

BOARD OF ZONING ADJUSTMENT MINUTES
MEETING OF SEPTEMBER 13, 2004 - 2:00 P.M.
MOBILE GOVERNMENT PLAZA, MULTI-PURPOSE ROOM

MEMBERS PRESENT

Reid Cummings, Chairman
Stephen J. Davitt, Jr.
Rev. Clarence Cooke
Martha Collier
H. Lamar Lee

MEMBERS ABSENT

Horace Christian
William Guess

STAFF PRESENT

Margaret Pappas, Planner II
Mae Sciple, Secretary II
Rose Murphy, Secretary II

OTHERS PRESENT

David Roberts, Traffic Engineering
Wanda Cochran, 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.

HOLDOVER:

#5252

(Case #ZON2004-01341)

Austal USA

(South side of Dunlap Drive, between Dunlap Drive & Highway 90, adjacent to the North side of Bankhead Tunnel)

Parking and Use Variances to allow 94 parking spaces in a R-1, Single-Family Residential District; the Zoning Ordinance requires all parking to be located on site and parking lots are prohibited in R-1, Single-Family Residential Districts.

The plan illustrates the proposed parking lot.

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

Don Rowe, Rowe Surveying and Engineering, was present representing the applicant and concurred with the staff's recommendation. He noted, however, that the applicant had applied to rezone this R-1 site to an industrial zoning. At its meeting of August 19, 2004, the Planning Commission recommended approval to the City Council.

In discussion Ms. Collier asked if the little knoll would be kept as it is. She also asked about the location of the parking.

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Mr. Rowe stated that there would be minimal grading. Also, they would have to meet the City minimum landscaping requirements. Drainage was already in place. As for parking, Mr. Rowe said all the parking would be in one place at that point.

Ms. Pappas noted that when you enter Bankhead tunnel there were trees and so forth to the right, and asked if those were on State property.

Mr. Rowe replied that they were on State property and would not be touched.

Mr. Cummings commented that if the City Council approves the Planning Commission's recommendation for rezoning, the use variance would be moot.

After discussion a motion was made by Mr. Lee and seconded by Mr. Cooke to approve the off-site parking variance subject to the following conditions: 1) full compliance with the landscaping and tree planting requirements of the Ordinance; and 2) full compliance with all municipal codes and ordinances.

Mr. Cummings noted that the motion was to approve the variance for off-site parking only. He asked counsel if the Board should also address the use variance or table it at this time pending the outcome of the rezoning request.

Wanda Cochran stated that since the zoning was pending before the Council, the use variance should not be addressed until after the City Council rules on the rezoning request.

Mr. Cummings called for a vote on the motion. The motion carried unanimously.

#5257

(Case #ZON2004-01588)

City Of Mobile Urban Development Department

North side of Old Shell Road, 550' + East of Pine Street

(adjacent to the South of LifeTouch Portraits—957 Springhill Avenue)

Administrative Review to determine if the staff erred in granting legal, nonconforming status to an unpaved, commercial driveway in a R-1, Single-Family Residential District.

Rosemarie Jordan, executive assistant for the property owner and for the vice-president and international service manager, was present on behalf of the applicant.

Joyce Lundy, also assistant to Mr. Ward, the applicant, stated that Mr. Ward was required to be at the corporate headquarters in Minneapolis and was unable to attend the meeting today. She read a written statement from Mr. Ward as follows:

“Dear Commissioners: Thank you so much for your consideration of our application for a use variance for the property adjacent to our building on Old Shell Road. I do apologize for not being able to appear before you personally today, but my presence was mandated at a meeting with our corporation CEO in Minneapolis, Minnesota. Life Touch Pre-School Portraits has operated in the City of Mobile for more than 20 years. We currently employ 57 area residents at our facility on Spring Hill Avenue. Life Touch National School Studios, the nations

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largest employee-owned company in the U.S., and owner of Life Touch Pre-School Portraits, is fully committed to and desirous of expanding this Mobile operations facility which now supports approximately 200 field staff across the United States. Selection of the building on Spring Hill Avenue was made specifically to accommodate our expansion and because of our continued commitment to Mobile and its residents. One critical area considered for the Spring Hill Avenue site was the safety of employees to the building. It was recognized early on in our site preparation that exiting the parking lot onto Spring Hill Avenue presented a serious visual hazard for drivers because of two large Oak trees that line the street immediately west of the building. These trees are protected and cannot be removed. Therefore, we requested and were given permission by the Urban Development Department to continue use of the driveway across the vacant lots on Old Shell Road for access to and from the Spring Hill Avenue facility. We now respectfully request that this decision not be rescinded in consideration of the above stated compelling safety issues for our employees and visitors.”

Ms. Lundy stated that the next portion of Mr. Ward’s letter addressed Case #5258, a request by Mr. Ward for a use variance to allow off-site parking in an R-1, single-family residential district, as follows:

“Life Touch Pre-School Portraits is committed to being a good corporate citizen and while offering employment opportunities, we also desire to bring improvements to the community in which we reside. A significant investment both internally and externally has been made to a building which stood as an eyesore and deterrent to improving property values. Additional redevelopment of this and the adjacent property on Old Shell Road has been specifically designed to enhance the beauty of our community. The design incorporates trees, plants and shrubbery native to the area and will reflect the historic nature of our community. No commercial building of any sort will be situated on this property. We respectfully request your approval of a use variance to allow off-site parking on the Old Shell Road lots. Though I am unable to answer your questions, my representatives and neighbor are available to provide any additional information you may require. I sincerely thank you for your favored consideration today. Sincerely, George M. Ward.”

Ms. Pappas pointed out that there were two different applications before the Board today, and Ms. Lundy was speaking more specifically in regard to the use variance rather than the administrative review. She said it would probably be best to consider them simultaneously.

Mr. Cummings agreed.

Ms. Jordan addressed the issue of whether or not there had been continued use of the access, and whether or not there had been use of the access after the building had been unoccupied. They were asked to seek proof or have someone come and address this issue. They asked one of the neighbors, Mr. Gerald Allen, who resided right beside the property and had knowledge of what was going on at that property during this time, to speak.

Gerald T. Allen stated that he resided at 953 Spring Hill Avenue and had been at that address his entire life. He stated that prior to Mr. Ward’s purchase of the property it was vacant, and prior to that it was M & M Florist. Prior to that it was Otis Lee Motorcycle Shop. He indicated that the driveway had been in continuous use by local residents, both pedestrian and vehicular traffic, for

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at least 10 years. He had used it himself as a short cut between Old Shell and Spring Hill Avenue.

Mr. Cummings asked Mr. Allen if he could recall how long a period of time it was that the property was vacant prior to Mr. Ward buying it.

Mr. Allen replied that it seemed that it was at least five years, maybe longer.

Ms. Lundy presented photographs that Mr. Ward had taken at the time he purchased the property that actually shows vehicles moving through the property as the pictures were being taken. This would support the fact that the access was in continuous use even though the building itself was not occupied.

Ms. Jordan noted that it also definitely showed that the driveway was not grown up. She said they also had a survey that does show that the property was not chained up. The survey actually shows that the gate would not even meet. This proves that the property was not secured in a manner that the traffic could not pass through, as stated in an affidavit provided by one of the neighbors, Mr. McCleave.

Mr. Cummings referred to a 1997 aerial photograph which does appear to indicate that the driveway, although there were no cars on it, was not grown over. A photo from 2002 shows similar conditions. He also retrieved from the file an affidavit dated May 26, 2004, from Daniel McCleave stating in part that he had resided at 1010 Old Shell Road since 1979. During that time he had the opportunity to observe the lots located directly east of 1000 Old Shell Road.

Mr. Cummings further stated that there were two items before the Board regarding this property. One was an administrative review to see if the decision made by Urban Development was in error. At the same time, there was a case before the Board that deals with a request for a use variance to allow for off-site parking in the very area they were talking about. He said they would go ahead and hear these two matters simultaneously and would more than likely rule on all of them at one time. Mr. Cummings asked if anyone had anything to say in opposition to please come forward.

Daniel McCleave stated that he was not sure when M & M Florist went out of business, but it was before August of 1997. He had an affidavit from Ted Hall, who was the trustee in bankruptcy for that group, who testified that *"To my knowledge M & M Wholesale Florist had ceased doing business prior to their filing of bankruptcy petition on August 28, 1997"*. He submitted of the affidavit.

Mr. Cummings read from Mr. McCleave's affidavit referred to earlier that to the best of his recollection *"...access from the Old Shell Road residential lot to Spring Hill Avenue commercial lot was completely cut off for several years."* He also stated that *"...at no time during my residency on Old Shell Road has the driveway and lot directly east of 1000 Old Shell Road been regularly used as a commercial interest to the property located at 959 Spring Hill Avenue."* Mr. Cummings asked Mr. McCleave if he had lived at that location since 1979 continuously.

Mr. McCleave replied that he had. He also presented the warranty deed where the present owners purchased the property, which was dated March 30, 2000. He further stated that prior to

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recent times the property had a house on it and there was a small driveway that ran around the side of the house. He submitted a photo that the Historic Development Commission had given him that showed a modest home, driveway, and sapling in front of the house. He also had a photo taken approximately six months ago showing a large tree, which was actually the sapling shown in the previous picture.

Mr. Cummings asked when the first photo was taken.

Mr. McCleave said he did not know, but when he first moved to the neighborhood that house, although not occupied, was still there. That would have been in the late '70s or early '80s. He recalled that the house was torn down in the mid to late '80s. He said he wanted to show that the type of use of the driveway was not consistent with what it was in the '70s and '80s. There were other neighbors present who would testify that there was a fence across the back of that property and the fence was locked. There was no ingress or egress for many, many years. Mr. McCleave said this was backed up by the fact that M & M Florist went out of business sometime before 1978, and no one else carried on business at the location for some time. He presented a petition signed by a number of residents in opposition to this requested use variance.

Mr. Cummings read the petition, as follows: "*We the residents who live in the vicinity of 957 Spring Hill Avenue, would like to document our opposition to the proposed variance to allow off-site parking at the above mentioned R-1, single-family residential district*". There were 20 or so signatures.

Finally, Mr. McCleave submitted a photograph of the to demonstrate that this is a residential neighborhood.

Mr. Cummings asked Mr. McCleave if, in the 25 years he had lived there, either when the business was located there or when the building was vacant, had he ever observed anybody using this as an access, and did he personally ever use it as an access.

Mr. McCleave replied that he never did, but he had talked to people who said that they actually drove through there once or twice. He never saw it used as a commercial access to M & M Florist, although some have said that it was. But he did observe that there was a period of time when no one used it and that whole area had grown up.

Mr. Cummings asked if he would say that the reason was because the gate was locked.

Mr. McCleave said the gate was locked and there was no business going on there.

Zelma Chitty, a resident of 951 Old Shell Road at LeBaron Avenue, expressed concern about additional traffic coming off of that driveway into Old Shell Road and into LeBaron Avenue. LeBaron Avenue was a one-lane street with two-way traffic. Mr. Chitty said he had been in that house since July of 1997, and he knew for a fact that the gate was locked from 1997 to 2002. The subject lot is four houses from him and he walked that street five or six times a week, and said most of the use that has been from that driveway during the time that gate was closed was from the home next door. He noted positive changes that had occurred in the neighborhood over the past two years. He again expressed concern that allowing use of the driveway would add to the traffic problem on LeBaron Avenue.

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Harry Stewart stated that he owned property at 909 Old Shell Road, which was on the other side of LeBaron and Old Shell Road. He had lived at 12 Lebaron Avenue for 12 years and had never driven between Old Shell Road and Spring Hill Avenue through anything but Pine Street or Broad Street and he really had not ever seen anybody else use it. He had seen it with the gate open all the way through in the last few years, but had not really seen much traffic through it. He agreed with Mr. Chitty that if a commercial parking lot was allowed, that an already difficult situation with vehicular traffic on the one-lane LeBaron Avenue was going to increase because there's nothing else between Broad and Pine to cover that whole area. He also expressed concern for the safety of children in the neighborhood.

Evans Crowe stated that he owned the property at 960 Old Shell Road. As far as the variance was concerned, he didn't see that the applicant had shown any hardship. Neither did they show hardship two years ago when they were here. Unless they show that, he said they shouldn't be able to prevail.

There being no further opposition to speak, Mr. Cummings asked if either Ms. Jordan or Ms. Lundy would like to respond. He also pointed out that what the last speaker said was absolutely true. The burden is on the applicant to prove hardship for the property. That means they need to tell the Board why this property can't be used for anything other than for a parking lot, other than the fact that Mr. Ward owns it and wants it so.

Ms. Jordan noted that the only reason they had stopped using the Spring Hill Avenue access was that prior to them even moving to the building there were two accidents with people trying to exit onto Spring Hill. There were two enormous, beautiful Live Oak trees at that driveway which block the view of oncoming traffic. They had been told by the City that they could not remove those trees. This is why they wanted the Old Shell Road access. They knew that the Old Shell Road property had been used as access and the property was sold with the understanding that M & M Florist had even used that drive for their truck access to their dock because their trucks could not make the sharp turn coming in from Spring Hill Avenue. They were using the Old Shell Road property to access their loading dock which is on the backside of their property. Ms. Jordan said the company continues to grow and had outgrown the Spring Hill property. She presented photos of how the property looked before they bought it with abandoned trucks and such. People still park their vehicles there and throw trash there but they try to keep the grass mowed. They have tried to keep it as aesthetically pleasing to the neighborhood as they possibly could.

Ms. Collier asked if she understood correctly that they were expanding the facility.

Ms. Jordan said they were expecting this particular facility to expand extensively. At this point in time if that happens they will not have the parking facilities that they would need. If that is the case, they fear the Minneapolis office would decide that if they cannot handle this in Mobile, they will shut them down and move everything to Minneapolis.

Regarding the issue of the gate, Ms. Lundy stated that after he bought the building Mr. Ward erected the gate, because it was his intention to access from Spring Hill Avenue. It was prior to them moving in to take over operations that those accidents occurred. That was when the

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application was made to change the use so that they could go back to continuous use of that driveway.

Ms. Jordan also pointed out that the historic society only let the gate stay up for about two months because the fence did not meet their criteria, so it had to come down anyway and they had to move it back. Ms. Lundy felt that what some neighbors might recall was the gate that Mr. Ward actually put up when he took over ownership, but that was for a very, very short period of time.

Ms. Jordan presented a certified survey done by Byrd Surveying in February of the year they purchased the property that very clearly showed that the gate did not even touch, so it could not have been locked.

Ms. Pappas related license information was requested by the Board at the last meeting. Correspondence from Revenue indicates that M & M Wholesale Florist's business license at 957 Spring Hill Avenue was deleted in 1997. Life Touch National Studio began business in 1993 at 1119 Dauphin Street, and moved to the 957 Spring Hill Avenue location in May 2003. They had no record of any business activity at 957 Spring Hill Avenue between December 1997 and May 2003, according to the Revenue Department computer records.

Ms. Jordan said that April 2003 was when their primary business moved there, but prior to that, almost immediately after their purchase of the property, their warehouse was moved over into that building.

Mr. Cummings asked if he understood correctly that the purchase of the property occurred on March 30, 2000, and that even though they did not do any business other than a warehouse use until 2003, they owned it in March of 2000.

Ms. Jordan stated that was correct.

Mr. Cummings pointed out that they presently have 26 parking spaces on that site now, and their proposal showed they have 40 or so additional spaces planned. He asked if they had a need for 60-70 spaces overall.

Ms. Lundy stated that there was a second floor to that building that was office space that was not currently being utilized, and that was what they were looking at. They currently occupied the first floor with the 57 employees, but the growth opportunity is there because they could use the second floor. She did not know if it would actually double the number of spaces needed. They just know that there will be some growth and they were making plans for that.

Mr. Cummings asked if they knew, roughly, when this building was first constructed on this site. Was it more than 30 or 40 years ago?

Ms. Lundy said that it was. It was originally a union building.

Mr. Cummings said his point was that the building was built there prior to the Zoning Ordinance going into effect. Now the Zoning Ordinance is in effect and has been in effect for a long time. He said he also wanted to point out that before the Board takes this under review, that this Board

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was not in the business of putting people out of work, or putting neighbors out of their homes or making their streets safer or not safer. That's Traffic Engineering and the Police Department and lots of other departments that they have nothing to do with. The Board's job is strictly to interpret and to enforce as best they know how, the Zoning Ordinance. So whatever happens as a result of the decision with regard to their business's future might be regrettable from their standpoint or from somebody else's standpoint. That is not something that the Board has the power over and certainly, as he mentioned at the beginning of the meeting, if things don't go the applicant's way or opponent's way, the next step is Circuit Court.

Mr. Crowe pointed out that the original question was could they show the Board any evidence of a hardship, and everything they were talking about relates to the Spring Hill Avenue property. None of that relates to the ownership of the three R-1 lots on Old Shell Road. Further, they hadn't shown any hardship regarding the use of those three lots. Mr. Crowe said what he said previously about the non-conforming use still stands.

Ms. Stewart stated that she lived on LeBaron Avenue right next to Old Shell Road. She was concerned that the property was not kept up. There were high grass and weeds. They have had this property for two years with approval to use it as a drive and they had done nothing to improve the lot during these two years. She felt their proposal to beautify it after they make it a parking lot would not be carried out.

Mr. Cummings pointed out that no variance was granted in 2000. The application that was heard by the Board in 2000 was to utilize that property for parking, and that variance was denied. There was no condition to the denial that said you have to shut it up and you can't go back and forth as you like, or anybody else can't go back and forth as they like. The Board didn't say go keep your property up and come back and see us again in four years.

Regarding upkeep of the property, Ms. Lundy said they did make every effort to keep the grass cut and the trash picked up, but this was a public street. She said they could not do anything to the driveway, however, because they were precluded from doing that because of the historical nature they were living under, and that you cannot do anything else to it because of the way it was zoned.

Mr. Cummings pointed out that this was not a public street. It was a private piece of property. So if their failure to keep trash off their private property has nothing to do with the failure on the part of the City or anybody else. Also, if the property is zoned R-1, perhaps that was why nothing has been able to be done to the property because they did not want to build a house there.

Mr. Davitt asked for clarification that the commercial access was from Old Shell Road.

Mr. Cummings said that was not correct. The access was from Spring Hill Avenue, but they were coming from both sides. But all this property was commercially zoned and that's where they have their driveway coming in currently.

Mr. Davitt asked if that ran with the ownership of the property.

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Ms. Pappas said that it did. Regarding #5257, the administrative review, the driveway runs from Old Shell Road to the Spring Hill Avenue site, running across residential property and it is a driveway that is used for a commercial operation. That would not be allowed under the current Zoning Ordinance.

Ms. Cochran stated that the issue was whether it was a legal non-conforming use so they can continue to use it. And, assuming that they can continue to use it, can they expand it?

Mr. Davitt said the question was, who was using it.

Ms. Pappas stated that the use was tied to the property.

Ms. Cochran said the question was, does use of a driveway by the general public confer legal, non-conforming status, whether there was a business there or not. The business license record shows that whatever date, there has been at least a two-year period that there was no business there. Even though there is no business there, does the fact that it may have been used by members of the public create a non-conforming use? Does that give it an active status?

Mr. Davitt felt there was no difference than somebody buying a piece of property and for years there's a pig trail. They've got prescriptive rights.

Ms. Cochran said she would look at the ordinance.

Mr. Cummings noted that if the decision of the Board on the variance was approved, the answer to that question matters not. The administrative review would be moot.

Ms. Pappas said that was correct because the requested variance, #5258, would allow parking there. If the parking were allowed there, the administrative review would be moot because then the Board has granted approval for the access between the two properties. If the use variance, #5258, were denied, there would still be the issue as to whether or not the driveway enjoys legal non-conforming status.

Mr. Cummings decided that they would consider the use variance first.

Ms. Collier noted that the property was zoned R-1 and she would certainly like to see three lovely homes there.

Mr. Cummings said it occurred to him that perhaps down the road a portion of the north side of two of those lots that front on Old Shell Road could perhaps be resubdivided into the Spring Hill Avenue property, and give them some additional land on which to expand their parking.

Ms. Collier said she had observed that parking could exist on all three sides of the property, and does not efficiently do that right now.

After discussion a motion was made by Mr. Davitt and seconded by Ms. Collier to deny the variance.

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In further discussion Mr. Cummings stated that hardship for the property itself being zoned R-1 does not exist, apparently. If the consequences of a denial result in difficulties for the business in its existence at this location it's regrettable, but then that's why we have a Zoning Ordinance. The applicant has avenues that are available down the road.

There being no further discussion, the Chairman called the question. The motion carried.

Mr. Cummings stated that the Board would now consider the administrative review of whether an error was made by the staff, and specifically, to determine if the staff erred in granting legal non-conforming status to an unpaved commercial driveway. He asked Ms. Cochran to address this issue.

Ms. Cochran stated that she thought she could answer Mr. Davitt's question by turning to the Zoning Ordinance, but she could not. The Zoning Ordinance does not specifically address that issue. She said there might be some cases out there that do, but she would have to go read them.

Mr. Cummings called their attention back to the affidavit given by Mr. McCleave, in which he says that at some point in the 1990s the wholesale florist company went out of business. That was in 1997. And during all this time there was a chain link fence with a gate between the residential properties on Old Shell Road and the commercial property on Spring Hill Avenue. So that would presuppose that access was not available from Old Shell Road to Spring Hill Avenue before that period of time, and from Spring Hill Avenue to Old Shell Road. So it was not a continuously traversed pig trail or unpaved driveway or commercial access to and from Spring Hill Avenue and Old Shell Road. As far as what the Board had been presented today, it appeared to Mr. Cummings that at some point there was a gap. Sometime between 1997 and 2000 or longer the property was not continually accessible from Old Shell Road to Spring Hill Avenue and back.

Ms. Cochran said if you treat that as an appurtenance to the business, then what they were saying was that regardless of what the zoning was or the fact that it was a separate parcel, it wasn't part of a business operation for at least two years. It was not an appendage.

Mr. Cummings said the answer to Mr. Davitt's question was, and perhaps should be, is the fact that even though the business was not there and it was an open pig trail and people used it, does that make a legal non-conforming use. But according to the affidavit, somewhere along that path it was closed and blocked so that you couldn't use it from one end to the other during a period of probably more than two years. But testimony was given that at some point for a period greater than two years it was not continuously open from one street to the other.

After discussion a motion was made by Mr. Davitt and seconded by Mr. Lee to overturn the staff's recommendation and to effectively say that the staff erred in its granting of a legal non-conforming status to an unpaved commercial driveway.

The motion carried unanimously.

In further discussion Ms. Cochran noted that the Urban Forester was not present, and she recollected that the Urban Forester said that one of those trees could come out. If the employees

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of Life Touch just made a right turn only, that would probably alleviate their safety problem. Turning left of course would remain a problem.

Ms. Clarke said the staff would check with Mr. Ward, because she believed he had a conversation with the Forester, and to see if there needed to be additional conversation with the Forestry Department as well as Traffic Engineering, to further address that.

Further, Mr. Cummings wanted to make the point that perhaps another look at this overall piece of property might result in some further subdivision of the property to shorten the depth of residential lots on Old Shell Road, still leaving plenty of room for Mr. Ward or whoever comes later to sell those to somebody who wants to build a residential houses there, thereby you could pick up some additional parking. He suggested they might also be able to accommodate a drive that circles that building and back out on Spring Hill Avenue, and maybe make it a one-way drive. That would rearrange their parking layout a little bit. He said these were all just theories they might want to look at.

EXTENSION:

#5160

(Case # ZON2003-00050)

Krewe of Marry Mates, Inc.

810 Kentucky Street

(Area bounded on the West by South Washington Avenue, on the South by Kentucky Street, on the East by South Scott Street, and the North by Tennessee Street [unopen] and Illinois Central Gulf Railroad right-of-way)

Use Variance to allow the construction of three 200' x 90' float barns in a B-3, Community Business District and a R-2, Two-Family Residential District; float barns are allowed with Planning Approval in a B-4, General Business District and allowed by right in an I-1, Light Industrial District.

The plan illustrates the proposed buildings, driveways, parking and landscape.

A motion was made by Mr. Lee and seconded by Mr. Davitt to approve the request for a one-year extension of the previously approved Variance.

The motion carried unanimously.

PUBLIC HEARINGS:

#5258

(Case #ZON2004-01620)

Springhill Properties, L.L.C. (Mike Ward, Agent)

957 Springhill Avenue

(North side of Old Shell Road, 550' ± East of Pine Street)

Use Variance to allow off-site parking in a R-1, Single-Family Residential District; commercial parking lots are allowed by right in a B-1, Buffer-Business District.

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The plan illustrates the existing structure and asphalt parking; along with the proposed structure and 20' ingress/egress easement.

See Case #5257 for discussion.

A motion was made by Mr. Davitt and seconded by Ms. Collier to deny this request.

The motion carried unanimously.

#5259

(Case #ZON2004-01701)

Oakleigh Venture Revolving Fund (Douglas Kearley, Agent)

351 Charles Street

(Southeast corner of Charles and Savannah Street)

Fence Height Variance to allow the construction of a 6' wooden privacy fence along a side street property line in a R-1, Single-Family Residential District; a 20' side yard setback is required for a fence higher than 3', or a minimum side street setback of 20' is required for

The site plan illustrates the existing buildings, walks, drives, and fencing along with the proposed building additions.

Douglas Kearley was present representing the applicant and concurred with the staff recommendations.

A motion was made by Mr. Davitt and seconded by Mr. Lee to approve this request.

The motion carried unanimously.

#5260

(Case #ZON2004-01702)

Professional Associates, L.L.C.

801 University Boulevard

(Northeast corner of University Boulevard and Georgian Avenue)

Sign Variance to allow a 10' x 6' free standing within the right-of-way; all signs must be located on-site (private property).

The site plan illustrates the existing buildings, parking, and drives along with the proposed sign location.

Jeff Head was present representing the applicant and concurred with the staff recommendations.

Ms. Clarke stated that they were subdividing the property and buying their individual buildings, which brought to light the sign in the right-of-way, thus the need for a sign variance.

A motion was made by Mr. Lee and seconded by Mr. Davitt to approve this request subject to the following conditions: 1) if Georgian Drive is widened, the sign will be removed; and 2) if the sign is expanded the sign must be removed or a new sign variance obtained.

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The motion carried unanimously.

#5261

(Case #ZON2004-01733)

Mary Jo Zoghby

1800 Dauphin Street

(Northwest corner of Dauphin and Kenneth Street)

Use and Parking Ratio Variances to allow a law office with three on-site parking spaces in a R-1, Single-Family Residential District; a law office requires a minimum of B-1, Buffer Business District, a 2,000 sq. ft. law office with a single-family residence and garage apartment requires a minimum of ten on-site parking spaces.

The site plan illustrates the existing buildings, landscaping, drives, and proposed parking spaces.

Ms. Collier recused from discussion and voting in this matter.

Mary Jo Zoghby, applicant, was present and stated she had resided at 1800 Dauphin Street for 36 years. Her children were all grown and had left home and her husband died nine years ago. She has lived alone in the house for the last five years. Due to an accident four years ago in which she injured her leg, and her arthritis, it has made it extremely difficult for her to live in a two-story house. All of the bedrooms are upstairs. If she added a bedroom downstairs she would have a five-bedroom house for one person. Ms. Zoghby said she could not go up the steps the way she has been doing. Her home simply does not work for her anymore and it was time for her to move on. She said her home was appraised at fair market value and her appraiser was present for any questions. Her home had been on the market for six months. Some 60-80 people had gone through the house. She noted that she lived on an extremely busy corner of Dauphin and Kenneth Streets. With 80 potential buyers, Ms. Zoghby said she had not had one offer. She finally got an offer about six weeks ago from an attorney who wanted to buy her home to live in upstairs and have his law office downstairs. She noted that across the street from her home there were three lawyers that worked there. In her home, this one attorney wanted to live and work under the same roof. This would be a great convenience and she contended it would add stability to the neighborhood if he continued to live there. Parking was not an issue, as Ms. Zoghby said all they needed was two more parking spaces. The house sits on 80 percent of an acre and the prospective buyer would be happy to put parking for two spaces wherever it was required. In the event the time comes when the prospective buyer wanted to sell the house and move on, he would be buying it R-1 and would be selling it R-1. Ms. Zoghby presented 34 petitions in support of this request from her neighbors and respectfully requested that the Board grant this variance.

Mr. Cummings asked if anyone wanted to speak in favor of this application.

Paul Dobby stated that he had resided at 1807 Dauphin Street for seven years, which was directly across the street from the subject property. He said the majority of the neighbors in the immediate vicinity and adjacent to him had forged a unified commitment to the control of the uses in the neighborhood. They had fought the advancement of Mobile Infirmery's purchase of property along Louiselle and Kenneth Streets. The Infirmery was aggressively purchasing property down the east side of Kenneth, and some say they are looking at property on the west

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side. Mr. Dobby contended that a law office at this location would be much more palatable to him and his neighbors than the potential for a full-scale doctor's office. The requested variance would have a non-commercial look and he felt it would have little or no impact on the neighborhood. Also, obtaining the market value for the subject property maintains the status quo and also increases the future value of the neighboring properties. Mr. Dobby felt that lowering the asking price below market value to obtain strip-residential zoning would in essence devalue the surrounding properties. He and the neighbors he represented strongly urged the Board to approve the variance as requested.

Mr. Cummings stated that the petition presented by Mr. Dobby contained 34 signatures said the signers did not oppose Ms. Zoghby's variance to sell her home to an attorney who will reside upstairs and have a practice of law downstairs.

Felix Vereen stated that he had lived at 1750 Dauphin Street, which was eight houses east of the Zoghby house. He has lived there for the last three years and was very familiar with the neighborhood as he grew up there and came back to retire. He said he was a member of the Mobile Historic Development Commission and a member of the Old Dauphin Way District. He felt that a home business of what was being asked for would not ruin the historic district. He presented a chart showing development from Broad to Tacon Street showing commercial property and churches in yellow. There were 30 law offices, many of which were restored buildings in good condition. He contended that this lawyer would be no exception to the rest of them. Mr. Vereen felt the variance would not be detrimental to the neighborhood. He said he would be opposed, however, to a zoning change. He asked that the Board grant this variance.

Mr. Cummings asked Mr. Vereen how many of the 30 or so law offices shown on the chart he presented were there by variance and how many were there because they were zoned for business.

Mr. Vereen said he did not know, but there were several businesses and residences combined. Several of the homes had been on tour and they did contribute to the neighborhood.

Jim Fernandez, attorney, was present representing Ms. Zoghby. Regarding the parking, he contended there was enough space on the site to do three times the required amount of parking. Mr. Fernandez read from the Zoning Ordinance the criteria for granting a variance and felt this proposal met those requirements. He stated that this case could be taken to court and heard by a jury. The judge would tell the jury that the jury had the burden to reasonably satisfy that the variance should be granted. He read from the jury charge that the law does recognize that situations in various neighborhoods change as time goes on and has provided for a variance to meet situations where a literal enforcement of the Zoning Ordinance would result in unnecessary hardship. Mr. Fernandez said it goes on to say that no one factor determines whether the existing zoning of the property constitutes an unnecessary hardship. All relevant factors and evidence must be considered, and when taken together, must reasonably satisfy you that the plight of property in question is unique and cannot be put to a conforming use because of the limitations imposed on it by the present zoning

He noted that in the staff's recommendation for denial they in essence say that the applicant has to prove that the property cannot be put to a residential use. Because the buyer will live there, he said they could never meet this burden. If the Board were going to follow the spirit of the

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Ordinance and do justice to the neighborhood, it seemed pretty simple and logical to him that you should maximize the residential use. He contended that what they proposed was much better than office space for the Mobile Infirmary in five or six years. Mr. Fernandez stated that the analysis of the staff also correctly pointed out that there was a right under the Ordinance to operate a home office in an R-1 zone, and there were many of them everywhere. He noted that there were some percentage requirements in the Ordinance, and they were asking that they be allowed to use the entire bottom floor, which would be more than 25 percent of the area of the home. The staff's analysis says, however, that this buyer won't qualify because the secretary and/or the paralegal doesn't live in the house too. In other words, if the buyer found a secretary or a paralegal who would live there or who would say she lived there or who would rent one of the rooms, he would have a right to do exactly what they were asking for a variance to do. From that perspective, Mr. Fernandez said they were asking less than many of the side yard, parking and fence variances that you have and will correctly grant today, and have granted in the past. The people who get those variances are going to continue to live right there on that piece of property. He asked why they wanted to give them different criteria. He said all zoning across the board dealt with regulating land use and there was no separate variance provided in the Ordinance for fences or uses or anything. There was just one variance and everybody ought to be treated alike under that. Mr. Fernandez stated that if the Board followed the spirit of the Ordinance and did substantial justice they would grant this variance across the board. He further noted that he had lived three blocks away for almost 17 years and his mother lived there today.

Mr. Cummings asked Mr. Fernandez if it was his contention that neither a hardship can or cannot be proven.

Mr. Fernandez stated that he felt it was a hardship on the gentleman who wanted to work there to not be able to have a secretary come in as an employee when somebody else under the Ordinance can have one there living with them. He felt the rest of the hardship had been demonstrated by the neighbors in terms of what the proper use of that property was and how it most benefited the neighborhood.

Mr. Cummings again asked Mr. Fernandez if it was his contention that the applicant can neither prove nor disprove whether there was a hardship there.

Mr. Fernandez stated that the definition of his burden of proof in the staff analysis was that he would have to prove that the property could never be put to a residential use, and that, because someone is going to live there, necessarily he would never be able to meet that burden.

Mr. Cummings stated that the burden there was to prove that it couldn't be used for anything other than a residential house. The property is zoned R-1. In order to get a variance for a use you have to have a hardship for the property. With due respect for Ms. Zoghby and her injuries, not the hardship for her being able to get up and down the stairs, but hardship for the property as to why the property cannot be used for the purpose for which it was zoned.

Mr. Fernandez said the concept of unnecessary hardship, just as in the jury charge, was not limited to one certain instance. He said if the Board read the analysis they had been given they would be told that you could not prove an unnecessary hardship because he was going to live there. Mr. Fernandez said he disagreed with that.

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Wanda Cochran asked Mr. Ferdandez if he would pass out the jury charge. Mr. Ferdandez did so.

Leon Nelson stated that he lived at 1821 Dauphin Street, which was seven houses west of the Zoghby property. It was his opinion that a variance given for the gentleman to work downstairs as an attorney would not in any way negatively affect his property. Mr. Nelson did the appraisal for this property.

Mr. Cummings asked Mr. Nelson, what, in his opinion as a licensed appraiser in the State of Alabama, was the highest and best use for this property.

Mr. Nelson replied that the highest and best use was a single-family residence for the purpose of the appraisal that was given. He said when a potential buyer looked at the house they would obviously be aware of what the listing price was. The listing price was very close to the market value given on it. The individuals were therefore aware of what the asking price was. So obviously, there was something else that was a concern, and they believe the concern was with the heavy traffic on the street that it was sitting on. Personally, being a resident, Mr. Nelson said there was a law firm on the corner across the street from Ms. Zoghby and, therefore, with an individual resident residing here and working in a portion of the downstairs as an attorney, that would not have any effect on the surrounding properties because it would have the same use with the law offices in the immediate vicinity.

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

Barry Dumas stated that he was raised on Dauphin Street and was raising his own family at 1826 Dauphin Street and he did not want any more lawyers in his block. He noted that there was a corridor from Kenneth Street west to Fulton Street that was purely residential, and then as you go on to Upham Street it was mixed. He said that there was a case before the Court of Civil Appeals in 1996 that addressed a variance requested and denied by this Board for an accounting firm to acquire a house on the corner of Upham and Dauphin. The decision was appealed and Judge McDermott overturned the Board. Mr. Lawler instituted an appeal to which the Court of Civil Appeals stated that after thoroughly reviewing the records they concluded that the Circuit Court incorrectly applied the law of unnecessary hardship to the facts before it. Further, it was apparent to this Court that the Board's denial of the variance was based upon the following factors that the Circuit Court either ignored or found not significant enough to justify denying the variance. These three things he felt were pertinent to this request: (1) Upham Street was a boundary between residences to the west and business and commercial uses to the east on Dauphin Street. Mr. Dumas felt this was very much like Kenneth Street all the way down to Fulton Street. (2) Although the property in question might not be as inviting or as desirable for residential purposes as other properties on Dauphin Street west of Upham – which he said was certainly not the case with Ms. Zoghby's house; it was not unfit for residential purposes. (3) If a use variance was granted for the first lot on the first block west of Upham Street, then the continued existence of the residential character of the rest of the block was threatened. Mr. Dumas said what the Board was called upon to do in enforcing the Zoning Ordinance was to retain the residential character. He said there were several residents west and some east of the subject property who opposed this application and submitted a petition in opposition.

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Mr. Cummings read the petition which stated that the undersigned residents of homes in the vicinity of 1800 Dauphin Street objected to the application for variance. Specifically, they objected to a variance application which seeks the allowance of a use of a portion of the property for professional office space. There were 24 signatures of residents of Dauphin Street, with a total of 38.

Mr. Dumas further stated that when they bought their home at 1826 Dauphin Street in 1989 they had occasion to come before this Board on a Mobile Infirmary variance request at Old Shell Road and North Carlen Street, which was ultimately denied. He said they came to appreciate what the Board was trying to do in this area, which was to preserve the old houses as residential R-1. He said he and his neighbors had invested a great deal in keeping up these old homes and upgrading them. Mr. Dumas noted that Craig and Pricilla Turner had recently bought a house in the middle of their block. It was bought after the house had been vacant for about six months. With regard to splitting the use, he was concerned that they might end up with a situation where you have separate meters and that type of thing. He also felt parking would be a problem and did not want it to become a commercial parking lot like on Carlen Street and Old Shell Road. He felt there was no way that the property would ever revert back to residential once it got those vestiges of commercial and they would be stuck with it.

Ruth Rye of 166 South Street stated that she was a neighbor and was very concerned. She had lived in midtown for 17 years. She was not speaking as a neighbor, although she was in this block that was pristinely only residential, except for the church, all the way up to Fulton Street. Ms. Rye said she was speaking as a realtor who had been selling houses in midtown and downtown for eight years. She had found that families do not choose to live close to commercial and property values drop dramatically when you are close to commercial. She gave several examples. Ms. Rye also contended that based on research, houses in the area over \$400,000 take an average 397 days to sell. So it takes a good deal longer than six months, and that was not what she considered a hardship. She contended that the house did not sell because it was on a busy intersection. Also, the price could be too high or there could be a condition inside the house that was not up to \$400,000 standards. As to those who say this could be so much worse, as Mobile Infirmary could buy it and put an office there; she said that could not happen because it would not be allowed under the Zoning Ordinance.

Cheryl Dumas stated that as her husband said, they lived in the middle of their block and raised their family there and had enjoyed their life on Dauphin Street for the last 15 years. She said over the years there had been several variance requests on Dauphin Street, and the Board had denied them. They were told that it was the desire and intent of the Board that this area stay residential and that the residents could count on that. Ms. Dumas expressed appreciation for what they had done for them. Last year there was the issue that came up at Kenneth and Dauphin Streets and the park the Mobile Infirmary wanted to put there. She said they were not happy with that but felt that they made the best decision they could. It had improved that property, and if anything it had enhanced the corner piece of property that they were talking about today. Ms. Dumas said most of the people that live near Ms. Zoghby were very concerned about the Mobile Infirmary, but said the Board had done a tremendous job in protecting them.

Bobbie Ford stated that they bought their house at 1828 Dauphin Street in 1992 and renovated it, and they did not want a parking lot next to them.

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In further discussion Mr. Lee stated that it was his opinion that a use variance was granted in perpetuity. Once you find a hardship it is difficult to say to the next owner that they do not have a hardship. He said this Board does not make policy. Many good arguments have been made to have commercial in the neighborhood, but those needed to be presented to the Planning Commission.

After discussion Mr. Lee said he had sympathy for Ms. Zoghby but felt there was no hardship and moved that this request be denied. Mr. Davitt seconded the motion. Ms. Collier recused.

The motion carried unanimously.

#5262

(Case #ZON2004-01734)

Racetrac Petroleum, Inc.

(Southwest corner of Government Boulevard and McVay Drive North)

Sign Variance to allow four wall signs and one free-standing sign; a maximum of two wall signs and one free-standing sign is allowed on a single tenant site.

The plan illustrates the proposed buildings, parking and signs.

Jamie Reedy was present representing the applicant and explained this request. She they were proposing extensive landscaping and were following the tree ordinance, but nothing was required above and beyond trees. The property sits far back 100 feet from the pavement. The canopy signs are another 50 feet beyond that. Their setbacks are further than the neighbors. Ms. Reedy showed photo of the surrounding properties and their signs which she said showed there was precedence and that they did have a hardship with their large amount of right-of-way distance.

Chairman Cummings noted that the only access was off of McVay Drive. It was recommended for denial because it was over the maximum allowable number of wall signs.

After discussion a motion was made by Mr. Lee and seconded by Mr. Cooke to deny this request

The motion carried unanimously.

#5263

(Case #ZON2004-01740)

Glenda and Briand Saba (Douglas Kearley, Agent)

6 Elizabeth Place

(West side of Elizabeth Place, 175' ± South of Dauphin Street)

Side Yard and Total Combined Side Yard Setback Variances to allow the construction of 11' x 20' addition and carport to a residential structure within 2' of a side property line and to allow a combined side yard total of 8.6' in a R-1, Single-Family Residential District; the Zoning Ordinance requires an 8' minimum side yard and a total combined side yard of 20' in a R-1, Single-Family Residential District.

The site plan illustrates the existing and proposed structures.

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Douglas Kearley was present representing the owner and concurred with the staff recommendations.

A motion was made by Mr. Davitt and seconded by Mr. Lee to grant this request subject to the placement of gutters and downspouts along the northern roof edge.

The motion carried unanimously.

#5264

(Case #ZON2004-01741)

S. Reeves Dill (Terry C. Plauche, Agent)

6112 Macarthur Place Court South

(Northeast corner of MacArthur Place Court South and MacArthur Place Court)

Fence Height Variance to allow the construction of an 8' wooden privacy fence along a side street property line in a R-1, Single-Family Residential District; a 20' side yard setback is required for a fence higher than 3', or a minimum side street setback of 20' is required for a 6' privacy fence, on a corner lot in a R-1, Single-Family Residential District

The plan illustrates the existing structure and pool, along with the proposed fence.

Terry Plauche was present on behalf of the applicant. He said that because of the physical separation between the south and the north, plus the deflection of the road, he did not think this would impact that northern part of the subdivision.

After discussion a motion was made by Mr. Davitt and seconded by Mr. Lee to approve this request.

In further discussion Ms. Collier expressed concern that the fence would stick out almost on the sidewalk.

Mr. Cummings noted that there was a 7 ½ foot utility easement that runs parallel to the west property line, and suggested perhaps the fence could be located on the other side of the utility easement. There was some type of gate proposed there and there was a retention pond there. He suggested moving it onto the east side of that utility easement.

Mr. Plauche said that would be acceptable.

Mr. Cummings asked that the motion be amended to approve the fence with the exception that the location parallel to McArthur Place Court be situated east of the 7-½ foot utility easement that runs also parallel to the street.

Mr. Davitt so moved, and Mr. Cooke seconded the revised motion.

The motion carried unanimously.

#5265

(Case #ZON2004-01746)

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Herbert Hollings

280 Magnolia Drive

(South side of Magnolia Drive, 470 ± East of St. Stephens Road)

Use and Access/Maneuvering Variances to allow three apartments and a substandard (9.3') width driveway in a R-1, Single-Family Residential District; the Zoning Ordinance requires a minimum of R-3, Multi-Family Residential for apartments and a 24' wide drive is required for two-way access in a R-1, Single-Family Residential District.

The plan illustrates the existing structure and proposed parking.

Dion Hollings, applicant, was present in this matter. Mr. Hollings stated that prior to his purchasing this property it was vacant for ten years and was an eyesore to the community. He rehabbed the property and brought it back up to code. Now he was requesting a variance so that it could be used as a multi-family dwelling which would be leased to the Gordon Smith Center for mentally and physically challenged individuals, or it would be leased to the Veteran's Administration for disabled veterans. He said he had invested \$30,000 in it and it would be a hardship if he were not granted permission to turn it into multi-family dwellings. Mr. Hollings said an additional hardship was a mortgage he had on that property. He said the property was already zoned multi-family prior to his purchasing it, however, it stayed vacant for so many years that he guessed it went back to single-family.

Mr. Cummings commented that Mr. Hollings' intentions had been tremendous. He bought the property and had obviously spent a lot of time and a lot of money out of pocket. And he also has a mortgage. Mr. Cummings said, however, that those were personal financial hardships. They were not necessarily hardships for the property, and that was the matter before them. He noted that the property itself was zoned and had been zoned since the Zoning Ordinance went into effect as R-1, Single-Family Residential. From what the Board can understand, it was never used as a multi-family dwelling. Chairman Cummings asked Mr. Hollings to tell the Board what the hardship was for the property.

Mr. Hollings stated that it could only be used for multi-family dwellings because it was a duplex, upstairs and downstairs, and there was no way for the family to get from downstairs to upstairs without going outside. There was no access inside the dwelling. There were also separate kitchens, separate bathrooms and separate entrances. He said the property was situated this way when he bought it. It sat vacant for 10 years prior to his purchasing it. It was an eyesore to the community. He had owned it now for almost seven years.

Mr. Cummings asked if the variance were to be granted, how many dwelling units would he operate there?

Mr. Hollings replied that there would be three residences with three separate kitchens and three separate entrances.

Ms. Collier noted that the property was zoned R-1.

Mr. Cummings said that the point was, that he had three separate kitchens, three separate bathrooms and three separate entrances. The hardship to the property may be that you cannot

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have a family living there. There would be no way to access the second floor except to go outside. He asked how many parking spaces would be required for three apartments.

Ms. Pappas stated that five spaces would be required. Mr. Hollings has six spaces.

Mr. Cummings asked how many units were upstairs and how many were downstairs.

Mr. Hollings said there were one unit upstairs and two units downstairs. He said prior to him obtaining it the garage was converted over into a separate apartment, and he just put it back together exactly like it was prior to his purchasing the property. He explained that the property had burned and he gutted the entire thing. It was inspected during each phase of construction.

Mr. Cummings asked if there were three separate addresses for each unit.

Mr. Hollings said there were. There were, however, three separate water meters but one sewer meter that were already in place at the residence. He said they had been there ever since he owned it. He did not know how long there had been three meters there.

Mr. Cummings asked if the water and electricity was currently turned on at all three of those meters.

Mr. Hollings replied that it was. The bills were sent to each individual unit.

Mr. Cummings asked if there was anyone present to speak in favor of this application.

Herbert Hollings, Jr., applicant, stated that they had put a lot of work into the place. He said the building had once been a big crack house. Everything was grown up around it. They did everything they could to try to get it going. He said they had put too much into it to let it go now.

There being no one else to speak in favor of the application, Mr. Cummings asked if there was anybody who would like to speak in opposition.

William Taylor, a resident of 260 Magnolia Drive, expressed his opposition to a multi-family dwelling in the neighborhood. He felt it would devalue their property. Mr. Taylor said he had lived at 260 Magnolia Drive for about 15 years, then he bought another home. He first moved there in 1942 or 1943.

Mr. Cummings asked Mr. Taylor if, during the period of time since he had been familiar with the property, there was ever a time in which there were three apartments there.

Mr. Taylor replied no.

Mr. Cummings said he was curious as to how a single-family house over a period of 40 something years just came to be equipped with three separate kitchens and three separate entrances.

Mr. Taylor said he did not know the answer.

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Mr. Cummings asked if there was anyone else to speak in opposition.

Divina Scott stated that she moved to 263 Magnolia Drive in 1961, and the two-story building was there at that time. It was the Coastman's single family home. Later his mother-in-law moved there. She said one way to get upstairs would be to go in on the first floor and go upstairs to the second floor from the inside. She said she had done it herself. Their mother, his sister who raised him, was ailing and they had her up there. When they moved out Mrs. Kennedy moved in, Mr. Taylor's mother-in-law. There still was one family. When they moved out it was vacant for a spell. Then somebody moved in and they added a garage to it. They had a kitchen upstairs for the old lady and one downstairs for her nephew and his family. Mrs. Scott said they started seeing a lot of different people coming in and out of there, and said they must have put in that third place that Mr. Hollings called the third apartment. When they abandoned it, it was just left there for weeds to grow up around it. Since then, somebody got it and tried to make three units out of it. Naturally the neighbors did not want this in the neighborhood. It was zoned for a one-family dwelling.

Henry Keil, a resident of 274 Magnolia Drive since 1957, stated that from his time up until just recently it had always been a one-family house. The apartments and the meters were recently added to it. He said they had that problem once before when they were trying to make an apartment out of it and it went to court. The judge told them they couldn't do that because they had some illegal meters. That was five or six years ago.

Ollie M. Keil stated that she owned the house next door to the right, and she owned the lot next door to the left. She said there was only four feet on one side. She was concerned that they would park on her property, and she did not plan to sell or give up any of her property.

Mr. Cummings noted that the site plan that was submitted showed their proposed parking and it didn't indicate that there would be any part of their parking lot that would cross over their property line onto Mrs. Keil's property.

Dorothy Dees, a resident of 277 Magnolia Drive, directly across from the subject property, stated that they built their home in 1964, and to her knowledge, the subject property had been a one-family dwelling since then.

The meaning of a one-family dwelling was discussed. Mr. Cummings asked Mrs. Dees if she would consider two or three members of a family living in separate apartments to be all one family.

Mrs. Dees said she would.

Mr. Cummings asked then about the three separate water meters and three separate kitchens.

Mrs. Dees stated that there never separate water meters, unless they had just been put there.

Mr. Cummings asked Mrs. Dees if, to her knowledge, accommodation were made from a construction standpoint to create two additional kitchens.

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Mrs. Dees said not that she knew of, but if it was, it was done as part of the new remodeling that was done. She also said she was having trouble with parking, and that there had never been a drug house in the neighborhood.

Sidney Gamble, a resident of 313 Magnolia Drive, was concerned about property values going down by it being a multi-family dwelling. He presented a petition from the neighborhood in opposition to this being used for multi-family.

Mr. Cummings read the petition with 25 signatures in opposition to a multi-family residence in the neighborhood.

Rhonda Gamble, also a resident of 313 Magnolia Drive, said one of her main concerns was the traffic in and out of that area. The majority of the people on that street were elderly and had owned their homes for many years. She said they had lived there 13 years and in that time no one had lived in the subject property. Also, there had never been a drug house in that neighborhood in that 13-year period. They were concerned about their property values and about the safety for the homeowners on the street.

There being no further opposition to speak, Mr. Cummings asked the applicant if he would like to offer some answers to what they had heard.

Dion Hollings noted that Ms. Scott had stated that at one point in time there were two kitchens for two families, even though they all had the same last name. However, he said it was one kitchen upstairs and one kitchen downstairs. He said he was not familiar with the prior owners the neighbors referred to, as he purchased the property from Rich Carlson Cabinets. With reference to having to go before a judge and a jury, Mr. Hollings said that you had to go before Urban Development when you were going to put a piece of property back together. At each different stage they had to go to court and each stage had to be inspected.

Mr. Cummings said he was not familiar with the process Mr. Hollings was talking about, and asked if he was talking about environmental court.

Mr. Hollings said that was correct, because the property was becoming an eyesore. He told the judge that he intended to renovate the property so he could rent it out as apartments.

Ms. Cochran asked Mr. Hollings when he bought the property and was anybody living there at the time.

Mr. Hollings said he purchased the property in 1985. It was vacant. It had burned.

Ms Cochran asked if anyone had lived there from 1985 until today.

Mr. Hollings said he had lived there three years ago in 2001. He had moved out just recently.

Ms. Cochran asked Mr. Hollings when he got a ticket to go to environmental court, and was he a resident of the property at that time.

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Mr. Hollings said he got the ticket at least three years ago, and he was not a resident at that time. He moved into the property once he conformed to what the environmental court required him to do.

Mr. Cochran asked Mr. Hollings what the ticket was for.

Mr. Hollings said they were complaining that it was an abandoned property and people were dumping on the property. There were also abandoned cars there which didn't belong to him. They belonged to the gentleman who owns the lot next door. Also, looters vandalized the property so it became an eyesore.

Ms. Cochran asked if she understood that the environmental court proceeding had to do with the exterior maintenance of the property.

Mr. Hollings said that was correct.

Mr. Cummings asked Mr. Hollings if all three water meters were in the ground and in place at the time he purchased the property in 1985.

Mr. Hollings replied that they were.

Mr. Cummings asked Mr. Hollings if he had any water bills from that period of time. He asked if he would agree to hold this request over until the next meeting so that he could request information on when the water meters first went into the ground. Similar information could also be requested for the power. That would be an establishment of the creation of three separate units within that building. Whether or not that means that a hardship exists for the property as to why it cannot be reconverted back to single-family is an issue the Board still has to address.

Mr. Hollings agreed to a holdover.

Mr. Cummings then called for a motion to hold over this application until the October 4 meeting.

Mr. Davitt commented that even with the power and water meter information, he had not heard any evidence to illustrate that the non-conforming status, if there was one, would not have expired.

Mr. Cummings said he didn't think that was really the issue. The issue was whether or not there was a hardship for the property as to why it could not be converted to a single-family residence?

Mr. Davitt asked Mr. Hollings when he took out building permits for repairs, was that for a single-family residence.

Mr. Hollings said it was.

Mr. Davitt asked how many power meters were there now.

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Mr. Hollings said right now there was one power meter. When he purchased it there were three power meters on the side of the property. There is one sewer, and three water meters for the entire house.

Mr. Davitt said that even though it could be three apartments, the length of time that has elapsed has expired as far as non-conforming.

Mr. Hollings said that was the reason he had to apply for a single-family permit. It had been vacant so long.

Regarding the question of an inside entrance to the second floor, Ms. Pappas stated that the staff would contact Mr. Hollings and schedule for an inspector to go out and provide photos to the Board.

After discussion a motion was made by Mr. Davitt and seconded by Mr. Cooke to hold over the application until the meeting of October 4, 2004.

The motion carried unanimously.

#5266

(Case #ZON2004-01748)

Mary Campbell

1936 Summer Place Drive West

(East side of Summer Place Drive West, 575 ± South of Summer Place Drive North)

Side Yard and Total Combined Side Yard Setback Variances to allow a carport within 3.5' of a side property line and to allow a combined side yard total of 15.6' in a R-1, Single-Family Residential District; the Zoning Ordinance requires an 8' minimum side yard and a total combined side yard of 20' in a R-1, Single-Family Residential District.

The plan illustrates the existing and proposed structure.

Darryl Martin was present representing the applicant and presented this request. The carport had already been constructed.

Mr. Cummings asked if this was to be an open carport.

Mr. Martin said it was.

Mr. Cummings asked if there were going to be posts that support it on the south side, and how far from the property line would the post be.

Mr. Martin said that actually from the post without the eave would give them eight feet. But it was his understanding they were counting the eave.

Mr. Cummings asked Mr. Martin if he had a current survey.

Mr. Martin said he did not have it with him.

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Ms. Pappas said there was a survey in the file.

Mr. Cummings said it did not indicate the distance he was asking for.

Mr. Martin showed approximately where the posts would be.

Ms. Pappas asked how far it was from the post to the property line.

Mr. Martin said it would be 5'8".

Mr. Cummings asked if this was the survey Mr. Martin took with him when he applied for the permit.

Mr. Martin said no. That was the one he got after he ran into the problem of the setback. He said they were actually going by the fence line.

Mr. Cummings asked if he actually had a copy of the survey that was used when he submitted his permit application, or did he just do a drawing based on what he saw on the site.

Mr. Martin said he just did a drawing based on what he saw.

Ms. Clarke asked if the Board wanted to hold this over and have an inspector go out and verify the distance.

Mr. Cummings asked Mr. Martin if he would consider holding this over so that a correct survey could be submitted. He said the problem was when he went and applied for a permit for residential property, Mr. Martin simply submitted a site drawing and they issued a permit. The problem is now that the actual survey has been. What that suggests, is that the fence that he measured from probably is not on the property line. He said he would like a little extra time for the building inspection department to take a look, and then review this again at our next meeting.

Mr. Martin agreed.

Mr. Cummings entertained a motion to hold this over until the October 4 meeting.

Mr. Collier so moved and Mr. Davitt seconded the motion. The motion carried unanimously.

OTHER BUSINESS:

Appeals

There being no further business, the meeting was adjourned.

APPROVED: December 6, 2004

/s/ Chairman of the Board

/rm & ms