance.

After discussion Mr. Cummings entertained a motion to hold this matter over until the meeting of January 8, 2007.

A motion was made by Mr. Davitt and seconded by Mr. Coleman to holdover this application until the meeting of January 8, 2007, at the applicant's request.

The motion carried unanimously.

Someone from the audience asked if they could speak in this matter.

Mr. Cummings said the matter had been officially held over for 60 days, but the Board would be happy to answer any questions at this time.

Cynthia Palm stated that she and her husband had a home on Montauk Avenue, as well as a home in New Orleans. They had received a notice about the hearing, but were not clear as to whether this was a request for rezoning or for a variance.

Mr. Cummings explained that the application before the Board today was a request for variances from the Zoning Ordinance for Use and Off-Site Parking.

Ms. Palm said that she and her husband had tried to call the Urban Development office to inquire about this but were unable to get through. They also tried to get information over the computer but were not able to get through, so they drove over from New Orleans today to attend this hearing. They were concerned that this was a request for a zoning change from R-1 to a business zoning.

Mr. Cummings said it was unfortunate that they were not able to get through to the Urban Development office. The Board had voted, however, to holdover this matter until the January 8, 2007 meeting.

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Mr. Davitt asked if the Palms would be re-notified.

Mr. Palombo said they would not be notified if the plans submitted with this application did not change. If there were changes made to the plan, the application would be re-advertised and notices would again be sent out.

Mr. Cummings clarified that the application before the Board today was a request for Use and Off-Site Parking Variances to allow the courtyard area of an existing single-family dwelling to be used for receptions in an R-1, single-family residential district. Typically, this would require an R-2 or greater type zoning. Mr. Cummings said he regretted Mr. and Mrs. Palm were not able to get this information on-line. Since they had made the trip from New Orleans, he asked the applicant to explain what they would be requesting at the hearing on January 8<sup>th</sup>.

Mr. Box stated that in evaluating the site plan submitted with this application, the staff raised a question regarding the off-site parking. To alleviate that concern, the Barfields were purchasing the adjoining property so they would be able to provide on-site parking. Mr. Box said he understood that at one time all of the property - the vacant lot they were talking about now, as well as the residence itself that the Barfield's were living in - was owned by the same property owner and was treated virtually as one parcel. At some point in time the property was split up and sold off separately. The additional lot the Barfield's were purchasing would allow them to develop a parking area specifically for the receptions they propose to hold. Mr. Box said they were asking for this delay because the applicants had not yet concluded the sale of the property. After the sale was finalized, they would have to submit a site plan for evaluation by the staff, as well as complying with any historic guidelines.

Mr. Cummings noted that he misspoke earlier when he said this use would normally require R-2 zoning. It would actually be allowed in a B-2 zone. Mr. Cummings asked if the applicant would actually close on the purchase of the additional property by January 8<sup>th</sup>.

Mr. Box said they were moving forward with purchasing the property and should close fairly soon.

Mr. Palombo said it was not clear as to what was actually going to be used for the reception area, whether it would just be the courtyard, or if it included a portion of the house. With the addition of the corner lot, however, the applicant would have to re-phrase the request.

Mrs. Barfield stated that the notice that was sent out by the Urban Development office indicated that the reception area would be restricted to the courtyard. She said that was not what she requested in her variance application. Mrs. Barfield said she requested that the first floor of the home be used, which would include the courtyard. That was not stated correctly by the staff.

Mr. Box said there were several things in the analysis made by the staff that were incorrect and that needed to be straightened out.

Mrs. Barfield said the square footage was also in error.

Mr. Cummings stated that since there were some interpretation issues here, he suggested that Mrs. Barfield, and perhaps Mr. Box as her representative, meet with the staff to go over

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specifically the points of the application that they intended and that perhaps the staff did not pick up on. There seemed to be some miscommunication and misunderstanding that needed to be discussed before too much time goes forward.

Mr. Davitt asked if he understood that the applicant was planning to purchase the area labeled "site".

Mrs. Barfield said no. That was where their existing home was located. The property they planned to purchase was across the street on S. Georgia Avenue. It was non-attached, but it was always part of the property.

Mr. Whistler noted that would be off-site parking, not on-site.

Mr. Cummings said they did not know what it was going to be. He advised the applicant to have some clarification with the staff before this matter comes up again on January 8<sup>th</sup>.

**#5385/3915**

**(Case #ZON2006-02146)**

**Fulton Road Baptist Church**

**1800 Dauphin Island Parkway**

(West side of Dauphin Island Parkway, between Magnolia Lane and Nicholas Lane).

**Side (Street) Yard Setback Variance to allow the construction of an 8' high wooden privacy fence along the side (Nicholas Lane) street property line; the Zoning Ordinance requires a 20' side (street) yard setback in an R-1, Single-Family Residential District.**

*The site plan illustrates the existing buildings and adjoining residential properties.*

Art Burroughs, applicant and pastor of the Fulton Road Baptist Church, was present in this matter. Mr. Burroughs stated that they were requesting a variance to construct a fence around their new Christian Life Center, a \$1.2 million improvement to their property. He pointed out that at the South end of their building there was a very large Alabama Power transformer on a pad, as well as some large air conditioning equipment. It was directly across the street from residences on Nicholas Lane. Some of the neighbors had requested that the church build a fence to screen this equipment from their view. Mr. Burroughs said they chose to bear the expense of constructing a fence in order to be good neighbors, but due to a problem with the setback they would require a variance.

Mr. Cummings noted that the staff had recommended approval of the Variance, and asked if Traffic Engineering concurred in their recommendation.

David Roberts, representing the Traffic Engineering Department, said they did concur with the staff recommendation.

Ben Brooks, City Councilman representing District 4, was also present in support of this application. Mr. Brooks said he had previously worked with Fulton Road Baptist on their church building, and now he was involved with them on the Christian Life Center project. They had worked out a lot of issues dealing with trees, sidewalks, setbacks and zoning. He said he had not received any complaints from any of the citizens regarding this project. Mr. Brooks said the

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Christian Life Center was a wonderful blessing for the parkway, and everyone in District 4 was totally behind it.

Mr. Cummings asked if anyone on the Board had any questions for Mr. Burroughs, or if anyone in the audience had anything further to add in favor of this application.

Mr. Davitt asked who constructed the fence for the church.

Mr. Burroughs said the fence was a Saturday project of some of the men who belonged to the church.

Mr. Palombo said he had spoken to Mr. Burroughs.

Mr. Cummings asked if there was anyone present who wished to speak in opposition. There was no one.

After discussion a motion was made by Mr. Turner and seconded by Mr. Davitt to approve this request for a Side (Street) Yard Setback Variance to allow the construction of an 8' high wooden privacy fence along the side (Nicholas Lane) street property line at the above referenced location.

The motion carried unanimously.

**#5386**  
**(Case #ZON2006-02156)**  
**Way of Life Community Church**  
**1764 Riverside Drive**

(North side of Riverside Drive, 400'± West of Club House Road).

**Use Variance to allow a temporary disaster relief volunteer camp (kitchen, dining, sleeping and shower trailers) in a R-1, Single-Family Residential District; the Zoning Ordinance does not allow disaster relief camps or habitable trailers in R-1, Single-Family Residential Districts.**

*The site plan illustrates the existing building and drive, along with the proposed improvements.*

Ben Brooks, City Councilman, District 4, stated that he was present representing his constituents regarding this application, which was located in his district. He said he had discussed this issue with both sides, and felt it would be best for each side to present their views, and then he would give his perspective in the matter as City Councilman for this district.

J.D. Landis, a resident of 1104 Bartram Curve, stated that he was the pastor of the Way of Life Community Church, which was a Mennonite church in Mobile. He also served as the president of the Alabama State Mennonite Disaster Unit, which had submitted this application for a variance, which would allow them to place four mobile units on the site for a maximum of one year. These units would be used to house and feed volunteers who would work in disaster recovery with the Mobile County Long Term Recovery Committee. Mr. Landis said the Mennonite Disaster Services had been working in the Mobile area for the last year, and this was just another opportunity for them to use their volunteers to serve the City of Mobile. The

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proposed units would be parked on the site among the trees behind the existing structure, and would be hooked up to the utilities that were already on the property. He noted that the existing church would be a buffer on the right side of the property, and a member of the church owned the house on the left side of the property and was in favor of this proposal. At the back of the property there was 100-150 feet of wooded area. Also, there was a lot of wooded area between this site and those properties that come off of Clubhouse Road. Mr. Landis felt they could move the proposed units onto the site without any disturbance to the community. He emphasized that they were not trying to make any money on this, but simply wanted to serve the community. Mr. Landis said that Polysurveying prepared their site plan, and a representative was available to answer any questions the Board may have.

Mr. Cummings noted that the variance request was to allow a temporary disaster relief volunteer camp. He asked Mr. Landis if the location of these units on this site would be on a permanent basis.

Mr. Landis said the trailers would be located on the site on a temporary basis, from three to six months, or possibly a year. They would hope to have them in place and ready to go by January for the Mennonite volunteers who come from Canada and the northern part of the country. When they have finished with the trailers, they would be moved out and used at other disaster sites that the Mennonite Disaster Services have along the coast, or elsewhere in the country. When they have vacated the site, no one would have a clue that they had ever been there.

Mr. Cummings pointed out that the church property located next door to the proposed site appeared to be two-and-a-half times larger than the proposed site, and he was curious as to why they would not seek a variance to locate the trailers on the church property as opposed to this R-1 property. He was concerned as to what would happen in the event the owner of the subject property decided to move or sell his property before the site was vacated by the volunteers.

Mr. Landis stated that the proposed site was owned by this church.

Mr. Cummings said he understood Mr. Landis to say that the person who lived there was a member of the church.

Mr. Landis said the person just beyond the site, the closest neighbor, was a member of the church.

Mike De Libro, coordinator for Long-Term Recovery for Mobile County, as well as chairman for Mobile County volunteer organizations active in disaster, stated that both of these organizations were in favor of this project. With more than 10,000 projects in Mobile County and a good number of those being in the City, Mr. De Libro said that all the help they can get from the faith-based institutions was appreciated and should be encouraged.

Mr. Cummings asked if anyone on the Board had any questions for Mr. Landis.

Mr. Davitt asked Mr. Landis to describe specifically what they proposed to put on this site.

Mr. Landis stated that there would be four, fifth-wheel trailers. One would be designed as a bunk house, which would have fold-outs that would allow it to sleep up to 20 persons. It would

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be 8 feet wide and 50 feet long. The second trailer would be the same size and would be used as a dining area for the volunteers. The third trailer would be a kitchen trailer, which he thought would be 8 feet by 30 feet. The fourth trailer would be a shower trailer, also 8 by 30 feet. Mr. Landis said these trailers would be built according to specifications and codes.

Mr. Davitt asked if he understood that all of the trailers would be intended for volunteers who were going to come down and help the church provide relief, and would not be for transients or people who have lost housing.

Mr. Landis said that was correct. The Mennonite Disaster Services has leadership at these sites, and the volunteers would come on a weekly basis, usually to serve for a week at a time.

Ms. Collier commended the Mennonite Disaster Services for its activities. She had a question, however, about the time lapse between the Spring when the volunteers would come down, and then in the Fall when they might come again. She asked if they would be securing the trailers during that time.

Mr. Landis said they had persons from the church who would be there taking care of the trailers.

Mr. Cummings asked if there was anyone present who wished to speak in opposition to this request.

Margaret Broom, a resident of 1901 Riverside Drive, said she lived seven houses away from the church and the next house, which was also owned by the church. She said the next house was the preacher's house, and on the other side of the church was a black man's house. The next house was a fireman's house. There were woods behind the preacher's house and the church, which were the only woods in the area. Ms. Broom also pointed out that the Log Cabin Trailer Court was across the street, and there was talk about taking the Log Cabin down because it was used as a drug house. She also pointed out that the church was not set up for water and sewer. Ms. Broom said she had talked to all the neighbors and they all agreed that they did not want trailers placed on the subject property because it would depreciate their property values. She said she had lived in her home for 35 years. A neighbor across the street had lived there 50 years. The owner of the land behind her, Mrs. Nettles, bought her land and wanted to put trailers on it, but could not do so because it was not zoned for trailers, so she built a house. Mrs. Cole, another neighbor who had lived in her house for 50 years, wanted to put a trailer on her property for her mother, but was also not allowed to do so because it was not zoned for trailers. Another neighbor two houses away from Mrs. Cole also wanted to put a trailer on her property for her mother-in-law, but was not allowed to do so. Ms. Broom said that only a Mrs. Annie Lee was allowed to put a trailer on her property, and she had to send letters out. Ms. Broom also stated that there were two schools in the area, with a baseball field, that were available and big enough to hold the Mennonite church, the trailers, and the preacher's house. She felt that would also benefit the schools.

Mr. Cummings stated that he wanted to hear everything Ms. Broom had to say and certainly wanted to hear any objections she may have, but said he would like to interrupt for a moment. First of all, Mr. Cummings said he wanted to make it clear that this Board does not consider granting or not granting variances on the basis of whether somebody is a fireman, or a black person, or a Chinese person, or whether they have lived in the area for 35 years or not.

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Secondly, the trailer park that was down the street and across Clubhouse Road was not owned by the church. This variance application had nothing to do with that property, so it was not germane to this discussion. Thirdly, the schools were owned and operated by the Mobile County School Board, and if this church wanted to make arrangements with the School Board, that would be between the church and the School Board. It was not for this Board, which was the City of Mobile's authority, to make any kind of decision that had anything to do with that. Mr. Cummings asked Ms. Broom to please limit her objections specifically to what it was that she was opposed to, and the Board would like to hear them.

Ms. Broom said she was just making suggestions, and she had even talked to the preacher about using the schools.

Mr. Cummings said he understood, but he wanted to make it clear that the Board had certain areas in which they could move laterally, and somebody who had lived there a long time, and the color of their skin, or properties that were down the road, or other properties that were owned by other authorities had nothing to do with what this Board was authorized to even consider. He again asked that Ms. Broom keep her objections and comments specifically to this piece of property.

Ms. Broom further stated that this site was not really set up for trailers, temporary or not. She also expressed concern that the trailers would not be moved out at the end of a year, and could possibly remain there for five or 10 years.

Mr. Cummings pointed out to Ms. Broom that no decision had been made on whether a variance would be granted or not, and if the decision was made to grant it, the Board may very well attach a time limitation to it, since the application was for a variance on a "temporary" basis.

Ms. Broom again expressed concern that this variance would depreciate the value of her house and the other houses in the area. She said her house was a 235 house and she had paid it off. She had made improvements to it over the years. If they wanted to buy her property, they could put a trailer court there or do whatever they wanted to. She said she would like \$100,000 for it, and she would sell it to them today and move out in two weeks.

Mr. Cummings said that was a business arrangement that Ms. Broom would have to take up with the Mennonite church.

Ms. Broom said her husband was in a VA hospital and she had to pay for him, and she really could not afford for her property to be depreciated.

Mr. Cummings further commented that the reason the City of Mobile has a Board such as this to consider variances to the uses of property, was so that they could grant leeway if necessary, within the confines of the Zoning Ordinance, so that people's property values do not decrease on an overall basis. That was the whole point behind having the Zoning Ordinance in a city such as Mobile, and most every city in the country has a Zoning Ordinance. Zoning Ordinances were put into place so that people's property values do not depreciate because something happens next to them or across the street from them over which the local government authorities enforce, and jurisdictions and what have you have no control over. Mr. Cummings assured Ms. Broom that it

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was not the position of this Board to do anything that would be detrimental to anyone's personal property values, or the real estate that they personally owned.

Mr. Cummings asked Mr. Brooks if he would like to add his comments in this matter.

Mr. Brooks said he had explained to Ms. Broom that the Board's decision today was final insofar as the City was concerned, but the appeal would be to the courts. The City Council would not have a vote on this after this Board had made its decision on the Use Variance. Regarding District 4, Mr. Brooks stated that this area was devastated by Hurricane Katrina last year. Hundreds of houses, including his own, were flooded. The City Council tried to get some help for District 4, and he had worked with homeowners from August until probably February or March trying to get repairs, trying to cut through the FEMA bureaucracy, trying to get insurance problems worked out, trying to get permits issued by the City and all kinds of problems. Mr. Brooks said the problem he found most often was that the uninsured, or the underinsured, the poor and the seniors were the ones that struggled the most to get their homes repaired. They were able to get some assistance from the Mobile Community Action Committee, Volunteers of America, and World Changers, which was a group affiliated with the Southern Baptist church. The bottom line was, there was, and still is, a great need for home repairs in District 4, particularly for the uninsured and the poor. Mr. Brooks said the Mennonite church and their volunteers were good, honorable, reputable people and well-intentioned from everything he had been able to find out. He said he had received a total of about three calls from residents in the immediate vicinity expressing their concerns, and he answered their questions, after he had talked to the Mennonite representatives, as best he could explaining the nature of a temporary Use Variance and that it was not a rezoning. Mr. Brooks said he was addressing the Board today at the request of Ms. Broom to express her concern, which was the long-term direction of the community. Another resident he talked to expressed concern that a mobile home park was going to be allowed on this site. Mr. Brooks said that was the perspective of District 4, and he asked that the Board balance the interests of the area residents in making their decision. Again, he said there was a pretty compelling need for repairs in the district, but he did not know whether this was the best avenue for that.

Mr. Cummings thanked Mr. Brooks for his comments, and asked if anyone on the Board had any questions for Mr. Brooks. There were no further questions.

Mr. Cummings asked Ms. Broom and Mr. Landis if they had any further comments to add. They had none. Before closing this portion of the meeting and going into deliberations session, Mr. Cummings said he wanted to make a general comment. He said it occurred to him that an organization such as the Mennonite church, or some of the organizations that offer volunteer relief in a general way, were doing good things for the community at-large, and he would think that perhaps one of the positive effect of something like that was that an awareness of that church, or that organization, would grow. As such, support and membership of the church would grow and perhaps contributions would increase for those who were coordinating those types of efforts in their organizations. Mr. Cummings said it occurred to him that in this particular case, with the church, if the awareness was positive and the community involvement was positive, if a Variance was granted and the applicant goes forward as proposed, that the overall effect on the neighborhood could be very positive in terms of property values and in terms of civic pride. Mr. Cummings said this was just his personal observation. Again, before

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closing the public hearing portion of the meeting, Mr. Cummings asked if Mr. Landis, Ms. Broom, or anyone on the Board had any further questions or comments.

Mr. Landis said he wanted to make one correction. He said perhaps it was a misunderstanding, but he did not live next to the church or next to this property. He lived up the parkway, however, they do have a church member who lives right on the other side of this site.

Mr. Davitt asked how hookups for water and sewer would be handled.

Mr. Landis stated that in reviewing this with the City departments, he was told that they could hook up to the utilities that were there. They would hire licensed plumbers to handle that. They would have to run a new line for the electrical service because of the amount of current that would be needed.

Mr. Davitt asked how transportation and parking for the volunteers would be addressed. He also noted that Clubhouse Road was a pretty active road, and he could understand concern about the additional traffic.

Mr. Landis said they would probably have four or five extra vehicles. They would use the church parking lot, which was adjacent to this site. He pointed out that there was also a driveway and parking area on the site itself. Mr. Landis said the volunteers usually come in a van or a small bus, and the leadership people have maybe three or four pickup trucks that they would use to take the workers to the sites where they would be working.

There being no further questions or comments, Mr. Cummings closed the public hearing session and the Board went into the deliberations session.

Mr. Cummings referred to the staff report in which the staff states that the Zoning Ordinance does not list a specific use such as a "temporary disaster relief volunteer camp" in an R-1, Single-Family Residential District. He said that was the problem, but he pointed out that they were requesting this on a temporary basis. He felt the Board had the authority, if they decided to approve this Use Variance, to attach some time frame to it. If approved, he also felt that the various City departments would make sure that the assembly of these units on this property would be done in accordance with all applicable City codes, and make sure there was no fire safety hazard for the people who would occupy these units.

There being no further discussion, a motion was made by Mr. Coleman and seconded by Mr. Davis to approve this request for a Use Variance to allow a temporary disaster relief volunteer camp (kitchen, dining, sleeping and shower trailers) in a R-1, Single-Family Residential District at the above referenced location subject to the following conditions:

- 1) the variance is not to exceed one year; and
- 2) the applicant must comply with all City codes and ordinances.

In further discussion Mr. Palombo asked if the Board could add an additional condition requiring that the trailers be removed after twelve months.

Mr. Cummings said that condition could be added.

Mr. Coleman amended his motion to require the additional condition as stated by Mr. Palombo.

Mr. Davis seconded the amended motion.

In further discussion Mr. Davitt said he would like to see the parking area on the church's main campus rather than in front of this house.

Mr. Palombo agreed with Mr. Davitt.

Mr. Guess asked if the applicant would be restricted to four trailers, with no additional trailers to be added later.

Mr. Cummings said they would be restricted to four trailers.

Ms. Collier suggested that it might be wise for the Board to require that the church supervise some sort of cleanup after the trailers were removed.

Mr. Coleman noted that in his presentation, Mr. Landis stated that after removal of the trailers, the site would be left as it was before the trailers were placed there.

Mr. Cummings asked Ms. Collier if she would approve of a condition that within a year when the variance expires and the trailers were removed, that the property would be cleaned up by the church and returned to its present state.

Ms. Collier agreed with the condition as stated by Mr. Cummings.

Mr. Coleman amended his motion to include this additional condition as stated by Mr. Cummings, such motion being seconded by Mr. Davis.

The final amended motion was to approve a Use Variance to allow a temporary disaster relief volunteer camp (kitchen, dining, sleeping and shower trailers) in a R-1, Single-Family Residential District at the above referenced location subject to the following conditions:

- 1) the variance is not to exceed one year;
- 2) the applicant must comply with all City codes and ordinances;
- 3) the site is limited to four trailers; and
- 4) all units are to be removed at the end of the 12-month period and the site be cleaned up and returned to its present state.

The motion carried unanimously.

**#5387/5299**

**(Case #ZON2006-02167)**

**Persons Development, LLC**

**2805 Grant Street**

(Southwest corner of Grant Street and Cottage Hill Road)

**Side Yard (Street) Setback Variance to allow the construction of a single-family residence**

**within 12' from the East (street) side property line; a minimum side yard setback of 20' is required for residential structures on a lot 60 feet wide or wider, along a side street in an R-1, Single-Family Residential District.**

*The site plan illustrates the proposed building, setbacks, and proposed wall.*

Frank Dagley, 717 Executive Park Drive, was present on behalf of the applicant. Mr. Dagley said they were requesting a Variance to allow a 12-foot Side Yard Setback from the East property line. The Zoning Ordinance requires a 20-foot setback. Mr. Dagley said this application was a re-submittal of a previous request that was approved by the Board, but due to some time factors, mainly Hurricane Katrina, construction was delayed and the variance had expired. He said they had changed nothing on the application. As noted in the staff report, Mr. Dagley said a Fence Height Variance was approved for this property in August 2004, permitting construction of a 7-foot high masonry wall along the property line along Cottage Hill Road. That wall had been constructed and was not an issue at this meeting.

Mr. Cummings asked the staff if this application was the same as the one approved in 2004, with the condition regarding the tree root system.

Mr. Palombo said it was the same.

Mr. Cummings asked if there was anyone present who wished to speak in opposition.

Dr. Angela Bently, a resident of 2810 Grant Street, stated that she did not know why she was not aware of the previous approval of a Variance for this site, but she did receive notice of this request. Speaking with some of the neighbors, she said they were a little concerned, as this was a very nice neighborhood with houses that had nice front yards and was good for children. Dr. Bently said this was not a patio home type neighborhood, which she said was apparently what it looked like they were trying to do. They wanted to put the home very close to the street.

Mr. Cummings interrupted, stating that this subdivision was already in place. The lots were small, but the property had been subdivided and platted, and it had been of record for at least three years. The application before the Board was not a subdivision application. The applicant requested a Variance for the masonry wall in the last year or so, and that approval was granted. The Variance being requested today was to allow the construction of a single-family residence within 12 feet from the East (street) side property line. The house they were attempting to build on this site was not overly huge, but the lots were very small. The Variance was granted in 2004, but due to hurricane delays they had not moved forward with the construction of the house and the Variance had expired. Mr. Cummings said he wanted to make it clear that the subdivision of those lots along Grant Street inside of that masonry wall had been of record for at least six years, whether the wall was ever built or not.

Dr. Bently said she understood. She said this was originally a nice, large piece of property. It was subdivided into smaller lots. She contended that the person who bought the lot should have realized that they would have to build a smaller house. Dr. Bently said she wanted to point out that it would be ugly because the houses were going to be closer to the road. All the other houses in the neighborhood were older homes with nice front yards. Her concern was that they were going to have this little patch of houses sticking out close to the street and it would not go

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along with the neighborhood of Grant Street. She noted that as you go around the corner where they were building Grant Park, even those homes were a little bit further back from the road. They were patio like homes.

Mr. Cummings stated that he had developed Grant Park, personally, and the front yard setback was actually about 15 feet. He further pointed out that the existing front yard setback on the subject property was 25 feet from Grant Street. As proposed, the front edge of the house would be within that 25-foot setback. What the applicant was asking for relief from was the side yard setback that was parallel to Cottage Hill Road.

Dr. Bently asked that if this 12-foot setback was granted for this lot along Cottage Hill Road, would that allow the next house to do the same.

Mr. Cummings said no. The Variance only applied to this property. He also pointed out that it would be within the existing wall. No changes to the location of proximity to the wall would be made. Further, he noted that the cottage style house at the other end of Grant Street was one of the original lots of the Y and G Subdivision, which was done in 1996, and it sits within the 25-foot setback. Mr. Persons actually lives in that house. Mr. Cummings said his point was, that if you could picture that house and its distance from Grant Street, and come down to the corner of Grant Street and Cottage Hill Road, the front of the house that was being proposed would also sit within that same 25-foot setback. The house to be constructed on the subject property would come farther away from the 25-foot setback required from Cottage Hill Road, but, again, it would be built inside the wall that runs parallel to Cottage Hill Road. Mr. Cummings emphasized that this would not affect any of the platted subdivision requirements of the remaining four lots between the house Mr. Persons lives in and the one that would be situated on the corner.

Chassity Ebbole, a resident of 2004 Grant Street, stated that she lived directly across the street from the subject property. Ms. Ebbole said she wanted to be clear that by bringing the variance forward, the proposed house would be built closer to Cottage Hill Road, and not forward onto Grant Street.

Mr. Cummings said that was correct.

In that case, Ms. Ebbole said she did not oppose it.

A resident of 2914 Grant Street, further down the street from this site, stated that she was not notified about the masonry wall. She expressed concern from a safety standpoint, and felt that putting a house at this intersection of Cottage Hill Road and Grant Street so close to the street would be a hazard, especially with all the children playing in their yards. She also noted the heavy traffic along Cottage Hill Road. Also, the wall on Grant Street blocks her vision from seeing across the street until she gets right to the corner.

Mr. Cummings further pointed out that the proximity of the houses on Berkley Court to Grant Street was very similar to Mr. Persons' house on Grant Street.

Mr. Cummings thanked the residents who came down to speak today. For the record, he again pointed out that this variance was originally approved in 2004, but due to delays from the

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hurricane, construction was delayed and the variance expired. In the meantime, the Board approved a Variance for the masonry wall that has been built. The applicant was requesting approval of the same type of variance as previously approved to allow him to locate the house closer to the side street, Cottage Hill Road. Mr. Cummings said he did not know why some people were not notified, but said the City was not selective about who they send notices to. He explained that people who live within 300 feet of property that someone seeks a variance for, or, in the case of the Planning Commission, somebody seeks rezoning for, are notified by certified mail. The applicant is responsible for producing, in accordance with the code, all the names and addresses of the property owners who live within that proximity. Furthermore, a sign is placed on the property saying "Notice - Zoning Variance Requested", and it is advertised for a month.

Mr. Cummings asked if there was anyone else who wished to speak.

Xia Qiu, a resident of 305 Cottage Hill Road, pointed out that there was already heavy traffic on Cottage Hill Road and he had seen many accidents. He had a problem getting out of his driveway every morning. He seemed to be concerned about safety, and that additional development in the area would cause further traffic congestion.

Dr. Bently further pointed out that the whole ambiance of the neighborhood - Grant Street and Grant Park - was relatively conservative. All of the homes had nice front yards, and she felt the proposed house would stick out like a sore thumb. It would change the look and the whole feel of the neighborhood.

Mr. Cummings agreed that traffic in the area was very heavy, and the only solution would be for the City of Mobile to widen Cottage Hill Road, in which case it would become even busier. He pointed out that there was a lot of traffic that comes off of Florida Street and crosses Airport Boulevard to Grant Street, and then turns left onto Cottage Hill Road, which was just the natural flow of the traffic. He said it would be like that in the foreseeable future, and he could not see it becoming any less busy.

Mr. Davitt asked if the remaining four lots along Grant Street required a 25-foot setback.

Mr. Dagley said that was correct.

Mr. Davitt asked if he understood correctly that this request was for a 12-foot setback from the side (Cottage Hill Road) street, and the house would sit behind an existing wall, and this does not affect future construction on any other lot.

Mr. Dagley said that was correct. He further emphasized that plans for the existing wall were approved by Traffic Engineering and Land Use, and there were no issues there.

Ms. Collier noted that several residents complained about the wall, and asked Traffic Engineering to address this issue.

Mr. Roberts, representing Traffic Engineering, stated that to the best of his knowledge their department had not received any complaints about the subject wall. When plans were submitted for the wall, they reviewed the location and did not see that there was a potential problem.

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Ms. Collier asked if there was a stop sign there now.

Mr. Roberts said there was a stop sign for people wanting to turn left from Grant Street onto Cottage Hill Road. For a right turn, there was a yield sign.

After discussion a motion was made by Mr. Davitt and seconded by Mr. Coleman to approve this request for a Side Yard (Street) Setback Variance to allow the construction of a single-family residence within 12' from the East (street) side property line at the above referenced location, subject to the following conditions:

- 1) coordination with Urban Forestry to minimize any possible damage to the Oak tree root system in the area of the driveway to Grant Street.

In further discussion Mr. Cummings questioned the condition regarding the Oak tree, noting that this was existing R-1 property.

Mr. Daughenbaugh explained that there was an existing tree in the city right-of-way. Urban Forestry was requesting coordination so as minimize the impact of the root system of the tree when the driveway is put in from Grant Street.

There being no further discussion, Mr. Cummings called the question.

There were five votes in favor of the motion, and two against. The motion carried.

Mr. Cummings further commented that if the Board's counsel, John Lawler, were present today, he felt sure he would advise the Board that if it previously approves a variance and time lapses as in this case in a very short time frame, the Board has a difficult time not also agreeing to permit that variance to go forward as originally approved. He said Mr. Lawler had made that point time and again. Mr. Cummings said he was directing his comments to Ms. Collier and Mr. Turner, but he was in no way scolding them, but was just trying to point this out because Mr. Lawler has told them in the past that if the Board does not approve variances which have just expired because of circumstances such as a hurricane or time delay such as in this case, and there had been no changes, that if the applicant went to court, he would win. Mr. Cummings further stated that he wanted the audience to know what they were not trying to ramrod anything down anybody's throat, and were certainly not trying to ram anything down the residents' throats. They had every right to be present in August of 2004 when this matter was addressed. They were not, for whatever reason, and the variance was approved. Due to delays in construction due to two hurricanes since that time, construction was delayed.

Mr. Turner asked if a variance were approved and there was no opposition at that particular time due to, say an act of God, and that variance expired due to say, an act of God, and when it was up for reapproval it did have opposition, would the Board not be inclined to listen to that opposition?

Mr. Cummings said that was a great question, and he wished Mr. Lawler was present to answer it. He said that first of all, the opposition that they did not have, unless there was a petition, which he could not recall since it had been two years, would not have been an act of God. The opposition would have been an act of the residents. The reason that their construction did not

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go forward had to do with two hurricanes, which was certainly an act of God. So, he did not know the answer to Mr. Turner's question. He just knew that time again in the seven or nine or 10 years he had been on this Board, Mr. Lawler had advised them that when these situations have occurred, and there has been a very tight time frame and conditions around it had not changed, the Board would be hard-pressed not to do the same thing they did before. Mr. Cummings said he wanted to make that point for the record and for the benefit of those who were in the audience, because the Board tries to hear everything in a fair manner and act accordingly. He said he appreciated the fact that these neighbors came down and had their say today.

Ms. Collier stated that she had also heard Mr. Lawler say that in order to save court costs, that this would not fly in court. But prior counsel also made it perfectly clear that they were not responsible for things that happened before they became members of this Board, and if they did not concur with that opinion, they had a right to say so.

Mr. Collier said point taken, and Ms. Collier was absolutely correct.

**#5388/5332**  
**(Case #ZON2006-02168)**

**Mark Bullis**

West side of St. Emanuel Street, 80'± North of Short Texas Street.

**Parking Surface Variance to allow aggregate parking in an I-1, Light Industry District; parking surfaces must be asphalt, concrete, or an approved alternative paving surface in an I-1, Light Industry District.**

*The site plan illustrates the proposed building, setbacks, and proposed wall.*

Mark Bullis, applicant, stated that this was actually a re-submittal of a previous request which was approved by the Board in December 2005, but which had expired before permits for development had been obtained. This request was for a Parking Surface Variance only, as they had complied with the requirements of the previous request regarding landscaping and trees.

Mr. Davitt asked if he understood that this was a resubmittal, but with modifications from the previous variance.

Mr. Palombo said that was correct. This request shows the modifications concerning landscaping and curbing.

Mr. Bullis said they had updated the application showing the appropriate apron, trees, landscaping, drainage and so forth. The permit was still pending.

Mr. Guess asked if Mr. Bullis had started utilizing the property yet for the intended purposes.

Mr. Bullis said they had been utilizing the property ever since they were cited, some time in early 2005.

Mr. Guess asked what they had been utilizing for a surface during the interim.

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Mr. Bullis said it was the same surface that had been there for the last 25 years.

There was no one present in opposition.

After discussion a motion was made by Mr. Davitt and seconded by Mr. Turner to approve this request for a Parking Surface Variance to allow aggregate parking in an I-1, Light Industry District at the above referenced location.

The motion carried unanimously.

**#5389/4356**

**(Case #ZON2006-02169)**

**Wrico Signs, Inc.**

**301 Government Street**

(Block bounded by Government Street, Jackson Street, Church Street, and Claiborne Street).

Sign Variance to amend a previously approved Sign Variance to allow 507 square feet of signage for one tenant on a multi-tenant site; a maximum of 64 square feet per tenant is allowed in a historic district.

*The site plan illustrates existing building, parking, setbacks, and proposed signs.*

Mr. Davitt recused himself from discussion and voting in this matter.

Fred Wright, 5714 Kings Mill Drive, was present representing Wrico Signs. Mr. Wright said they were requesting a Variance that would allow them to place a total of five signs, totaling 507 square feet, on a 17-floor building at 301 Government. This will be a Holiday Inn.

Mr. Cummings asked if there was anyone else who wished to speak in favor of this application.

Maura Garino, operations manager at the Lafayette Plaza Hotel, soon to be Holiday Inn's Historic District, Mobile, introduced Mr. Christian Trox, who represents the owners of the property. Ms. Garino said she wanted to emphasize the importance to the Board of the signage package, which was in full compliance with Holiday Inn standards. The proposed sign on the 17<sup>th</sup> floor would face directly onto the Interstate. Ms. Garino said that presently as a traveler approaches Mobile heading East, and approaches Exit 26-B to Downtown Mobile, to the right you see Metro Jail and to the left you see bail bondsmen signs. It was not a pretty sight, and they felt if the business, or leisure, traveler saw the Holiday Inn sign, which was nation-wide and world-wide recognized, they would make a more favorable choice in staying in downtown because the Holiday Inn was there. Ms. Garino said the sign would not only benefit the property, but also the downtown business community.

Mr. Cummings asked if there was anyone present who wished to speak in opposition.

Marie Dyson, a resident of 203 S. Dearborn Street, stated that she was also the president of the Church Street East Historic District Association, which encompasses this property. Ms. Dyson said she could not speak for everyone in East Church Street, but she had spoken with many of their members who believe that the signage was excessive and does not fit in with the historic character of this neighborhood. Ms. Dyson said their residents were all very positive about

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revitalizing the downtown area, and they had a good relationship of businesses and residences in their neighborhood. They believe the proposed signage, however, was too much, and does not fit in with the historic character and maintain the historic integrity of the area. They feel the proposed signage on the North side was unnecessary. They could understand the signage on the South side for the approach from the Interstate. Ms. Dyson said that other hotels in the downtown area had tried to maintain the historic character of the area. Also, she said they were opposed to any neon lighting. She understood that it had been requested that the applicant change the proposed neon lighting to back-lit channel lighting. Again, Ms. Dyson said they were opposed to the excessive amount of signage that was proposed.

Mr. Cummings asked Ms. Dyson if she was speaking for herself, or on behalf of the Church Street East Historic District.

Ms. Dyson said she was speaking for herself, as well as a great number of the residents of the Church Street East Historic District. She said they had had a meeting in their neighborhood regarding this proposed variance, and of those in attendance, over 30 people voted in opposition.

Mr. Cummings asked if 30 was a majority of the residents of that area.

Ms. Dyson said it was not a majority by any means.

Mr. Cummings asked Ms. Dyson if she understood that in 1992 a Variance was granted to allow up to 254 square feet of signage for the original hotel over and above the 64 square feet the code then allowed, and the Architectural Review Board had approved that.

Ms. Dyson said she was aware of that.

Mr. Cummings also pointed out that two years ago, although it was not in the historic district, the Board approved a rather large sign for the Adams Mark Riverview Hotel. It was a much bigger sign than the requested signage.

Ms. Dyson said she was not aware of that. Ms. Dyson said she understood they needed signage, but the residents she represented felt it was excessive. She noted that signage for the Radisson was kept to 400 square feet. They were also opposed to neon lighting, and were in favor of some kind of change being made to give it a historic design that would fit in with the historic character, and maintain some of the historic integrity of the area.

Mr. Cummings said he understood, but from his own personal opinion, when the original Holiday Inn was designed, historic integrity kind of went out the window. Mr. Cummings further stated that it had no bearing on this Board's decision, but that hotel operated for a period of time and fell into tremendous disrepair, and the owner of the Holiday Inn franchise had spent millions of dollars, and were continuing to spend millions of dollars, to bring it into a condition that could be considered a class-A condition, and that could be competitive in the downtown hotel market, all of which fall in line with what the City has tried to do over the last 10-15 years. He noted that the former mayor's emphasis had always been to try to revitalize downtown and create numerous hotels that would attract and accommodate the type of folks that we want to book the convention center, and the area behind us. Mr. Cummings said that, again, he was not speaking for or against, but said this was a tremendously large facility that takes up an entire city

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block. He respected Ms. Dyson's point of view, and he did not think the Holiday Inn sign package per se was in any way fitting with the historic nature of Church Street East. But again, neither was the building, and the building never would be. Personally, as a resident of the City of Mobile, Mr. Cummings said he was excited about this tremendous capital investment. He had heard that as much as \$15 million dollars, perhaps more, had been put into bringing this building up to snuff so it could compete with the Radisson next door, and the huge amount of dollars that were being spent on the Battle House. They had not even seen the sign package for that yet, and it was a historic building. Mr. Cummings said the Board was trying to be stewards of the Ordinance, and at the same time, good citizens as well. He understood what Ms. Dyson was saying, but there was nothing historic at all about the nature of the Holiday Inn franchise sign package. Mr. Cummings said the Board hears the same arguments from car dealerships and fast food operations about what their franchises require. The Board has to try to balance that with the Ordinance and with what makes sense, and opposition and support, and they appreciated her comments.

Ms. Dyson said she understood. They were just trying to protect the neighborhood.

Mr. Cummings asked Ms. Garino to comment further about their objections to neon.

Ms. Garino said the hotel had agreed with Devereaux Bemis and would not be any neon lighting. Also, she said there was no signage plan for the Church Street side of the building. The signage was on Claiborne, Government, and Jackson Street. They requested that the sign on the top of the 17<sup>th</sup> floor be neon so they could have very good visibility from I-10. She said that was not within the line of sight of any residential areas.

Referring to the plan, Mr. Cummings asked about the notation on the Church Street side which said "proposed sign".

Ms. Garino said that was behind the fence.

Mr. Cummings asked at what height.

Mr. Palombo stated that it was the 17<sup>th</sup> floor.

Mr. Whistler said there were two signs proposed up on the corner.

Ms. Garino said that was correct, but there was no large signage proposed on the Church Street side at ground level.

Mr. Cummings asked Mr. Devereaux Bemis, Director of the Mobile Historic Development Commission, to address the Board.

Mr. Bemis stated that he was present representing the Architectural Review Board, and explained that the way the Historic Preservation Ordinance was written, appeals on decisions from that Board come to the Board of Zoning Adjustment. Regarding the lighting, Mr. Bemis said the ARB simply does not allow internally lit signs anywhere in the historic district. On very rare occasion, neon is allowed. The only place he could think of where that was allowed was at Grand Central, and that was because it was an art deco building which would have had neon

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originally. He said this sort of strobing light was not appropriate for a historic district, and that the signs should either be lit from a spotlight, or as they have allowed on a number of commercial buildings, including the Radisson-Admiral Semmes which wanted internal lit signage, they allowed the reverse channel letters where the light comes from behind. He asked that the Board uphold their decision that there be no neon. Their other concern was the amount of signage. Mr. Bemis said this was one of those things their Board struggles with as much as this Board. He said the most that had ever been allowed as far as they could determine was 400 square feet, which was allowed for the Radisson. He noted though, that sign creep had occurred, and there were little signs that had popped up around the Radisson that never got approval from their Board or Urban Development. Mr. Bemis said he was confident this was more, and therefore their Board felt that 530 feet would be the absolute maximum, and they would have no problem going with 400 feet, which is supposedly what the Admiral Semmes was maxed out at. He said they had a discrepancy between 507 and 530, but he did not know why.

Mr. Turner asked Mr. Bemis what the size was of the pylon sign in the front of the civic center.

Mr. Bemis said that sign went up when the City Council overruled the Architectural Review Board, and he did not know what size it was. It was turned down by the ARB, and at that point the appeal went to City Council. He did, however, know the size of the monument sign.

Mr. Turner asked if the monument sign was within the historic district.

Mr. Bemis said it was. The monument sign that came before the Board was kept well within the 50 square feet that the Board allowed, but the pylon sign was a City Council decision in overruling the ARB. They considered that a city building.

Mr. Cummings said he did not know if the staff calculated a ratio of square footage of the five signs that were being proposed as it relates to the overall surface square footage of this 17-story building, but he would venture that the ratio would be very, very small. Mr. Cummings noted the elevation of the building and said you would really have to squint to see a sign at the top. There was a little bitty one down at the bottom that faces Government Street. There was one on the canopy on one side, and on the other side of the Radisson, it would be by the parking garage. There would also be one at the top of the building on the back side, and one catty-corner across from the civic center. So, relative to the overall size of the building and the surface area of the building, the square footage of 504 square feet was larger than the 64 square feet allowed in the historic district. That 64 square feet in the historic district, however, envisions a 150-200 year old, two-story house in the Church Street area being converted to some professional type office. Mr. Cummings said this was a really, really big building, and he would think that was probably one of the things the ARB considered.

Mr. Bemis said exactly. The ARB would never think that 64 square feet would be adequate for this building, which was the reason that when the Ordinance was written, the Board of Zoning Adjustment was given that particular option. Mr. Bemis said he was there when the ordinance was written and 64 square feet was one of those things that was discussed extensively. It was decided that variances from that should be infrequent, and that an appeal process would be the best way to handle it.

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Mr. Cummings thanked Mr. Bemis for his comments, and asked if the Board had any questions of either the applicant, or Ms. Dyson, or Mr. Bemis.

Mr. Coleman was not clear about how the square footage allowed was determined.

Mr. Cummings said the Ordinance says that inside the historic district, the total surface square footage of signs allowed is 64 square feet.

Mr. Coleman asked if that was regardless of the height.

Mr. Cummings said that was what the Ordinance stated, and what Mr. Bemis was saying.

Mr. Coleman asked if the application would be in compliance if the Board did not take into consideration the signs on top of the building.

Mr. Palombo said no, it would still not be in compliance.

Mr. Whistler said there were only 178 1/4 square feet on top.

Mr. Guess asked where the signage was located on the previous Holiday Inn.

Mr. Wright said he thought the signage was going to be in the same locations on the building as it was on the previous Holiday Inn. He said it might be a little bigger, because it was a new standard Holiday Inn signage package. He thought all the wiring was in place to re-affix the signs.

Mr. Whistler noted that the original Holiday Inn was granted a Variance for 254 square feet total. The Variance requested today was almost exactly twice that square footage.

There being no further discussion, Mr. Cummings called for a motion.

Ms. Collier made a motion to deny this request for a Sign Variance at the above stated location.

Mr. Cummings asked if there was a second to the motion.

The motion died for lack of a second.

A motion was then made by Mr. Cummings and seconded by Mr. Guess to approve this request for a Sign Variance to amend a previously approved Sign Variance to allow 507 square feet of signage for one tenant on a multi-tenant site at the above referenced location.

In further discussion Mr. Daughenbaugh stated that whenever possible, Urban Forestry tries to plant in existing green space. This site has very little additional green space, but there was some along Government Street and also along the side streets. Mr. Daughenbaugh asked if the Board would consider adding a condition of in-fill planting of live oak trees to match the existing ones along Government Street where there was existing green space, and that it be coordinated with Urban Forestry. Based on the open green space, he said they were looking at possibly three or four live oak trees.

Mr. Cummings said he would not want to see a 3" caliper live oak planted along Government Street when the existing trees were 20 feet tall and 8".

Mr. Daughenbaugh said the trees would be 4-6 inches, and from 15-20 feet at the time of planting.

Mr. Cummings revised his motion, and Mr. Guess his second, to approve this request for a Sign Variance to amend a previously approved Sign Variance to allow 507 square feet of signage for one tenant on a multi-tenant site at the above referenced location subject to the following condition:

- 1) the provision of 4 Live Oak trees larger than 3" caliper for planting in the green space, to be coordinated with Urban Forestry.

There being no further discussion, Mr. Cummings called for the vote. There were four votes in favor of the motion and two against.

Mr. Cummings said there were four "yes" votes and two "nay" votes, and one abstention. He said five votes were required in order for this to move forward. The variance was denied, therefore, for lack of a fifth affirmative vote. He suggested the applicant confer with the staff and look at their next option.

Mr. Palombo interrupted, saying there were five voting members of this body, not seven. There were two supernumerary members. The supernumerary members do not vote unless one of the regular members is absent. Ms. Collier was a supernumerary, but he was not sure who the other supernumerary was, but he would find out. He suggested postponing this decision until the rest of the items on the agenda had been heard. In the meantime, he would determine who the other supernumerary was.

Mr. Cummings said that this could mean that the vote could be voided. He said he hesitated to suggest to anybody on the Board that their vote does not matter, because certainly every vote from the Board matters. He regretted that Mr. Lawler, counsel for the Board, was not present for clarification. Mr. Cummings said this matter would be continued after the other two items on the agenda were heard.

(After hearing the remaining two items on the agenda, Mr. Cummings reconvened the discussion on application #5389, Wrico Signs.)

Mr. Cummings stated that the Board had been furnished with a list of Board members and their appointment dates. The members are: Mr. Davis, District 1; Mr. Coleman, District 3; Mr. Cummings, District 5; Mr. Guess, District 6; Mr. Davitt, District 7. On page two it states that Ms. Collier, District 2, is serving as a supernumerary, and Mr. Turner, District 4, is serving as a supernumerary as well. Now that that was cleared up, Mr. Cummings asked what it meant.

Mr. Palombo stated that the Board of Zoning Adjustment consisted of five voting members. If one of the voting members, not a supernumerary, was absent, one of the supernumeraries takes his place in voting. In the case at hand, there were no absences of five votes, so those five votes

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- Mr. Guess, Mr. Cummings, Mr. Davitt, Mr. Coleman and Mr. Davis - are the voting members of the Board.

Mr. Cummings noted that Mr. Davitt recused from voting in this matter.

Mr. Palombo contended that it still passed - four for the motion, and one abstaining. He suggested the Board may want to hold this over to the next meeting when Mr. Lawler is present.

Mr. Cummings stated that he wanted to be very careful and not do anything that creates a situation where the applicant, and anybody else, winds up unnecessarily in court for this. He also wanted to be very careful because he did not want to send a message to the citizens of the City of Mobile that the Board can get a vote and the gavel drops, and we say, wait a minute, maybe there's a problem with the vote. Also, Mr. Cummings said he wanted to be very careful not to send a message to the members of the Board that their votes do not matter, because in the past, prior to the addition of Ms. Collier and Mr. Guess and Mr. Davis and Mr. Coleman, there was an attendance problem among Board members, and there were many times when they failed to go forward with the agenda because they did not have a quorum. So, personally, as Chairman, Mr. Cummings said he wanted to tell Ms. Collier and Mr. Turner that he believed their votes, supernumerary or not, do count and were very important. He appreciated their attendance and their participation in discussion, and he did not want them to leave this meeting thinking that their votes do not matter. Mr. Cummings said that was his opinion, for the record, and he would like the minutes to reflect that.

Mr. Cummings said they now needed to determine what to do with the matter at hand. This was a technicality that, frankly, he was not sure the Board was prepared to rule on today. He regretted that the Board's counsel was not present. Mr. Cummings said he wanted to be very careful about what they do here. He realized that this matter, and the timing of the decision from this body, was vital to the applicant.

Mr. Davis asked if, as a vote from the prevailing side, he could re-open this case.

Mr. Cummings suggested to Mr. Davis that he could move to re-open the case. He explained that if anyone decided to appeal a decision if it were granted favorably, the appeal would go to circuit court and essentially the proceedings of the Board of Zoning Adjustment at that level are moot. In other words, it would be as if they never had this discussion. So the plaintiff would file their motions and state their arguments and cases, and that was how the matter would proceed in circuit court. The discussions at the Board level, and the fact that there was discussion about supernumeraries, never happened. That was the way it worked. Mr. Cummings said he was not discouraging anything anyone had to say. He said he would like to re-open the case, and felt that the Board could reconsider the matter. The only reason he would hesitate to do so was if there was **heavy** opposition in this matter. There was **not** heavy opposition. Mr. Cummings said he would therefore allow the floor to be re-opened for further discussion.

Mr. Davis stated that in light of the Chairman's opinion, he asked that the Board hold this matter in abeyance until they were further prepared to move forward. Mr. Davis said he would like to classify this as a ruling for the Chair.

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Mr. Coleman agreed with Mr. Davis.

Mr. Cummings stated that Mr. Davis and Mr. Coleman had voiced a desire to re-open this matter and for the Board to take the action that this matter be held over for 30 days. He said he would like for Ms. Collier and Mr. Turner to comment on that, as well as Mr. Guess. He cautioned that before they spoke, they should realize that if it was not re-opened and held over, unless the counsel to this Board says the vote was not valid, the matter is denied. So it is moot. Mr. Cummings asked Ms. Collier for her comments, and again said that he regretted that the issue of discussion of supernumerary votes or not had even arisen. As a member of the Board for last eight or nine years, Mr. Cummings said this was the first he had heard of it, and he did not know how to deal with it. Again, Mr. Cummings said he appreciated Ms. Collier's attendance record and her willingness to state her opinion, and he did not want to send a message that her voice and her vote does not matter, because he personally felt that it does.

Ms. Collier thanked Mr. Cummings, and said she felt they needed further clarification from counsel. Ms. Collier noted that when she was first put on this Board she questioned the voting of supernumerary members, and was told to vote. So that is what she has done. Ms. Collier also pointed out that the Board's counsel had changed during that time, so she was anxious to see what their new counsel had to say.

Mr. Cummings said he would appreciate Mr. Turner's comments on the entire matter.

Mr. Turner stated that like his colleague, Ms. Collier, he yields to the Board's legal counsel for his opinion, and he would be comfortable with the opinion he renders.

Mr. Cummings asked Mr. Guess for his thoughts.

Mr. Guess said his only question in this matter was that they had made previous decisions when they were unaware of the appointment status and it may have changed the outcome. He said he was not comfortable with going into a decision that was not clear at this time.

Mr. Cummings agreed, and he felt everybody in the room, not the staff necessarily, agreed. He wanted the applicant to understand that this was not just about his signs. The Board wanted clarification from the City of Mobile attorney who represents this Board to tell them whether the supernumerary votes count or not.

Mr. Davitt stated that although he recused in this particular matter, being an armchair attorney, he did not see in the rules of the Board of Zoning Adjustment anything that differentiates between a supernumerary and somebody who is not listed as one. According to the rules, under Section 3., Item 3.A. Quorum, a quorum shall consist of four members of the Board. And under Voting, Section 7.Voting, it states that it requires the vote of four members of the Board to decide in favor.

Mr. Cummings said he would like to review the vote. There were four "aye" votes.

Mr. Palombo asked which four were they going to count. He felt it would be in the best interest to hold this matter over until they get legal counsel. He contended that five votes count, not seven.

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Mr. Cummings asked if he was saying that five affirmative votes count.

Mr. Palombo said The Enabling Legislation states that five votes count on all variances boards.

Mr. Davitt said the rules say four members constitutes a quorum.

Ms. Collier asked the staff if that meant that when the members were polled about their attendance at an upcoming meeting, and if it was determined that the supernumeraries were not needed, should they not attend the meeting.

Mr. Palombo said he could not answer that question. He would have to consult with his supervisors. He noted, however, that the job of the supernumerary was a replacement vote if a regular member was absent. In the last few years, there had been one hundred percent from this Board. All of the members came to every meeting. In the years prior to that, they were lucky to have three or four members present, so all votes counted and they really did not have a case such as this come up. Mr. Palombo said he had discussed that with Mr. Lawler for two or three years, and he just said to let them vote.

Mr. Cummings said that instead of officially holding this matter over for 30 days, because of time constraints on the applicant, he would like to request an opinion from the Board's counsel, with the Board's approval, as to whether or not there was a valid vote by those who voted, and was the outcome of that vote based on those who voted. Mr. Cummings said he would like the counsel to render that opinion quickly. If it turns out that in the next two or three days his opinion is, "no, we did not have a valid vote", then he would ask that this matter be brought back at the next meeting, and any adjustments that may be needed to the application can be made at that time, and the Board would consider it again. But in the event the counsel says "it was a valid vote", the applicant would be free to start construction on the signs.

Mr. Davis so moved, and Mr. Guess seconded the motion.

Mr. Cummings asked if there was any further discussion. He asked Ms. Collier if she felt that was a reasonable approach. He said he was singling her out, and Mr. Turner, because he was very sensitive to making sure that they did not leave here today thinking they were wasting their time, because that was not the case.

Ms. Collier said she did feel that it was an appropriate approach. She further commented that she felt this would have to go to the State Legislature to be changed to a seven member voting Board. The Board needed to know that, and act appropriately.

Mr. Cummings asked Mr. Turner how he felt about this.

Mr. Turner said it was fine with him.

Mr. Cummings called the question. The vote was unanimous in favor of the motion.

Prior to adjourning, Mr. Davis said he would like to thank the Chairman for the way he handled that matter and the sensitivity that he possesses as Chairman.

Mr. Cummings said he appreciated Mr. Davis' comments.

**#5390**

**(Case #ZON2006-02183)**

**Harry & Sheila Palmer**

**4658 Airport Boulevard**

(North side of Airport Boulevard, 200'± West of South University Boulevard).

**Parking Ratio Variance to allow a total of 67 parking spaces on a multi-tenant site with a night club, office and warehouse; the Zoning Ordinance requires a minimum of 77 parking spaces for such uses in a B-2, Neighborhood Business District.**

Frank Dagley, 717 Executive Park Drive, was present on behalf of the owners of this property. Mr. Dagley said the applicant, Darryl Evans, would like to rent this property and open a jazz club. Mr. Dagley gave a history of the property, which he said wraps around Diamonds, which is a night club on Airport Boulevard. There was a large metal building in the back, a small car wash, and a small building on the East side of Diamonds. This application before the Board today was necessary due to a shortage of the required number of parking spaces that would be required for the proposed use. This operation would require 36 spaces, and they were short 20 spaces. Mr. Dagley said the hours of operation of the proposed nightclub would not coincide with the hours of operation of the other two existing businesses on the site - a dance studio and a video equipment repair service. The proposed club would be open Thursday through Sunday in the evenings. The owners of the other two businesses on the site had submitted documentation of their hours of operation and said they had no problem sharing the parking spaces. Mr. Dagley noted that Mr. Evans had owned and operated a club on Royal Street for seven years, and had never had one instance in which the police had to come for any kind of disturbance. He said this would be an upscale type operation, catering to people over 30.

Mr. Cummings noted that the staff report indicated that the parking requirement for the existing businesses and the proposed night club was 77 spaces. He asked if that was for the applicant's operation only, or for the total square footage of the buildings on the site now.

Mr. Whistler said that was the total that would be required for a proposed nightclub and the existing businesses.

Mr. Dagley also noted that the subject building had been vacant for about a year. Mr. Evans was planning to sign a three-year lease, and he would be agreeable to a Variance of three years. Hopefully, he would come back in three years and with no problems from any of the other tenants, and submit a request for another three-year extension.

Mr. Cummings asked Mr. Evans if he would care to add any comments.

As Mr. Dagley stated, Mr. Evans said they catered to older adults, and they find there is a need for this type of establishment in the Mobile area. Most of the night spots now were basically taken over by the young people. He and his wife ran Attitudes downtown on Royal Street very successfully, and they would like to open a club in this area. They feel this is a good location, centrally located, and that the demographics in this area are professional people, who they would be catering to.

Mr. Cummings commented that certainly if this Variance was approved, and if Mr. Evans were to open, he would wish him nothing but 150 percent success. He asked, however, that they consider what would happen in the event, for whatever reason, the operation of his business did not continue during the term of his lease, or it was so successful that he needed to move to a bigger facility and he decided to vacate the property. If the Board were to grant this Variance, could they make it specific not just to the property, but to the time frame that Mr. Evans had agreed to in his lease? He was concerned that in the event things did not work out and Mr. Evans had to close the business before the 3-year time limit on the variance had expired, the landlord could come back and decide to open a club, and all of a sudden you could have 150 cars trying to jam the parking lot every Friday and Saturday night. Mr. Cummings asked if the Board could tie the variance to a specific tenant as well.

Mr. Palombo said the Variance could specify a time frame and the use for a jazz lounge, or they could tie it to this particular use and this particular tenant.

Mr. Cummings asked if anyone on the Board had any questions for Mr. Evans or Mr. Dagley.

There being no further discussion, Mr. Davitt made a motion to approve this request for a Parking Ratio Variance to allow a total of 67 parking spaces on a multi-tenant site with a night club, office and warehouse at the above referenced location, subject to the condition that the variance be applicable to no more than three years.

Mr. Davis seconded the motion.

After further discussion Mr. Davitt amended his motion to add that the variance also apply to the operation of this club by Mr. Evans only.

Mr. Davis seconded the motion as amended.

The final motion was to approve this request for a Parking Ratio Variance to allow a total of 67 parking spaces on a multi-tenant site with a night club, office and warehouse at the above referenced location, subject to the following conditions:

- 1) the variance is not to exceed three years, and is specific to the operation of this club by Mr. Evans only.

Mr. Cummings called for the vote.

The motion carried unanimously.

**#5391**

**(Case #ZON2006-02216)**

**Michael Davis**

**6605 Red Maple Drive**

(South side of Red Maple Drive, 110'+ West of Magnolia Grande Drive)

Site Coverage Variance to allow the construction of a single-family dwelling with 38% site coverage; a maximum site coverage of 35% is allowed.

Don Williams, Williams Engineering, was present on behalf of the applicant. Mr. Williams said this site was located in The Grand of Magnolia Grove subdivision. There were two or three sections built in this area. The Grand was the section of some of the larger lots, and his client would like to build a single-family house on his single-family lot. He is restricted to 35 percent maximum site coverage, but was requesting 38 percent site coverage. Mr. Williams noted that they were in compliance with the front, sides and rear setbacks. They were also putting a garage in the front of the structure so that the driveway is minimized. They were not doing the normal situation with eight feet on one side and 12 on the other, having a driveway with the extra asphalt and the extra look of that going on the side of the structure. They were therefore getting a lot more green buffer around the sides of the house, so it does make it a little more pleasing effect. The proposed residence would be single-story. The gentleman who proposes to live in this house is in a wheelchair, and for this reason he needs some extra turning radii inside the structure, and he needs a single-story situation.

Mr. Cummings asked if there were any objections from the developer or from the homeowners association.

Mr. Williams said no. He said he had done eight houses on this cul-de-sac and the same builder had built all eight of them. He said they had not had any response from them. He noted that this was one of the smaller sites in the entire neighborhood.

Mr. Guess asked if the covenants or the neighborhood organization had any restrictions on the square footage of the coverage.

Mr. Williams said no, not that he was aware of.

Mr. Cummings understood that, technically, the hardship was for the individual due to the fact that he was handicapped and could not avail himself of a second floor.

Mr. Williams said he could not really say that. It was the desire of the applicant to build 38 percent site coverage. He could not officially state the fact that he was handicapped had anything to do with it.

As a percentage of the square footage, Mr. Cummings asked if he went with 35 percent coverage, it would equate to how many square feet versus 38 percent coverage.

Mr. Williams said about three percent. You would lose the back porch.

There being no one else to speak in favor of this application, Mr. Cummings asked if there was anyone present who wished to speak in opposition.

There was no one present in opposition.

Mr. Guess asked if the porches were enclosed or just covered.

Mr. Williams said they were covered. They were part of the roof system.

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After discussion a motion was made by Mr. Davitt and seconded by Mr. Turner to approve this request for a Site Coverage Variance to allow the construction of a single-family dwelling with 38% site coverage at the above referenced location.

The motion carried unanimously.

**OTHER BUSINESS:**

Mr. Cummings asked if there was any further business.

Mr. Guess stated that he had two matters he would like to address. First, he asked that when the Board was in deliberations session, that everyone be given an opportunity to talk before a motion is presented. Mr. Guess said many times a motion is made and seconded before some of the members have an opportunity to ask a question.

Also, regarding site visitation prior to meetings, Mr. Guess said that at times it was difficult for the members to see the sites individually, and asked if possibly at some point when staffing allowed, a member of the staff could have someone take the members to some of the sites that were to be considered. Mr. Guess said he had only been a resident of Mobile for 12 years and was not familiar with all the streets and locations. He said he and Ms. Collier had discussed this, and he wondered if any of the other members had made this request.

Mr. Cummings said he felt that if any member of the Board wanted to inspect a site and get the staff's opinion on it, someone from the staff would be happy to make that accommodation. He asked the staff how they felt about it.

Mr. Palombo said there was a time when he was taking Ms. Collier and Mr. Guess to see each and every site, however, it had become beyond what he could do in a month's work. He said they were short on manpower, and were having to come in on weekends to get their work done. They hired a planner last week, and he quit two days later. Also, one of the planners on the staff now had accepted another job and was leaving next week. Mr. Palombo suggested maybe a couple of the members could get together and drive to the sites.

Mr. Davitt said he would be concerned that that might be contrary to the sunshine law.

Ms. Collier asked if the staff would provide them with a map so they could visit the sites on their own.

Mr. Palombo said they would provide whatever they needed.

Mr. Coleman asked David Roberts, in the case of a traffic-related matter, if they might be able to tag along with him for a site visit.

Mr. Roberts said in a traffic-related matter, if any of the members needed any additional information, he would be happy to accommodate them.

Mr. Cummings said he was hearing the willingness of the staff to the extent their manpower allowed. They would provide any information needed so the members could go visit a site for

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themselves. Mr. Cummings said he was aware that the staff had a tremendous workload, and he respected their time. The Board would appreciate, to the extent possible, any information the staff could provide or feedback or questions and answers, or maps or what have you. Mr. Cummings felt it would be inappropriate for Board members to get in a car and ride around and discuss applications that were to come before them, because it could possibly prejudice their thoughts before they ever hit the door. He would not be in favor of that, and it would probably violate the law if they did so. He said that was the reason for open forum discussion.

There being no further business, the meeting was adjourned.

**APPROVED: January 8, 2007**

Reid Cummings  
Chairman

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