

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

MEMBERS PRESENT

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

MEMBERS ABSENT

J. Tyler Turner

STAFF PRESENT

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

OTHERS PRESENT

David Roberts, Traffic Engineering
John Lawler, Assistant City Attorney

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.

HOLDOVERS:

#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.

The site plan illustrates the proposed tower, easement, and lease area.

**Board of Zoning Adjustment
October 2, 2006**

David Wilkins, representing the applicant, stated that they were in agreement with the staff recommendations.

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

Connie Hudson, representing District 6 on the Mobile City Council, stated that she was not in support or in opposition of this application. Ms. Hudson said she was present to relay some concerns that had been expressed to her by some of her constituents who were property owners in the surrounding area of this site regarding the visual impact of the tower. There were residential subdivisions to the North, South, East and East of the subject property, and the residents were concerned about this large tower looming over their property. Ms. Hudson requested that if this tower was approved, that a condition be placed on the approval that the tower would be disguised. As an example, she noted that there was a cell tower on the Mobile Christian School property that was disguised as a flagpole. She felt it would be much less intrusive to the surrounding area, and did not feel there would be any opposition to a tower that was so disguised.

Mr. Cummings commented that the Board had approved cell towers in the past that had been disguised as flagpoles. He had also heard of a tower being disguised as a real tall pine tree. Mr. Cummings asked Mr. Wilkins if he would like to respond to Ms. Hudson's remarks.

Mr. Wilkins noted that their original application location was described on the agenda. Since submitting the application, they had relocated the tower site near the center of the property, and it was also in a wooded area that would give a lot of cover to the tower. The church building, as well as the proposed two-story addition to the church, would also help hide the base and lower part of the tower compound area. Mr. Wilkins also noted that the topography was lower on the North side of the property back toward Spring Creek where the tower would be. The Northwest corner of the property on Knollwood Drive was at an elevation of 160 feet, and the elevation dropped off to about 142 feet where the tower was proposed.

Mr. Cummings noted that the tower would be 150 feet tall, and he estimated the surrounding pines to be 60 to 70 feet tall. Mr. Wilkins agreed.

Mr. Palombo asked Mr. Wilkins if they had done a balloon test.

Mr. Wilkins said they had not. This would entail raising a big orange or whatever color balloon that would contrast with the sky on a 150-foot string, which would just give a more real idea of where you would be able to see the top of the tower from.

Mr. Cummings commented that whether they throw up one or more balloons, it would still be a tower at a height somewhere about 60 feet or so above the current vegetation of the existing forested area.

Mr. Wilkins said that was correct. He also pointed out that along the South property line there was a pretty good tree line, which would shield the tower from view, especially standing on the ground looking toward the tower. The oak trees would probably conceal it all the way to the top.

**Board of Zoning Adjustment
October 2, 2006**

Mr. Wilkins pointed out that the whole property between the proposed site to the East line was heavily wooded.

Assuming the Board approved a camouflaged tower, Mr. Cummings asked Mr. Wilkins what alternatives they would be capable of in terms of that.

Mr. Wilkins said they could do the stealth flagpole type design where the antenna would have to be mounted inside of the tube. They had also recently done a stealth light pole where the antennae were mounted outside of the pole itself, but flush mounted so they were not as noticeable as they would normally be. Mr. Wilkins said he had seen some towers disguised as 150-foot tall trees, and they stuck out like a sore thumb.

Ms. Collier stated that she had recently become aware that in other parts of the country churches and their steeples were being used for cell towers. She asked if consideration had been given to giving this church a nice steeple and using that for their tower.

Mr. Wilkins stated that the existing church structure was a round building, and he did not think a steeple would fit in to that design. It was not a big, square cathedral looking church that would normally have a steeple in the front of the church.

Mr. Guess asked Mr. Wilkins if he thought the Baptist church would take offense to a different option as far as design, such as a flagpole or any other design.

Mr. Wilkins said he did not think the church would be opposed to a flagpole design, except that if they wanted the flag taken down at night and put up in the morning, they would ask that the landlord do that.

Mr. Palombo asked Mr. Wilkins if a flagpole design, rather than a monopole, would diminish their frequency.

Mr. Wilkins said he thought that flush mounting on the outside of the pole, as he previously mentioned, would diminish it some. He said he was not an engineer, but he would imagine that putting the antennae inside the pole would diminish it some also.

After discussion a motion was made by Mr. Coleman to deny the request for Variances for Substandard Access/Maneuvering and a Gravel Surface, but to approve the Use, Height, Setback, and Buffer Separation Variances at the above referenced location subject to the conditions as recommended by the staff.

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

The motion failed for lack of a second.

Mr. Cummings asked if there were any other motions.

**Board of Zoning Adjustment
October 2, 2006**

Mr. Davitt moved to deny the request for Substandard Access/Maneuvering and Gravel Surface Variances, but approve Use, Height, Setback and Buffer Separation Variances at the above referenced location subject to the following conditions:

- (1) the paving of the 12' drive and parking space as required by the Ordinance;
- (2) full compliance with landscaping and tree planting requirements of the Ordinance for the lease parcel (to be coordinated with and approved by Urban Forestry);
- (3) full compliance with all municipal codes and ordinances, including, but not limited to, the Telecommunications Towers and Facilities requirements of the Ordinance;
- (4) that the applicant submit a Certificate of Insurance naming the City of Mobile as an additional insured;
- (5) the provision of an engineer's certification regarding the collocation capability of the tower; and
- (6) the tower must be a stealth tower of a flag pole design.

Mr. Guess seconded the motion.

In further discussion Mr. Cummings said he had seen a pine tree type tower in a setting around other pine trees 60-70 feet tall, and it looked a bit odd to him to see artificial pine limbs coming out of the top of it. Personally, he would be in favor of the flagpole type design as opposed to the pine tree.

Mr. Davis asked Ms. Hudson if she felt a flagpole type design tower would satisfy her constituents.

Ms. Hudson replied that she had spoken to several of the property owners in the surrounding residential areas and they were aware that a camouflage tower would be an option. She felt they would be acceptable to a flagpole type design tower.

Mr. Davitt said he wanted it made clear that his motion did in no way require that the applicant be required to post a flag or do any uplighting. If the church wanted to put a flag up, and it was okay with the applicant, they could do so.

Mr. Cummings commented that if the church was going to have a 150-foot tall pole that looked like a flagpole on its property, he would think they would want to see a flag flying on it, whether it be a national, state, or church flag.

Based on the proximity of this location to Infirmary West, Mr. Guess asked the applicant if a light for the flight path of helicopters was needed atop the pole. He noted that a light was required on the tower on Girby Road, so he thought there may be some impact with this tower also.

Mr. Wilkins said he did not think a light was required, and that they had already gotten FAA approval.

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

The vote was unanimous in favor of the motion.

PUBLIC HEARINGS:

#5379

(Case #ZON2006-01928)

T-Mobile

East side of Shipyard Road, 890'± North of Crown Drive

Height, Setback, and Buffer Separation Variances to allow the construction of a 150' Monopole Telecommunications Tower, setback 25' from a lease parcel line, and 67' from residentially zoned property; the maximum allowable height is 45', a 150' tower must be setback at least 150' from a lease parcel line, and a minimum separation of 225' (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.

The site plan illustrates the proposed tower location, access easement, drive and walk.

David Wilkins was present on behalf of the applicant and stated that they concurred with the staff recommendations.

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

There was no one present to speak in opposition.

After discussion a motion was made by Mr. Coleman and seconded by Mr. Davis to approve this request for Height, Setback, and Buffer Separation Variances to allow the construction of a 150' Monopole Telecommunications Tower, setback 25' from a lease parcel line, and 67' from residentially zoned property at the above referenced location, subject to the following conditions:

- (1) full compliance with the landscaping and tree planting requirements of the Ordinance for the lease parcel (to be coordinated with and approved by Urban Forestry);
- (2) approval from the Planning Commission;
- (3) full compliance with all municipal codes and ordinances, including, but not limited to, the Telecommunications Towers and Facilities section of the Ordinance; and
- (4) that the applicant submit a Certificate of Insurance naming the City of Mobile as an additional insured.

In further discussion Mr. Davitt noted that on several occasions the Board had approved cell towers with the condition that in the event the tower should collapse, that it be designed to collapse in upon itself. Mr. Davitt said he was not concerned in this case about the residences, but asked how far the tower was from Shipyard Road and the railroad tracks.

After discussion with the staff, Mr. Palombo said the tower was 130 feet from the right-of-way.

Mr. Wilkins noted that the tower was designed so that in a catastrophic event it would fail at about 100 feet and would bend over on itself.

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

The vote was unanimous in favor of the motion.

5380

(Case #ZON2006-01929)

Applied Marine Design

308 Congress Street

(Northeast corner of Congress Street and North Claiborne Street)

Parking Surface and Access and Maneuvering Variances to allow aggregate parking, maneuvering areas and to allow an 11'5" wide access drive on a commercial site zoned R-B, Residential/Business; the Zoning Ordinance requires Planning Approval for gravel parking surfaces within the Hank Aaron Loop, and a minimum 12' wide access drive is required for one-way drive aisles within all commercial districts.

The site plan illustrates the existing building, proposed parking, and proposed drive.

Andrew Mund, applicant, stated that he understood the staff had a problem with the 11' 5" wide access drive on N. Claiborne Street. He explained that in this neighborhood they had granite curbstones, and along that particular access there were some returns, basically a half circle, that had been in that location for many, many years, and they formed that 11' 5" wide drive. In order to modify that entrance to the 12-foot wide requirement, they would have to dig up the granite curbstones and cut them back seven inches.

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

There was no one present in opposition.

Mr. Cummings asked if Traffic Engineering would like to address the issue of not disturbing the granite curbing.

David Roberts stated that Traffic Engineering had a lot of problems with the overall layout of the parking as was presented by the applicant, and concurred with the staff recommendation to deny the substandard access. He said they really needed to see a complete layout on this before going any further.

Mr. Cummings stated that the Board was free to do what it desires within the confines of the statute, but they do take the recommendations of the staff very seriously, and certainly as it relates to Traffic Engineering. Based on the Traffic Engineering Department's comments, if the Board wanted to move forward with this application as written and consider approval or disapproval based on the staff recommendation, they could. Or, Mr. Cummings said if Mr.

Mund wanted to hold over this matter and submit a more detailed drawing to Traffic Engineering, the Board could consider the application again in a month.

**Board of Zoning Adjustment
October 2, 2006**

Mr. Whistler stated that if the staff had known that there were historic granite curbstones at this location, they would have recommended full approval. They were only talking about seven inches below standard.

Based on Mr. Whistler's statement, Mr. Cummings asked if there were any further questions from the Board.

Mr. Guess asked if he understood that Traffic Engineering still had an issue with the layout that needed to be addressed before the Board could render a decision in this matter.

Mr. Roberts said that was correct. He noted that this was an unusual design with respect to this location, however, Traffic Engineering would like to have more clarification on the parking itself.

Mr. Mund stated that the reason they submitted this variance request was because they understood that the way the statutes were written, there was no provision to allow parallel parking. He pointed out on the survey that right in the corner property there was really not the footprint available there to allow for traditional pull-in, side-by-side parking. To accommodate the parking, they designed a sort of flow-through parking with ingress off of Congress and coming down along side the house and parking in parallel fashion, and then exit onto N. Claiborne Street. Mr. Mund explained that at this time the property was used as a home office for himself. In anticipation of increased business, he needed to provide for additional parking as required. He understood that this was somewhat unusual, but they were trying to do the best they could with the lot size they had, and did not think there were better alternatives for providing the required type and number of parking spaces.

Mr. Cummings said he understood that had the staff known the historic granite curbstones were in place, they would have recommended approval of the requested variances subject to coordination with Traffic Engineering on the driveways and parking lot layout, and full compliance with all other municipal codes and ordinances, and would have allowed the 11' 5" wide access drive.

Mr. Whistler said that was correct.

Mr. Cummings said they would consider that an amended recommendation from the staff, and entertained a motion.

A motion was made by Mr. Davitt to approve the request for Parking Surface and Access and Maneuvering Variances to allow aggregate parking, maneuvering areas, and to allow an 11'5" wide access drive on a commercial site zoned R-B, Residential/Business at the above referenced location, subject to the following conditions:

- (1) coordination with Traffic Engineering on the driveways and parking layout plan; and
- (2) full compliance with all other municipal codes and ordinances.

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

**Board of Zoning Adjustment
October 2, 2006**

Mr. Guess seconded the motion.

In further discussion Mr. Davitt asked Mr. Roberts how he proposed they would be able to improve the parking situation.

Mr. Roberts said they would have to get some proposal from the applicant for the traffic flow through the site, and they could perhaps work something out as far as the layout of the parking area based on ASHTO and City's standards.

Mr. Davis said he thought he understood the applicant to say that there was not an alternative to the parking situation that would be acceptable.

Mr. Cummings said he would like the applicant to address that, but he understood him to say that given the fact that this was a corner lot and the site was less than 60 feet wide, and that there was an existing building there, it makes it difficult to use current parking ratios and ingress and egress code requirements.

Mr. Mund said that was correct. It was a square footage problem. He said they understood that the parallel parking aspect of it was the non-standard aspect, and that was the reason for this request.

This site being in a historic district, Mr. Cummings said the applicant would more than likely have to go before the Architectural Review Board.

Mr. Mund said that when they proposed the aggregate and also when they refurbished the curb cut on Congress, they did go before the ARB, and several other bodies. They also added some live oak trees down Claiborne Street. All of this was approved by the ARB.

Devereaux Bemis, representing the Mobile Historic Development Commission, stated that they certainly supported the retaining of the historic granite curb. He said they had been trying to maintain and actually replace the granite curbing where it had been removed throughout this whole district.

Regarding parking ratios mentioned earlier, Mr. Whistler noted that the layout was within the ratio.

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

The vote was unanimous in favor of the motion.

**#5381
(Case #ZON2006-01935)
Briley E. Shirah
915 Palmetto Street**

(Southeast corner of Palmetto Street and Marine Street)

Front and Side (Street) Yard Setback Variances to allow the construction of a 6-foot tall masonry privacy wall along the front (Palmetto Street) property line, and 10' from the side (Marine Street) street property line; a minimum 13' front yard setback and a 13' side (street) yard setback are required in an R-1, Single-Family Residential District within the Historic Overlay District.

The site plan illustrates existing buildings, fences, drive, setback, and proposed wall.

Mr. Cummings asked the applicant if he had seen the staff recommendations.

Mr. Briley Shirah, applicant, stated that he had not seen the recommendations.

Mr. Cummings stated that the application was recommended for approval subject to coordination with Urban Forestry to minimize any damage to the Magnolia tree root system at the East end of the wall along the front property line.

Mr. Shirah said he had no problem with that.

There being no one else to speak for this application, Mr. Cummings asked if they was anyone present to speak in opposition.

There was no one present in opposition.

There being no questions from the Board, Mr. Cummings called for a motion.

A motion was made by Mr. Coleman and seconded by Mr. Davis to approve this request for Front and Side (Street) Yard Setback Variances to allow the construction of a 6-foot tall masonry privacy wall along the front (Palmetto Street) property line, and 10' from the side (Marine Street) street property line at the above referenced location, subject to the following condition:

- (1) coordination with Urban Forestry to minimize any damage to the Magnolia tree root system at the East end of the wall along the front property line.

The motion carried unanimously.

#5382

(Case #ZON2006-01939)

Michael H. Dunnam

17 Drury Lane

(East side of Drury Lane, 450' ± North of Wimbledon Drive West)

Fence Height Variance to allow the construction of a 10' high masonry wall, approximately

30' along the rear (East) property line and approximately 12' along the side (North) property line; 8' is the maximum fence height allowed in an R-1, Single-Family Residential District.

The site plan illustrates building, drive, and proposed wall.

M.D. Price, agent for the applicant, was present and said they concurred with the staff recommendations.

For the record, Mr. Cummings stated that the application was recommend for approval subject to the obtaining of an "after-the-fact" wall permit. Mr. Cummings said he was not sure what that was. He asked if that was one of those deals where you ask for forgiveness, as opposed to asking for permission at the front end.

Mr. Whistler said it meant that you pay twice what you ordinarily would.

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

There was no one present in opposition.

Mr. Cummings asked if there were any questions from the Board.

Mr. Guess said he understood that the wall was actually constructed.

Mr. Cummings said that was correct.

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

A motion was made by Mr. Davitt and seconded by Mr. Davis to approve this request for a Fence Height Variance to allow the construction of a 10' high masonry wall, approximately 30' along the rear (East) property line and approximately 12' along the side (North) property line at the above referenced location, subject to the following condition:

- (1) the obtaining of an after-the-fact wall permit.

The motion carried unanimously.

#5383

(Case #ZON2006-01940)

Steve Owens

804 Country Club Court

(West side of Country Club Court, 80'± South of the South terminus of Spring Station Road)

Site Coverage Variance to allow the construction of single-family dwelling with 40.5% site coverage; a maximum site coverage of 35% is required on a dwelling site in an R-1, Single-Family Residential District.

The site plan illustrates the proposed residence, drainage and utility easement, and drive.

Don William, Williams Engineering, stated that he was present representing the applicant, who was also in the audience, and they did not agree with the staff recommendation. Mr. Williams said he designed this neighborhood, and there were 11 lots that emptied into a cul-de-sac. The

**Board of Zoning Adjustment
October 2, 2006**

lot in question was at the end of an extended cul-de-sac that used to be a dead end on Spring Station Road. He said they did not want this lot to look different than the neighboring lots. They did not want a zero-lot-line or a PUD. He pointed out that most everybody else in this neighborhood had a traditional, suburban, West Mobile type of single-family home on a single lot. They all abided by the side yard and front yard setbacks, and Mr. Owens wanted to do the same. Mr. Williams explained that Mr. Owens was building on the smallest lot of that neighborhood, and to be compatible with his neighbors, he had proposed a house that was over the 35 percent coverage area. The proposed two-story house had a porch which he said was more of an integral part of the house itself. It was not a traditional porch, but was more like a courtyard that had a roof over the top of it. That was what caused them to go over the 35 percent coverage. A little bit of a second floor above that, and it really becomes part of the line. When looking at this, Mr. Williams said he considered three things. One was the compatibility with the neighborhood. They felt that they were compatible with the neighborhood, as far as the other four houses that were built in this neighborhood, which were all within a certain economic price range. They had a little bit less in square footage, and would be the smallest house in the neighborhood, as well as the least expensive. They were, however, still 35 percent breaking that coverage area. Secondly, they also considered the setbacks, noting that they had not broken any of those. They had a 25-foot front setback, 8-foot setback on the North, 121 feet on the South, and 23 feet from the rear as opposed to the required 8 feet so as to have some back yard. Thirdly, regarding the stormwater runoff, Mr. Williams said he designed the subdivision for about 60 percent coverage, and then added an on-site stormwater retention pond. He said he looked at the pond this morning, and it did need some attention. The pond was lined with concrete block walls. The volume was there and it was now functioning with that volume, but there were some trees in it and it just needed some maintenance. Mr. Williams said they would agree, if the Board wanted to make it a condition of approval, to maintain the pond. It was actually the responsibility of the homeowners association, but with only four out of the 11 lots having been developed, there was not much of an association yet. It would have to be spread over three or four owners, plus the developer, who had not yet sold all the rest of the lots. Mr. Williams also pointed out that the offending percentage of coverage was actually enclosed within their roof, so no one would see it, and if they had to, they would uncover that and have it rain on the patio, which would be the same amount of stormwater. He said it was almost like an enclosed courtyard off of the master bedroom. They roofed it because it worked much better for the architecture of the house and the functionality of it. Mr. Williams emphasized that they were within the footprint of the standard city setbacks. He further stated that the trend in the city was bigger houses on smaller lots, and referenced four other newer developments in the city which were more densely packed. Those were PUD's, however, and they did not want to go that route because they were surrounded by bigger lots. They went a little bit too far, however, and were requesting permission to allow the 40.5 percent coverage.

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.

In discussion Mr. Davitt said he applauded whoever designed the house and laid it out on the lot that he did meet all the setbacks. He asked the staff if the calculations of the percentage of the area was based solely on the first floor, or did it also take into consideration the area of the second floor.

**Board of Zoning Adjustment
October 2, 2006**

Mr. Palombo said it was the building footprint. If there was an accessory building on that lot, that would also be computed.

Mr. Williams said he understood that anything under the roof was the footprint.

Mr. Whistler said it would include anything under the roof, and over three feet high. He gave an example of an open deck where the floor of the deck was below three feet above grade. In that case, that would not count toward your site coverage.

Mr. Davitt commented that he was in favor of this because it was all in-line. It did not stand out away from the house.

After discussion a motion was made by Mr. Davitt and seconded by Mr. Guess to approve this request for a Site Coverage Variance to allow the construction of single-family dwelling with 40.5% site coverage at the above referenced location.

The vote was five in favor of the motion and one against.

The motion carried.

OTHER BUSINESS

Mr. Davitt asked if there had been any cases appealed recently.

Mr. Lawler said that Blue Rabbits had appealed the decision in that case, however, the appeal came about a month after the 15-day appeal period.

There being no further business, the meeting was adjourned.

APPROVED: November 6, 2006

Reid Cummings
Chairman

ms