

**MOBILE CITY PLANNING COMMISSION MINUTES**  
**MEETING OF OCTOBER 1, 2009 - 2:00 P.M.**  
**AUDITORIUM, MOBILE GOVERNMENT PLAZA**

**Members Present**

Terry Plauche, Chairman  
Victoria L. Rivizzigno, Secretary  
William D. Curtin  
Stephen J. Davitt, Jr.  
Nicholas H. Holmes, III  
Herbert C. Jordan  
Mead Miller

**Members Absent**

Clinton Johnson  
William G. DeMouy, Jr.  
Roosevelt Turner  
John Vallas  
James F. Watkins, III

**Urban Development Staff Present**

Richard L. Olsen,  
Deputy Director of Planning  
Bert Hoffman,  
Planner II  
Derek Peterson,  
Planner I  
Joanie Stiff-Love,  
Secretary II

**Others Present**

John Lawler,  
Assistant City Attorney  
John Forrester,  
City Engineering  
Jennifer White,  
Traffic Engineering

The notation *motion carried unanimously* indicates a consensus, with the exception of the Chairman who does not participate in voting unless otherwise noted.

Mr. Plauche stated the number of members present constituted a quorum and called the meeting to order, advising all attending of the policies and procedures pertaining to the Planning Commission.

**APPROVL OF MINUTES:**

Mr. Plauche moved, with second by Mr. Davitt, to approve the minutes from the following, regularly held, Planning Commission meetings:

- April 16, 2009

The motion carried unanimously.

**HOLDOVERS:**

**Case #SUB2009-00120 (Subdivision)**

**D. L. Atchison Subdivision**

North side of Ben Hamilton Road at the North terminus of March Road  
Number of Lots / Acres: 11 Lots / 148.0± Acres  
Engineer / Surveyor: Polysurveying Engineering – Land Surveying  
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The Chair announced the matter had been recommended for denial, however, if there were those who wished to speak on the matter to please do so at that time.

Matt Orrell, Polysurveying of Mobile, spoke on behalf of the applicant stating the following:

- A. he had met with staff as requested by the Commission and had taken their proposal to his client and at that time he read the response to the same, "I (Mr. Orrell) have shown your sketch to my client who is not a developer but a landowner and he tells me he needs to sell his property now. He has no desire to develop this property. We have reduced lots fronting Ben Hamilton (Road). We have increased width, reduced depth, utilized all uplands with the plan we have sent you. We feel that three flag lots will have no negative impact on the community, given the size and wetlands that envelope this property. We would respectfully ask that staff write recommendations based upon the new plat as in myself and my client's opinion, this is the very best use for this property. Again, I would like to emphasis that my client can't develop this property due to financial hardships and they really need to sell this property now;"
- B. that the plat presented for the latest review is the proposal for an eleven lot subdivision, the applicant having reduced the number of frontage lots by 3, with every lot having a minimum width of 350 feet;
- C. regarding the lots not meeting the width to depth ratio, he noted it as true, however, the amount being asked for in that variance is very small comparatively, and that variance is approved rather frequently;
- D. regarding the issue of flag shaped lots, he noted that lot 11 is accessed on the east side by a strip of land that runs down the property line and they see no negative impact to those owners having a driveway down that line to get to the property and lots 9 and 10 will be accessed by a common driveway with a common curb cut if it means the uplands located on the property can be utilized; and,
- E. noted that if the Planning Commission line did not cut across the far western corner of the property, the applicant would not be before the Commission with this request.

Mr. Olsen responded by saying the staff stood by their original recommendations, however, they had drafted conditions for approval, should the Commission choose to do so. He then read the following conditions for approval of the matter:

- A. placement of a note on the final plat stating that the subdivision will share a maximum of 5 curb cuts to Ben Hamilton Road, with

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- the size, location, and design to be approved by County Engineering and in conformance with AASHTO standards;
- B. provision of a 25 foot minimum building setback line on all lots along Ben Hamilton Road; on lots 9, 10, and 11, the setback line shall be from where the “poles” meet the “flag” portions of the lots;
  - C. labeling of the lots with their sizes in square feet, in addition to acreage, or the provision of a table on the plat with the same information;
  - D. placement of a note on the final plat stating that no future subdivision for any lot will be allowed until additional adequate frontage is provided;
  - E. the applicant receive the approval of all applicable federal, state, and local environmental agencies prior to the issuance of any permits or land disturbance activities;
  - F. placement of a note on the plat stating that the site must be developed in compliance with all local, state, and federal regulations regarding endangered, threatened, or otherwise protected species;
  - G. placement of a note on the final plat stating that any lots developed commercially and adjoining residentially developed property shall provide a buffer in compliance with Section V.A.8. of the Subdivision Regulations; and,
  - H. submission of a letter from a licensed engineer certifying compliance with the City of Mobile’s stormwater and flood control ordinances to the Mobile County Engineering Department and the Planning Section of Mobile Urban Development prior to issuance of any permits.

Dr. Rivizzigno addressed the issue of lot frontage onto Ben Hamilton Road and asked if the proposed dedicated space would be wide enough to be a legal road.

Mr. Olsen stated that each flag lot had a 30 foot wide pole, so if, in the future, someone chose to develop the rear area, a road could be placed in that 60 foot strip, if there were to be a future re-subdivision of the back area.

Dr. Rivizzigno asked the same regarding lot 11 and was told by Mr. Olsen that lot 11 had only 30 feet, which was not wide enough and thereby would be unable to put a legal road on that “pole” which would also prevent further subdivision there unless another lot was bought that could provide the necessary road width.

Dr. Rivizzigno reminded the Commission and the applicant that the real problem with the property, especially the back area, was the potential for re-subdivision without having proper access to a public road.

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Mr. Orrell stated his client had no problem restricting the site to no future re-subdivision without the construction of an adequate, county standard road.

Mr. Davitt queried regarding recommendation 4 regarding the Final Plat stating no future subdivision of any lots, was that staff's intent with lots 9, 10, and 11 only.

Mr. Olsen stated it was for all of the lots because as staff had expressed at previous meetings regarding this proposal, there is concern, as there are flag shaped lots located in the parent parcel, that in the future that an owner of one of the smaller lots might want to re-subdivide their property and create another flag shaped lot, which due to those incorporated into this development would make flag shaped lots in character with the neighborhood.

Mr. Orrell stated his client had not problem with that because he and his client felt that would only be an issue for a future owner.

Hearing no opposition or further discussion, a motion was made by Mr. Davitt, with second by Mr. Holmes, to approve the above referenced subdivision, subject to the following conditions:

- 1) **placement of a note on the final plat stating that the subdivision will share a maximum of 5 curb cuts to Ben Hamilton Road, with the size, location, and design to be approved by County Engineering and in conformance with AASHTO standards;**
- 2) **provision of a 25' minimum building setback line on all lots (along Ben Hamilton Road); on Lots 9, 10, and 11, the setback line shall be from where the "poles" meets the "flag" portions of the lots;**
- 3) **labeling of the lots with their sizes in square feet (in addition to acreage), or the provision of a table on the plat with the same information;**
- 4) **placement of a note on the final plat stating that no future subdivision for any lot will be allowed until additional adequate frontage is provided;**
- 5) **the applicant receive the approval of all applicable federal, state, and local environmental agencies prior to the issuance of any permits or land disturbance activities;**
- 6) **placement of a note on the plat stating that the site must be developed in compliance with all local, state, and Federal regulations regarding endangered, threatened, or otherwise protected species;**
- 7) **placement of a note on the final plat stating that any lots developed commercially and adjoin residentially developed property shall provide a buffer in compliance with Section V.A.8 of the Subdivision Regulations; and,**

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- 8) **submission of a letter from a licensed engineer certifying compliance with the City of Mobile's stormwater and flood control ordinances to the Mobile County Engineering department and the Planning Section of Mobile Urban Development prior to issuance of any permits.**

The motion carried with only Dr. Rivizzigno voting in opposition.

**Case #SUB2009-00129 (Subdivision)**

**Oakland Heights Subdivision, Re-subdivision of Lot 28**

1004 Oakland Drive

North side of Oakland Drive at its West terminus

Number of Lots / Acres: 3 Lots / 0.6± Acre

Engineer / Surveyor: Byrd Surveying, Inc.

Council District 6

The Chair announced the application had been recommended for approval.

Jerry Byrd, Byrd Surveying, Inc., spoke on behalf of the owner and asked for staff's input regarding recommendation 6.

Mr. Olsen responded that recommendations 6 and 7, though not identical, are basically duplications of each other as they both relate to Engineering requirements. He stated that recommendation 6 should have been deleted as recommendation 7 is the appropriate Engineering comment.

Upon hearing that, Mr. Byrd stated that other ways of addressing the historical conditions that exist on the lot had been discussed with the Engineering Department and the Engineering Department had advised that they would revise their comments regarding those issues accordingly. He added that his client was agreeable to the revisions discussed with Engineering and asked that the subdivision be approved subject to the revision of that note.

Mr. Olsen agreed to the same.

Hearing no opposition or further discussion, a motion was made by Mr. Davitt, with second by Dr. Rivizzigno, to approve the above referenced subdivision, subject to the following conditions:

- 1) **retention of labeling of the size of the lot, in square feet, or provision of a table on the plat with the same information;**
- 2) **retention of the 25-foot minimum building setback line along all public rights-of-way;**
- 3) **placement of a note on the final plat stating that each lot is limited to one curb cut each, with the size, location, and design**

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- of all curb cuts to be approved by City of Mobile Traffic Engineering and conform to AASHTO standards;
- 4) dedication sufficient to comply with Section V.B.16 of the Subdivision Regulations regarding curb radii;
  - 5) placement of a note on the final plat stating that development of the site must be undertaken in compliance with all local, state, and Federal regulations regarding endangered, threatened, or otherwise protected species;
  - 6) subject to REVISED Engineering comments, as discussed with the applicant and Engineering Department Representative during the meeting; and,
  - 7) full compliance with all municipal codes and ordinances.

The motion carried unanimously.

**Case #ZON2009-02072 (Planned Unit Development)**

**KLK, LLC**

3704 Dauphin Street

Northwest corner of Dauphin Street Service Road and Du Rhu Drive

Planned Unit Development Approval to allow multiple buildings on a single building site and shared access between two building sites

Council District 7

The Chair announced the matter had been recommended for denial, however, if there were those who wished to speak on the matter to please do so at that time.

The following people spoke in favor of the matter:

- Doug Anderson, Burr and Foreman Law Firm, for the applicant; and,
- Ken Metzger, owner of the property in question.

They made the following points in favor of approving the matter:

- A. met with the Fire Department that week regarding their concern over site access and revised the site plan to reflect the changes needed regarding access to the back of the building by the Fire Department;
- B. since that time, the staff created 12 recommended conditions for approval, with condition 2 being in question by the applicant as it asked for a 24 foot wide, two-way access to the rear of the building;
- C. reminded the Commission that the rear of the Metzger's building had 11 parking spaces with those only being accessed by employees who come to work in the morning and leave in the

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- evening, so that area does not have a large amount of “in and out” traffic;
- D. the only non-employee traffic to the rear of the building is a UPS truck and a FEDEX truck, both of which come once a day, and the dumpster service truck that comes at 8 o'clock every morning;
  - E. there will be a stop sign at the end of the one way drive so that customers going thru the bank's drive-up tellers will have the right-of-way;
  - F. a yield sign will be installed for employees leaving the Metzger's side of the building via the proposed one way drive;
  - G. with traffic being so minimal, so limited, requiring the developer to do a two way, 24 foot access road on the north side of the Claude Moore building was unjustified; and,
  - H. having to go to 24 feet would “kill” the deal as it would then encroach on the existing retention pond that Howard Moore has on his site, as well as Mr. Moore having to remove an entire row of parking from the north boundary of his site

Mr. Olsen responded by saying the staff stood by their recommendation of 24 feet of access road on the north side due to the less than adequate traffic circulation on the site.

Mr. Davitt queried about the proposed location of the 20 foot wide drive and was given that information.

Hearing no opposition or further discussion, a motion was made by Dr. Rivizzigno, with second by Mr. Miller, to approve the above referenced Planned Unit Development, subject to the following conditions:

- 1) **any canopy must meet all Fire Department requirements and all building code requirements;**
- 2) **placement of the ATM and any associated structures behind the 25-foot minimum building line;**
- 3) **approval by Traffic Engineering of the ATM location;**
- 4) **compliance with all Traffic Engineering comments: “Driveway number, size, location, and design to be approved by Traffic Engineering and conform to AASHTO standards. No details are given for the location of the ATM machine and a line of sight problem could be created. To avoid conflicting movements, a yield sign should be installed for the one-way drive behind the Jewelers where it meets the turning traffic from the bank. All one way areas should be signed and marked to MUTCD standards;”**
- 5) **the dumpster shall not occupy a depicted or designated parking space;**
- 6) **placement of dumpster on the depicted dumpster pad, including an appropriate dumpster enclosure around the**

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- dumpster pad and any new dumpster pad must have a connection to the sanitary sewer;
- 7) ensure adequate maneuvering space for servicing of the dumpster;
  - 8) submittal and approval of a revised landscape plan for 3704 Dauphin Street, including full compliance with tree planting and landscaping requirements or approval of a variance prior to permitting;
  - 9) if landscaping is to be removed from 3700 Dauphin Street, full compliance with tree and landscaping on the site will also be required, or approval of a variance prior to permitting;
  - 10) provision of 2 (two) copies of the revised PUD site plan indicating compliance with the above requirements to the Planning Section of the Urban Development Department prior to the issuance of any permits; and,
  - 11) compliance with all municipal codes and ordinances.

The motion carried unanimously.

**EXTENSIONS:**

**Case #SUB2005-00195 (Subdivision)**

**Mobile Medical Group Subdivision**

6001 Airport Boulevard

South side of Airport Boulevard, between Wildwood and Pinemont Avenues

Number of Lots / Acres: 1 Lot / 1.4± Acres

Engineer / Surveyor: Rester and Coleman Engineers, Inc.

Council District 6

The Chair announced the matter had been recommended for denial, however, if there were those who wished to speak on the matter to please do so at that time.

Hearing no opposition or discussion, a motion was made by Dr. Rivizzigno, with second by Mr. Miller, to deny the above referenced request for extension.

The motion carried unanimously.

**Case #SUB2007-00243 (Subdivision)**

**Colleton Place Subdivision**

8101 Howells Ferry Road

South side of Howells Ferry Road at Harvey Hill Road

Number of Lots / Acres: 141 Lots / 47.0+ Acres

Engineer / Surveyor: Polysurveying Engineering – Land Surveying County

The Chair announced the application had been recommended for approval.

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Matt Orrell, Polysurveying of Mobile, spoke on behalf of the applicant and advised the Commission that the roads were already in place and it would be virtually impossible to revise the right-of-way at this time.

Mr. Olsen stated that the staff was not made aware that the roads had been constructed and as they have been, it is not possible to ask for the revision to the cul-de-sac's right-of-way diameter.

Hearing no opposition or further discussion, a motion was made by Mr. Plauche, with second by Dr. Rivizzigno, to approve the above referenced request for extension, with the deletion of the condition stating "revision of the cul-de-sac right-of-way diameter to 120' to comply with the 2003 International Fire Code standards, and a possible reduction in the number of lots to maintain the required minimum 7,200 square feet of lot area."

The motion carried unanimously.

**NEW SUBDIVISION APPLICATIONS:**

**Case #SUB2009-00136**

**Maurkit Subdivision**

600 St. Louis Street

Northwest corner of St. Louis Street and North Warren Street extending to the Southwest corner North Warren Street and St. Anthony Street

Number of Lots / Acres: 2 Lots / 0.7± Acres

Engineer / Surveyor: Byrd Surveying, Inc.

Council District 2

The Chair stated the applicant was agreeable with the recommendations and asked if anyone wished to speak on the matter to do so at that time.

Hearing no opposition or discussion, a motion was made by Mr. Davitt, with second by Dr. Rivizzigno, to approve the above referenced subdivision, subject to the following conditions:

- 1) **provision of labeling of the size of the lot, in square feet, or provision of a table on the plat with the same information;**
- 2) **dedication sufficient to comply with Section V.B.16 of the Subdivision Regulations at the intersection of St. Louis Street and Warren Street;**
- 3) **full compliance with all building and fire codes to separate the buildings prior to the signing of the final plat;**
- 4) **compliance with Engineering comments: *"Label each lot showing the required minimum finished floor elevation (MFFE). Must comply with all other stormwater and flood control ordinances. Any work performed in the right-of-way will require***

- a right-of-way permit. If a land disturbance permit is needed, any damaged sidewalk sections shall be replaced”;*
- 5) **placement of a note on the final plat stating that approval of all applicable federal, state, and local agencies would be required prior to the issuance of any permits;**
  - 6) **placement of a note on the final plat stating that development of the site must be undertaken in compliance with all local, state, and Federal regulations regarding endangered, threatened, or otherwise protected species; and,**
  - 7) **full compliance with all municipal codes and ordinances.**

The motion carried unanimously.

**Case #SUB2009-00137**

**Thistlewaite Place Subdivision**

6267 Howells Ferry Road

Southwest corner of Howells Ferry Road and Tew Drive [private drive]

Number of Lots / Acres: 2 Lots / 1.5± Acres

Engineer / Surveyor: Gerald A. Smith

Council District 7

The Chair stated the applicant was agreeable with the recommendations and asked if anyone wished to speak on the matter to do so at that time.

Hearing no opposition or discussion, a motion was made by Mr. Davitt, with second by Dr. Rivizzigno, to approve the above referenced subdivision, subject to the following conditions:

- 1) **placement of a note on the final plat stating that each lot is limited to one curb cut each (including the corner lot), with the size, location, and design to be approved by Traffic Engineering and in conformance with AASHTO standards;**
- 2) **placement of a note on the final plat stating that access to Tew Drive will require compliance with Section VIII.E of the Subdivision Regulations;**
- 3) **provision of an adequate radius, in compliance with Section V.B.16 of the Subdivision Regulations, at the intersection of Howells Ferry Road and Tew Drive; and,**
- 4) **placement of a note on the plat / site plan stating that the site must be developed in compliance with all local, state, and Federal regulations regarding endangered, threatened, or otherwise protected species.**

The motion carried unanimously.

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**Case #SUB2009-00133**

**Scott Plantation Subdivision, Unit Nine**

North side of Johnson Road South at the North terminus of Scott Dairy Loop Road West, extending North then West adjacent to the North side of Scott Plantation Subdivision Unit 8

Number of Lots / Acres: 86 Lots / 35.8± Acres

Engineer / Surveyor: Polysurveying Engineering – Land Surveying County

The Chair announced the matter was recommended for holdover, but if there were those present who wished to speak to please do so at that time.

Timothy Dees, Mobile, AL, spoke in opposition, advising that when he bought his property he was told the land behind him would not be developed and now houses are being developed on the site. He requested information regarding how closely the development would encroach upon his property.

The Chair advised that the plan involved modifications to the cul-de-sacs and those would not go out into the property.

Hearing no further opposition or discussion, a motion was made by Mr. Plauche, with second by Mr. Miller, to hold the matter over until the November 5, 2009, meeting, to allow the applicant to address the following:

- 1) **revision of the plat to align the access right-of-way via Lot 31, Scott Plantation Subdivision, Unit Eight with the right-of-way of Jersey Drive East and to provide a minimum building setback line along the access for Lot 32, Scott Plantation Subdivision, Unit Eight;**
- 2) **revision of the plat to provide an additional access stub to the undeveloped property to the North through proposed Lot 56; and,**
- 3) **revision of the plat to provide 120' diameters for the rights-of-way on all cul-de-sacs with revisions to the minimum building setback lines and lot sizes for all lots affected by the increased diameters required.**

The motion carried unanimously.

**Case #SUB2009-00138**

**Wimbledon Subdivision, First Unit, Re-subdivision of Lot 10, Block 1**

109 Hillwood Road

Northeast corner of Hillwood Road and Wimbledon Drive East

Number of Lots / Acres: 2 Lots / 0.5± Acres

Engineer / Surveyor: Baskerville Donovan, Inc.

Council District 5

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The Chair announced the application had been recommended for approval.

The Chair stated the applicant was agreeable with the recommendations and asked if anyone wished to speak on the matter to do so at that time.

The following people spoke in opposition:

- Janice Jones, 3 Wimbledon Drive , Mobile, AL;
- Chris Schatzman, 110 Hillwood Drive, Mobile, AL;
- John Case, 25 Hillwood Drive, Mobile, AL; and,
- Ann Marie Kilpatrick, 2 West Wimbledon Drive, Mobile, AL.

They made the following points against the development:

- A. Country Club Estates is an older neighborhood, having been developed in the 1930's;
- B. The house approved for demolition is structurally sound, has a nice floor plan with architecture that matches the area's streetscape and to demolish it would be an unfortunate loss to the character of the neighborhood;
- C. the house at 3 Wimbledon Drive is listed on the National Register of Historic Places and the house approved for demolition pre-dates it for construction, making it, too, eligible for recognition as a historic home;
- D. fear that should the house be demolished and the large lot divided into 3 smaller lots, that homes built on those lots will be much smaller and not in character with the other houses in the neighborhood thus jeopardizing their property values;
- E. the current owner is presently renovating the house and has moved into it;
- F. the current owner has stated publicly that he intends to live in the house until his death at which time his heirs will take over the property, which has caused the question of why the subdivision process and the then required demolition of the house could not wait until such time as the current owner passed away;
- G. concern that should the lots be subdivided that the new, smaller lots would not be large enough to meet city codes and have homes built on them that were in character with those of the neighborhood;
- H. concerns that the subdivision of the property would create two lots that would required variances to be used;
- I. new construction setback requirements have been stated as 25 feet, however, the setbacks for the neighborhood are listed as 50 feet;
- J. stormwater runoff in the neighborhood is a terrible problem and there is concern that the proposed development of this property would increase those problems; and,

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K. a letter from Dr. Franklin Trent, 106 Hillwood Drive, Mobile, AL, was presented to the Commission in opposition to the project.

Joe Riggins, Baskerville Donovan, Inc., spoke on behalf of the applicant and made the following points:

- A. the lots will be as large or larger than some of the lots that have already been divided, citing the corner of Wimbledon and Croydon as an example of such;
- B. the proposed development was designed using the Subdivision Regulations as their guide;
- C. presently there is no known reason to need variances to do the proposed development; and,
- D. the property was inherited by two cousins from their grandmother and they must either sell it to divide it or make it into two lots, the latter option being their preference.

Mr. Davitt asked what the sizes of the lots in question were, as it appeared to him that lot B did not appear to be in character with the neighborhood.

Mr. Olsen stated they were 13,647 square feet and 8,805 square feet respectively. He also pointed out to Mr. Riggins that there was only one signature for the property owner on the plat while the deed listed four property owners.

Mr. Riggins stated he had sent a copy of the deed which indicated that though there were 4 people who actually inherited the property but that those people had transferred ownership to the two cousins, Jimbo Posey and Roe Burton.

Mr. Olsen stated that a statutory warranty deed was given to the staff and it appears Mrs. Skinner sold it to James H. Posey, Jr., J. Roe Burton, Delphine B. Mason, and Gillette B. Muller, however, not all of those individuals had also signed the plat.

Mr. Riggins stated those individuals were the grandchildren of the former owner. He also stated there was another deed which showed there were currently only two owners and he thought a copy of that had been given to the staff as well.

Mr. Olsen said the staff would need a copy of that deed and would also need a copy of the plat with both signatures.

In deliberation, Mr. Miller expressed his dislike of the matter and did not see why the property was being divided as he did not see it "fitting" in the neighborhood.

Mr. Davitt agreed with Mr. Miller's opinion and stated his thoughts that lot B was out of character in size as far as the existing subdivision was concerned.

Dr. Rivizzigno asked for Mr. Lawler's opinion on the matter as she remembered having

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a problem with the issue of “in keeping with the neighborhood” as grounds for denial in previous cases.

Mr. Lawler offered the following opinion on the matter:

- A. noted that the subdivision mentioned on Croydon Road was denied by the Planning Commission and the case was appealed to Circuit Court where the Planning Commission’s decision was affirmed, then it was taken to the Alabama Supreme Court where it was decided that if in the hearing before the Planning Commission it is demonstrated that the subdivision will have a depreciating, downgrading effect on neighboring lots that issue can be used as a reason for denial;
- B. noted a case in the Pinehurst area that involved turning the lots around so that the lots would be on an open street because to leave them as they were would have left them un-developable and in that case the neighboring property owners came in and raised the issues of traffic, character, and depreciating value to their lots as reasons for the Commission not to approve the development;
- C. noted that if a developer met the minimum requirements as set out in the Subdivision Regulations, they were entitled to build that subdivision; and,
- D. noted that in all of the cases, great weight is given to the findings of the Planning Commission with regards to hearing the testimony of the neighbors, which generally means the Planning Commission’s decisions are upheld when appealed.

Mr. Holmes asked if the “tear down” date had any impact on the matter and was advised no. He then asked if the 50 foot setback would have any impact on the matter.

Mr. Lawler stated that if the 50 foot setback is part of the neighborhood covenants then the neighbors can force the developer to abide by it. He added that the 50 foot setback might then impact the amount of buildable space on the smaller lot in a negative manner.

Hearing no further opposition or discussion, a motion was made by Mr. Davitt, with second by Dr. Rivizzigno, to hold the matter over until the November 5, 2009, meeting to allow for the following:

- 1) **the applicant to provide ALL signatures of owners as required; and,**
- 2) **to allow the applicant and opponents to present evidence of alleged impact on the surrounding properties.**

The motion carried unanimously.

**NEW PLANNED UNIT DEVELOPMENT APPLICATIONS:**

Case #ZON2009-02251

**Karen & Kelly Douglas**

5275 Noble Drive North

Southwest corner of Noble Drive North and Noble Drive East

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

Council District 7

The Chair stated the applicant was agreeable with the recommendations and asked if anyone wished to speak on the matter to do so at that time.

Hearing no opposition or discussion, a motion was made by Mr. Davitt, with second by Dr. Rivizzigno, to approve the above referenced Planned Unit Development, subject to the following conditions:

- 1) **completion of the Subdivision process for Case Number SUB2009-00121, the Subdivision case associated with the first PUD approval;**
- 2) **provision of a buffer compliant with Section 64-4.D.1 of the Zoning Ordinance along the South and West property lines;**
- 3) **depiction of a dumpster on the site plan showing compliance with all enclosure, buffer, access, and maneuvering, and setback requirements or a note on the site plan be provided indicating that no dumpster will be included as part of the development and waste removal will occur by curbside pickup;**
- 4) **full compliance with all landscaping and tree planting ordinances;**
- 5) **depiction of sidewalks or submittal of a successful sidewalk waiver application;**
- 6) **revision of the site plan to show compliance with all conditions and submittal of two copies of said revised site plan to the Planning Section of Urban Development prior to the issuance of any permits; and,**
- 7) **full compliance with all municipal codes and ordinances.**

The motion carried unanimously.

**NEW PLANNING APPROVAL APPLICATIONS:**

Case #ZON2009-02241

**Pam McDonald**

1947 Hall Road

West side of Hall Road, 490' ± North of Howells Ferry Road

Planning Approval to allow a mobile home in a R-1, Single-Family Residential District.

Council District 7

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The Chair announced the matter had been recommended for denial, however, if there were those who wished to speak on the matter to please do so at that time.

The following people spoke in favor of the development:

- Jerry Byrd, Byrd Surveying, Inc., for the applicant; and,
- Pam McDonald, 1947 Hall Road, Mobile, AL, the applicant.

They gave the following points in support of the proposal:

- A. the applicant had recently purchased the lot in question as well as the identical lot to the north of it;
- B. the northern lot has a house on it and at the time the lot in question was purchased, it had a mobile home on it that had been in place since the 1980's;
- C. the mobile home burned so the applicant would like to replace it with another mobile home; and,
- D. the division of these two lots was done by "metes and bounds" in 1961, which was after the normal cut off for "metes and bounds" subdividing of 1952, but it was still a subdivision that occurred some 48 years ago and has existed as such since then.

Mr. Olsen responded by that the trailer in question had been on the site by variance in 1987 with an eighteen month time limit on its placement. He added that unfortunately the trailer had remained considerably longer than was intended. He stated that was why "non-conforming status" could not be given to the property.

The Chair questioned whether coming before the Planning Commission was the correct venue for solving the situation.

Mr. Olsen noted that the Zoning Ordinance did allow for the location of mobile homes within residential districts with Planning Commission approval, so if the Commission felt that the site was appropriate for a mobile home, it would be in character for the neighborhood, and if based on all of the normal criteria for a Planning Approval application, coming before the Commission was the appropriate venue. On the other hand, if the Commission were to choose not to approve the matter then the applicant had the option of filing for a variance to the Board of Zoning Adjustment or appealing the matter to City Council.

Hearing no further opposition or discussion, a motion was made by Mr. Davitt, with second by Dr. Rivizzigno, to deny the above referenced Planning Approval for the following reasons:

- 1) the request is basically to allow a second dwelling unit on a site containing an existing dwelling which was divided into two metes-and-bounds parcels without going through the proper**

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- Subdivision process; and,**  
**2) the mobile home would not be appropriate for the neighborhood and would be out of character with existing dwellings in the area.**

The motion carried unanimously.

**NEW ZONING APPLICATIONS:**

**Case #ZON2009-02193**

**McMurray Place Subdivision**

South side of Johnston Lane, extending from the West side of Rosedale Avenue (vacated right-a-way) to the centerline of Dickenson Avenue (vacated right-a-way), and to McCay Avenue (vacated right-a-way), 95'± South of Johnston Lane  
Rezoning from R-3, Multiple Family District, to R-3, Multiple Family District to remove a previously approved condition.  
Council District 6

The Chair stated the applicant was agreeable with the recommendations and asked if anyone wished to speak on the matter to do so at that time.

Mr. Davitt noted an application associated with this had been seen two weeks prior and had been approved and asked for details regarding the same.

Mr. Olsen stated those had been applications for a subdivision and Planned Unit Development and those were contingent upon the completion of the rezoning to modify this specific condition. He reminded the Commission that the property had been rezoned a few years prior and when it came before the City Council, a condition was added by that body limiting it to that very specific Planned Unit Development. He stated the developer had made some changes to that Planned Unit Development and that while those changes may seem insignificant in the development community, they are different from what had been approved by City Council. The staff felt that because the developer was wanting to change the number of lots, change the setbacks, and make changes to things of that nature, it had to come back before the Commission for approval, therefore it had to go through the rezoning process as well. He added this could not have been handled at the earlier meeting, because this application had not been submitted at that time.

Hearing no opposition or discussion, a motion was made by Dr. Rivizzigno, with second by Mr. Davitt, to approve the above referenced request for rezoning, subject to the following conditions:

- 1) limited to an approved Planned Unit Development;**
- 2) completion of the Subdivision process; and,**
- 3) full compliance with all other applicable municipal codes and ordinances.**

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The motion carried unanimously.

**GROUP APPLICATIONS:**

**Case #SUB2009-00134 (Subdivision)**

**Hardy Subdivision, Re-subdivision of and Addition to Lot 2**

1108 Schaub Avenue

West side of Schaub Avenue, 190'± South of Johnston Lane

Number of Lots / Acres: 1 Lot / 0.2± Acre

Engineer / Surveyor: Rester and Coleman Engineers, Inc.

Council District 6

(Also see **Case #ZON2009-02195 (Rezoning) Bertie Ruth Lowe**, below)

The Chair stated the applicant was agreeable with the recommendations and asked if anyone wished to speak on the matter to do so at that time.

Hearing no opposition or further discussion, a motion was made by Mr. Davitt, with second by Dr. Rivizzigno, to approve the above referenced subdivision, subject to the following conditions:

- 1) **placement of a note on the final plat stating that the site is limited to the two existing curb-cuts, with any modifications to be approved by Traffic Engineering, and to comply to AASHTO standards;**
- 2) **compliance with Engineering comments, including the requested note on the plat: *(Must comply with all stormwater and flood control ordinances. Add a note to the plat that detention must be provided and a land disturbance permit will be required for any further development or addition of impervious area the site. Any work performed in the right-of-way will require a right-of-way permit.)*;**
- 3) **depiction of the 25-foot minimum building setback line on the final plat, as shown;**
- 4) **labeling or notation of the lot size in square feet on the final plat, as shown; and,**
- 5) **placement of a note on the final plat stating that no buildings, storage sheds, decks, or other permanent structures may be placed in the 15-foot wide drainage and utility easement.**

The motion carried unanimously.

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**Case #ZON2009-02195 (Rezoning)**

**Bertie Ruth Lowe**

1108 Schaub Avenue

West side of Schaub Avenue, 190'± South of Johnston Lane

Rezoning from R-1, Single-Family Residential District and R-3, Multiple Family Residential to R-1, Single-Family Residential to eliminate split zoning

Council District 6

(Also see **Case #SUB2009-00134 (Subdivision) Hardy Subdivision, Re-subdivision of and Addition to Lot 2**, above)

The Chair stated the applicant was agreeable with the recommendations and asked if anyone wished to speak on the matter to do so at that time.

Hearing no opposition or further discussion, a motion was made by Mr. Davitt, with second by Dr. Rivizzigno, to approve the above request for rezoning, subject to the following conditions:

- 1) completion of the Subdivision process; and,**
- 2) new site development or construction to comply with all municipal codes and ordinances.**

The motion carried unanimously.

**Case #SUB2009-00135 (Subdivision)**

**McElver Subdivision**

East terminus of Benson Drive

Number of Lots / Acres: 2 Lots / 12.5± Acres

Engineer / Surveyor: Byrd Surveying, Inc.

Council District 7

(Also see **Case #ZON2009-02211 (Rezoning) Matthew McElver**, below)

The Chair announced the application had been recommended for approval. He also advised the Commission of materials regarding the applications that had been placed at their seats.

The following people spoke in favor of the development:

- Jerry Byrd, Byrd Surveying, Inc., on behalf of the applicant; and,
- Matthew McElver, 214 Upham Street, Apt. 12-B, Mobile, AL, the owner.

They made the following points in favor of approval:

- A. the applicant purchase 12.5 acres of property with the intent of building a single residence on the property;
- B. there is 50 feet of public road frontage for the property on Benson

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- Drive as well as Carre Drive South;
- C. real concerns over recommendations 2 and 3, which require dedication of property for and construction of a city standard right-of-way and turnaround/cul-de-sac just so the property owner can have one driveway as the construction of said turnaround/cul-de-sac was considered cost prohibitive to applicant;
  - D. the applicant would like to offer the dedication of the 50 foot ingress/egress easement for right-of-way, then simply allow the applicant to have a driveway off the end of Benson Drive;
  - E. the applicant did not buy the land to develop it beyond a single residence and has no plans to develop it in such a way as to “make a profit”;
  - F. currently the property is two separate parcels with two different zoning classification and the applicant would like them to be made a single lot of record zoned as R-1, single family residential;
  - G. the applicant offered to restrict the site to no further re-subdivision until the turnaround was built after the completion of his home; and,
  - H. the applicant had gone to the City to get permits to do some clearing on the lot but was unable to get a permit to do so as the property was split zoned and not a legal lot of record.

The Chair asked if the applicant was asking for the removal of conditions two and three and was advised yes.

The following people spoke in opposition to the development:

- Matthew Martin, 4301 Benson Drive, Mobile, AL, spoke on his own behalf and that of three other property owners unable to attend the meeting that day;
- Mark Cotsamire, 1308 East Carre Drive , Mobile, AL; and,
- Cassandra Harrison, 4220 Benson Drive, Mobile, AL.

They made the following points in opposition to the development:

- A. stormwater runoff is a very big problem in the area, noting that 10 years prior a brand new storm drain was put in from 4301 Benson Drive to 3 Mile Creek, but currently most of that storm drain can not be found as it has either sunk or caved in;
- B. the area is very swampy and it is not believed that anything can “stay” in the area where the applicant has proposed building;
- C. if the property is developed it is believed that it will cause water to back up even more onto the residential property in the area;
- D. it is felt that the purchase of the property in question was the first step in getting a “toe hold” in the area to do something else and that there is a separate agenda involved;

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- E. the area has a number of live springs causing there be standing water in the area in question as the topography in the area is flat; and,
- F. there are large numbers of indigenous fauna, citing the alligator snapping turtle and gopher tortoise as examples, that would be negatively effected if the property is developed.

Mr. Davitt asked if the only reasons the applicant could not get permits to clear the property was due to both the zoning and the subdivision issues.

Mr. Olsen stated it was due to two reasons, one was the property was currently two "metes and bounds" parcels, and the other was, as they have it described, it is split zoned. He also asked for confirmation that the applicant had offered to refrain from any further re-subdivision of the property until the cul-de-sac was constructed as a condition for approval and was advised yes. He also noted that the staff had omitted but wanted to add as a condition the completion of rezoning prior to the recording of the final plat to assure that the entire property is zoned with a R-1 classification and not split zoned.

In deliberation, Mr. Davitt noted that the applicant had bought the property with the stated intent of building his own personal residence so he had no problem with rezoning the property, however, having heard the major concerns of the neighbors regarding the wetlands and ground water, he was concerned with the ability to put in the roads and other infrastructure the staff was requiring, and in as much he was not sure he was in favor of a two lot subdivision.

Mr. Olsen responded by saying he believed that the reason the applicant was looking at a two lot subdivision rather than a one lot subdivision was in an effort to get the portion on which the applicant wished to build a home out of the 100 year flood plane. He suggested that one way around that might be to entitle the property located within the wetlands as "common area" or, "conservation area," if the applicant was agreeable to that, because based upon the information heard that day, it did not seem that lot 2 would ever be developable.

Mr. Davitt expressed his agreement with subdividing into two lots based upon those reasons so that the applicant could build on the upper parcel as long as the lower parcel remained un-developable for any future project.

Mr. Hoffman noted that the 500 year flood plane line was located just below the proposed division between lots 1 and 2, so it needed to be noted that all of lot 2 was located within both the 100 year flood plane and the 500 year flood plane of 3 Mile Creek and the wetlands, based upon the National Wetlands Inventory data, occur primarily on the lower lot.

Mr. Miller noted his concern that if the two lot subdivision was approved, the Commission be creating a lot which was, for all rights and purposes, land locked.

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Mr. Olsen stated that was the reason he suggested, if the applicant were agreeable, “doing” a one lot subdivision and labeling the lower portion, which is predominately wetlands, as a common area or a conservation area, as he could with almost 100% certainty state the City of Mobile would not finish constructing Carre Drive South as it was wetlands.

Mr. Holmes asked what was wrong with the two lot subdivision as they were done in case similar to this all of the time.

Mr. Davitt responded that would mean the creation of a legal lot of record with no ingress or egress except via private property. He then asked if the applicant could be asked by the Commission if he would be agreeable to a one lot subdivision.

Mr. Byrd stated that his client would agree to no further subdivision or development of the lot until Carre Drive South were constructed to county road standards as all that would be needed for building a home would be ¼ of an acre above the flood zone and out of the wetlands and he felt that much property was present on the second lot.

Mr. Miller asked Mr. Olsen’s feelings on Mr. Byrd’s response.

Mr. Olsen stated the staff would be comfortable with the two lot subdivision or a note on the final plat labeling the lower portion as “future development.”

Hearing no further opposition or discussion, a motion was made by Mr. Davitt, with second by Mr. Miller, to approve the above referenced subdivision, subject to the following conditions:

- 1) **dedication of the 50-foot by 116.05-foot non-exclusive ingress and egress easement depicted on Lot 1 as right-of-way for Benson Drive;**
- 2) **placement of a note on the final plat limiting Lot 1 to one curb cut to Benson Drive with the with the size, location, and design of all curb cuts to be approved by City of Mobile Traffic Engineering and conform to AASHTO standards;**
- 3) **dedication sufficient to provide a turnaround in compliance with Section V.B.14 of the Subdivision Regulations at the terminus of Carre Drive South;**
- 4) **placement of a note on the final plat stating that no permits shall be issued and no development shall take place on Lot 2 until such time as Carre Drive South is constructed to City of Mobile standards;**
- 5) **depiction of the centerline of the proposed Inner Ring Road right-of-way corresponding with the existing sewer line and easement, and also depiction of the proposed 100-foot right-of-way for the Inner Ring Road;**
- 6) **placement of a note on the final plat stating that no permanent**

- structures shall be developed within the future right-of-way area for Inner Ring Road except for utility construction or repair;
- 7) placement of a note on the final plat stating that Lot 2 will be limited to one curb cut to Carre Drive South, with the size, location, and design of all curb cuts to be approved by City of Mobile Traffic Engineering and conform to AASHTO standards, at such time as Carre Drive South is constructed to City of Mobile standards;
  - 8) revision of the lot size labeling to depict the lot size in square feet;
  - 9) compliance with Engineering comments: *“Label Lot #2 showing the required minimum finished floor elevation (MFFE). Lot 2 is located in the AE Flood Zone; add a note to the plat stating that there is to be no fill brought onto the property without the approval of the City Engineer. Wetlands are shown on the City of Mobile GIS database for Lot 2. Need to show the limits of the wetlands on the plat or supply documentation that the wetlands do not exist. Add a note to the plat that any development within the limits of the wetlands is prohibited without the approvals of the City Engineer and the Corps of Engineers. Must comply with all other stormwater and flood control ordinances. Any work performed in the right-of-way will require a right-of-way permit. A flood plain easement will be required. The size and location of the easement shall be coordinated with the City Engineer”*;
  - 10) placement of a note on the final plat stating that the approval of all applicable federal, state, and local agencies is required prior to the issuance of any permits;
  - 11) placement of a note on the final plat stating that development of the site must be undertaken in compliance with all local, state, and Federal regulations regarding endangered, threatened, or otherwise protected species;
  - 12) placement of a note on the final plat stating there shall be no future re-subdivision of Lot 1 until a cul-de-sac is built at the East terminus of Benson Drive, in compliance with Section V.B.15 of the Subdivision Regulations to be coordinated with City of Mobile Fire Department and Traffic Engineering;
  - 13) completion of the rezoning process prior to recording of the final plat; and,
  - 14) full compliance with all municipal codes and ordinances.

The motion carried with only Dr. Rivizzigno voting in opposition.

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**Case #ZON2009-02211 (Rezoning)**

**Matthew McElver**

East terminus of Benson Drive

Rezoning from R-1, Single-Family Residential District and R-3, Multiple Family Residential District, to R-1, Single-Family Residential District to eliminate split zoning and to allow construction of a single family residential home.

Council District 7

(Also see **Case #SUB2009-00135 (Subdivision) McElver Subdivision**, above)

Hearing no further opposition or discussion, a motion was made by Mr. Davitt, with second by Mr. Miller, to approve the above referenced request for rezoning, subject to the following conditions:

- 1) completion of the Subdivision process; and,**
- 2) full compliance with all municipal codes and ordinances.**

The motion carried unanimously.

**OTHER BUSINESS:**

**Ashland Place United Methodist Church**

5, 7, and 15 Wisteria Avenue

Subdivision - SUB2009-00011

Planned Unit Development - ZON2009-00349

Planning Approval - ZON2009-00347

The Chair asked Mr. Olsen for information regarding the above referenced matter.

Mr. Olsen gave the following points:

- A. on April 2, 2009, the Commission approved a Planning Approval/Planned Unit Development application for the church with one of the conditions for approval being “demolition of two residences on Wisteria Avenue to be postponed for 6 months (October 2, 2009), to allow adequate time to notify availability of houses for removal, and to provide opportunity for removal”;
- B. it has been discovered that the structures were removed without permits and that they were removed approximately a week prior to the date set by the Planning Commission;
- C. he had spoken with Mr. Bowden, the architect, who said he had been out of town that past week but that the church had gotten with Mobile Historic Development Commission so that organization could get any features from the structures they deemed to be of historic value as well as working with another community group to be sure that any re-usable fixtures could be salvaged and that the homes had been removed;

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- D. Mr. Bowden indicated it was an error on their part that the homes were removed prematurely. Mr. Olsen stated he reminded Mr. Bowen that the date on the letter was very specific as well as the fact that the contractor used by the church knew that permits were required for the removal of the houses;
- E. on Tuesday, September 29, 2009, a notice of violation was issued to the church regarding the same; and,
- F. at the present time, the Commission has limited options that can be pursued in the matter, if there were to be any actions taken by the Commission as the structures simply can not be brought back.

The Chair asked if they had been demolished or moved.

Mr. Olsen stated to his knowledge they had been demolished as there was nothing from his conversation with Mr. Bowden that indicated they were moved as Mr. Bowden had stated no buyers could be found for the houses. Mr. Olsen advised the Commission that a citation could be issued and they would have to appear in Environmental Court because of it.

The Chair asked who would issue the citation if the Commission chose to have it done.

Mr. Olsen advised it would be given by one of the department's Zoning Technicians and any citation issued would be done both to the church and to the contractor.

The Chair asked if the Commission voted on the citation or was it simply issued by a Zoning Technician.

Mr. Olsen said the staff would do whatever the Commission wished in the matter, including ignoring it if they so chose.

Mr. Miller, who resides in the area, noted that he felt the church could have made greater effort in having the homes salvaged by others, because to his knowledge there were no signs, etc., posted to let anyone know the houses were available.

Mr. Plauche moved, with second by Mr. Davitt, to issue citations for violation of condition and failure to obtain a demolition permit cite to the church and the contractor regarding the removal of the houses on Wisteria Avenue.

The motion carried unanimously.

Hearing no further business, the meeting was adjourned.

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**APPROVED:**            January 7, 2010

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Dr. Victoria Rivizzigno, Secretary

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Terry Plauche, Chairman

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