

The Planning & Zoning Commission met Monday, August 3, 2009 at 5:00 PM at the City Administration Building, 161 N. Section Street in the Council Chambers.

Present: Dick Charles, Vice-Chair; Tim Kant, Jennifer Fidler, Bob Clark, Gary Moore, Lee Turner, Fran Slade, Dan Stankoski. Jonathan Smith, Planning and Building Director, Nancy Milford, Planner, Chris Gill, Attorney. Betty Rivenbark, Secretary. Absent: Jean Wilson

In the absence of Jean Wilson, Dick Charles (Vice-Chair) presided over the meeting. The minutes of the July 6, 2009 meeting were considered and approved as written on motion by Bob Clark, 2<sup>nd</sup> by Jennifer Fidler. Three abstentions were noted, Timothy Kant, Fran Slade and Gary Moore.

Gary Moore asked and moved to change the agenda and let SD05-56 be heard first. Tim Kant 2<sup>nd</sup> the motion and it carried unanimously.

**SD05-56 Preliminary Plat approval for a one year extension The Cottages at Point Clear, Phase II (Villas at Point Clear), Gregory P. Bru.**

The property is located on the south side of Battles Road(if headed west) just before Battles Road makes a sharp turn to the north. Nancy Milford gave the staff report and said that The Villas at Point Clear was granted preliminary approval by the Planning Commission in August 2005. The Sub Regulations state that if a final plat is not submitted within two years of preliminary plat approval, the plat approval will expire. The applicant requested a two year extension on July 02, 2007. The Planning Commission granted a one year extension. A second request for a two year extension was made by the applicant on June 2, 2008. The Planning Commission granted a one year extension until July 31, 2009. The applicant is requesting that the approval be extended an additional period of one year ending July 31, 2010. Staff recommendation was approved with the following stipulations: at the time of final plat approval, the applicant shall bring The Cottages at Point Clear, Phase II (Villas at Point Clear) in compliance with all aspects of the revised March 8, 2007 City of Fairhope Subdivision Regulations. The following minimum changes, including but not limited to, must be met:

- 1) Drainage Requirements (a letter and/or a revised drainage plan stating that the March 8, 2007 drainage requirements have been met). This documentation shall include a watershed map.
- 2) BMP Treatment (a letter stating the requirements will be met)
- 3) Submission of an Operations and Maintenance Plan signed and stamped by a Professional Engineer.
- 4) All required Maintenance and Financial Guaranty agreements and bonds shall be submitted
- 5) A street lighting plan shall be submitted

6) A letter signed and stamped by an approved professional traffic engineer, stating that the latest versions of the traffic requirements of the subdivision regulations are met

7) Tree Survey and Landscape Plan must be submitted. The applicant shall meet all of the tree requirements per the Subdivision Regulations and Zoning Ordinance. A tree protection plan shall be submitted for all required street trees or trees over 20" DBH.

8) The applicant shall submit a pedestrian circulation plan.

9) All final plans shall be submitted on disc in an ADOBE PDF format.

10) Storm Sewers shall be videoed (reflecting a time and date stamp) and reviewed and approved by staff.

11) The Engineer's certificate on the plat would have to be revised with the new wording provided in the Subdivision Regulations Article IV Section D 18. Approval was for a one year extension of the preliminary plat, ending July 31, 2010 and upon the above listed conditions and the applicant bringing The Cottages at Point Clear, Phase II (Villas at Point Clear) in compliance with all aspects of the revised (March 8, 2007) City of Fairhope Subdivision Regulations at the time of final plat approval. Lee Turner moved to approve one year extension with staff's recommendations. Gary Moore 2<sup>nd</sup> the motion and it carried unanimously.

**ZC09-01 Rezone request of Thomas Toombs/Black Angus Development, LLC from R-2 Medium Density Single Family Residential to PUD. Gary Moore and Fran Slade had a conflict with the this case and left the room.** The property known as Dogwood Subdivision, is located on the northeast corner of Valley Street and Middle Street. Jonathan gave the staff report saying that this is an eight lot recorded subdivision and all lots within the development are vacant and are platted per the R-2 zoning district area and dimensional requirements and it contains 3.09 acres. The minimum PUD requirement is three acres. He said the applicant appeared at the March 2<sup>nd</sup> Planning Commission meeting requesting reduced front, side and rear building setbacks, accessory dwelling units up to 750 square feet, 40% maximum lot coverage and an increased building height to 35'. Unanimous denial was the vote recommendation to the city council. It appeared before the City Council on May 26, 2009 where it was held over until June 8, 2009 city council meeting. At the June 8 city council meeting with a 4 to 1 vote the council sent the application back to the Planning Commission to allow the applicant to make changes to the proposal. The current PUD request consists of single family homes. The applicant is requesting the following setbacks: front 25', rear 30'; interior side 6'; driveway side 15' and street side 20'. Exterior Building Materials are proposed to consist of brick, wood, hardplank, stucco, and vinyl for accent only. Per this request, the subdivision will remain as platted with the exception of allowing decreased setbacks. The increased building height

request of the proposed PUD has been eliminated. Even though PUD zoning is to allow for an innovative development, Bob Clark had expressed his opposition to a PUD saying it is a developers dream and they can change plans at will. Staff recommendation was to recommend denial to City Council.

The public hearing was opened and no one had signed up to speak, it was closed at 5:10 PM. Thomas Toombs spoke on behalf of Black Angus. He made all the points he had made before saying it was in compliance with R2, PUD, Village Concept and comprehensive plan, they were trying to be innovative in design and fit in neighborhood just asking to simply reduce setbacks. He said they had withdrawn the height change request, and they had improved the property and deeded the lift station to the City, improved fire hydrants, and installed lighting, that the first two planned homes are high quality. He said smaller setbacks exist now in the neighborhood, they are just trying to knit into the existing fabric of the older neighborhood. It was pointed out that the smaller setback request was to save trees. Bob Clark expressed again his dislike for the PUD zoning saying it is a big tool for flexibility, but also said that he is going to vote no because of the concern for drainage. He said on at least three occasions he has driven over there in rainstorms and the water was almost over the barrier, less than a foot from the top and there are no residences built on the property now. Jennifer said she felt that six foot side setbacks are not large enough, she said that the Board of Adjustments offered an avenue for his setback request. Mr. Toombs said he understood that if he goes this route it would have to be considered on a lot by lot basis, not the whole subdivision. Further discussion led to Bob Clark moving to accept staff recommendation to deny rezone request and convey this to City Council. Jennifer Fidler seconded the motion. Motion carried with one no vote by Lee Turner who had expressed appreciation for the innovative design.

**ZC09.02 Rezone request from R-A Residential/Agriculture to PUD property of Klumpp Family Limited Partnership.** The property is located on the west side of Highway 181, just south of the intersection of State Hwy 181 and Fairhope Avenue. Jonathan Smith gave the staff interpretation saying this is currently undeveloped property and is one parcel containing approximately 1252 feet of frontage along Highway 181 and contains 10.24 acres. If approved it will be subdivided into a five lot commercial subdivision. The five lots will be accessed by a service road off of State Hwy 181. Proposed uses were listed as: Education or Training Facility, General Office Space, Professional Office Space, Retail-Grocery retail – Convenience (no gas), Retail – General Merchandise, Drug Store, Coffee Shop, Post Office, Bank, Barber/Beauty Salon, Film/Photo, Tailor, Office Support Services, Fitness Club, Dry Cleaning/Laundry, Restaurant (No Drive Thru), Catering, Florist and Bakery. The hours of operation proposed by the applicant are 5:30 AM to 11:00 PM. Maximum building coverage is

proposed at 30% and total maximum lot coverage is presented at 80%. He said further that staff feels the “restaurant(no drive thru)” proposed permitted use is too intense to be located abutting single family residential subdivisions and recommended this be eliminated from the “permitted uses” table on the proposed PUD site plan, due to the offensive odors and noise typically associated with this type of use. As proposed a 20’ drainage easement and a 20’ heavily landscaped buffer (40’) will separate the proposed PUD from the adjacent lots in Idlewild, and a 20’ heavily landscaped buffer is proposed along the southern side of the lot in the proposed development that abuts 4 lots in Jackson Place. An abundance of large plant materials will be required in the proposed buffer areas. The plant material and trees required were listed. An 8 ft privacy fence is also an added requirement to the property lines of the subject property that abut single family residential zoning and/or uses. If the PUD is approved, each proposed site plan shall meet all Fairhope Regulations unless specifically drawn on the PUD site plan. This includes regulations pertaining to site landscaping, parking lot lighting, dumpster and mechanical equipment screening, etc. In addition to staff requests, the applicant has agreed to construct 50% of the parking surfaces of a pervious material. Upon preliminary plat subdivision application (if zoning change approved) the applicant shall be required to submit a drainage plan in compliance with all City stormwater requirements and upon individual lot development, any proposed site plan will also be required to be in compliance with stormwater regulations. A conceptual drainage layout and a letter stamped and signed by Joe Bullock of EDS, LLC has been submitted saying the drainage system and infrastructure will be in compliance with the Fairhope Subdivision Regulations. The applicant shall obtain approval from ALDOT for any curb cuts or proposed improvements on State Highway 181 and the Planning Department has requested that the applicant submit an official letter from ALDOT approving access and any necessary traffic improvements on 181. A pedestrian connection into the Idlewild S/D from the primary ingress/egress point in the center of the proposed PUD site plan and a pedestrian connection to the Idlewild stubout located on the north side of the project is included. When Idlewild Preliminary Plat for Phase 7 was approved a ROW stub-out was required on Orleans Drive which abuts the subject property. He said the residents of the Idlewild residential subdivision are adamantly opposed to a street connection to Orleans Drive and a petition has been submitted and included in the packet to the commission. Staff feels obligated to recommend connectivity from Orleans Drive to the proposed development due to the comprehensive plan, connectivity requirements in the city’s subdivision regulations and the Planning Commission’s required street stubout for Phase VII of Idlewild. In order to limit the possibility of any strip style development the applicant agreed to a 10’ side setback for all lots within the proposed PUD and to provide four-sided architecture for all buildings within the project. Staff recommendation was to approve application contingent upon the following:

1. An 8 ft privacy fence added to any property lines for the subject property that abut residential zoning and/or uses.
2. All perimeter buffer landscaping/fences and required vehicular, pedestrian and stormwater infrastructure shown on the PUD site plan shall be installed prior to Final Subdivision Plat approval.
3. A fountain shall be incorporated into the proposed "water feature"/retention pond for the project. This will assist in water circulation and provide an additional aesthetical value to the project.
4. Restaurant (no-drive thru) shall be removed from the Permitted uses table on the PUD site plan.
5. Due to language in the Comprehensive Plan encouraging connectivity, connectivity requirements in the subdivision regulations and the Planning Commissions approval conditions of Phase VII of the residential Idlewild Subdivision, staff recommends the primary ingress/egress for the project (the central ingress/egress) be connected to Orleans Drive within Phase VII of the Idlewild Subdivision. If the connection is approved, the intersection of Orleans Drive and Royal Lane shall be a four-way stop intersection, the applicant shall be responsible for installing all signage; a "No Commercial Vehicles" sign shall be installed before the new street connection meets the existing street stub into the Idlewild Subdivision and a traffic calming device(speed hump, speed table) shall be installed on the new street located at the common property line on the west side of the subject PUD property
6. Unless specifically defined and/or outlined by the subject PUD Site Plan, all improvements and aspects of the Idlewild 181 Place PUD shall be in compliance with all applicable city regulations.
7. All pervious surfaces shall be constructed and maintained per the latest industry standards; all pervious paving parking surfaces shall be maintained at least once per year. The established POA shall keep a record of parking lot maintenance.

Dick Charles pointed out to all that connectivity is important for emergency vehicles, police, fire, and ambulances. The public hearing was opened and the following spoke: Tom McCuller, 210 Orleans Drive, against connectivity; pointing out potential speeding concerns as well as speeding now in neighborhood. He said there are three entrances to Wal-Mart now; two sides to the story, he is concerned about the children, a terrible idea. Keith Jacobsen, here for the Board of the Idlewild Property Owner's Association, asked for a show of hands and said they have serious concerns, that there is currently connected access to Wal-Mart, 150 houses don't want it; staff and developers don't want the road, he wanted all to know these decisions affect families, the good working people of the community. Joe Bullock spoke for the applicant. A lengthy discussion followed with commission members about the connectivity issue, with most saying use common

sense, that this will definitely be a cut through. Lee Turner related his experience driving through Idlewild with his son, he said he is also concerned that this will be used as a shortcut, concerned for the children and families. He went on to say he thought a pedestrian connectivity could be a good thing and he could envision walking to a good restaurant. Tim Kant mentioned that golf carts are now being used for transportation and could be used in a pedestrian connection, he cited other subdivisions where connectivity was required and said we need to be consistent, continue with connectivity either a sidewalk or cart path. He expressed his concerns that one of the proposed uses is a post office and said we fought hard to get the post office uptown to keep the downtown viable and that he would hate to see it move out there. Chris Gill addressed the members saying the issue of connectivity might need to be addressed, but it is in the subdivision regulations, a requirement, might suggest a traffic circle, traffic calming, narrower streets maybe one way only. He suggested the commission think about changing the connectivity rules to allow for conflicting residential to commercial, that street stubouts cost a lot of money. Dan Stankoski, said use common sense, residential to commercial, Wal-Mart is a high traffic area, no one wants it. Fran Slade asked about a connectivity committee, why not other ways of connectivity, read as a guideline. Jonathan Smith mentioned that staff feels if the Planning Commission is leaning toward approving the Restaurant use for the project, each restaurant within the project should take measures to ensure compatibility with the Idlewild Single Family Subdivision. Mayor Kant then recommended each site go through the Site Plan Review process. Lee Turner, said he can see it as pedestrian walk through, he sees connectivity as a safety issue, all buildings will have site plan review, he moved to accept staff recommendation with pedestrian connection and to remove items 4 and 5 from the recommendations listed above, instead of approving condition number 4 as it is written, change the condition number 4 to allow for restaurant use (with no drive thru) and also delete condition number 5 as it is written in the staff report and change condition number 5 to allow for pedestrian walk through connectivity only, with emergency vehicle access provided through use of a transmitter activated device on the emergency vehicle, which can open a motorized gate if absolutely necessary. Fran Slade seconded the motion, Gary Moore said he is a proponent of connectivity concern, but mentioned he is concerned that an incongruent traffic pattern might be created if we allow the ingress/egress locations as proposed for the project. Motion passed with one no vote by Jennifer Fidler.

**ZC09-03 Request of the City Planning Staff and Accessory Dwelling Unit Committee for approval of an amendment to the Zoning Ordinance to allow for detached Accessory Dwelling Units.** Jonathan Smith gave the staff report saying that staff has been working with the ADU Committee since July of 2008 to draft an Accessory Dwelling Unit Ordinance that will best suit the needs and character of the community. Over the course of

several months, the committee and staff have formulated an ADU Ordinance for consideration by the Planning Commission and City Council. A draft copy of the ADU Ordinance was presented to the Planning Commission on April 6, 2009 and appeared to be comfortable with the provisions included in the proposed ordinance. Staff recommendation was to approve. Gary Moore, chaired the committee and spoke naming the committee members: Jonathan Smith, Barry Fulford, Ealine Snyder-Conn, Wendy Allen, Mike Hutchinson and Dick Charles. He said they sought and received public input, this ADU committee was put in motion due to a lack of affordable housing, returning children, housing for aging parents. He said they pulled ordinances from around the country, took the best of those, got public input, listened to the community regarding street parking, exterior lighting, size of unit, porches, building codes, concerns of windows facing neighbors. He said they required on site parking and any new parking would be pervious material, also that the owner would live in the ADU or it be their primary residence, short-term rentals, the same rules and regulations would apply, a limit on bedrooms, would accommodate handicap and the ADU unit could not be subdivided. Sue Simmons had written a letter and said four individuals seems excessive unless it reads "four related residents" It was pointed out it had been advertised 7 times in the Courier, including tonight, posted at the Nix Center, City Hall and utilities building. Dan Stankoski asked how would you enforce the owner living on the property, what if someone dies, how 15 years down the road would you enforce it. The answer was it would be recorded in real property records with Baldwin County and action will be taken in municipal court if violations occur. Bob Clark commented that in reading it, it is discriminatory for subdivisions with covenants, but he feels that it will change the character of a great part of Fairhope if passed. Lee Turner said until five years ago you could do it, and Fran Slade said garage apartments were allowed. Jonathan Smith said now garage apartments are considered as a non-conforming use, if a nonconforming structure is proposed to be changed by more than 50% they would have to come into compliance with current codes. Dick Charles said on property ownership it would be "right of succession", wrung out with legal documents. Chris Gill said as with other laws a property owner would be "deemed to have constructive knowledge", but is not always the case. Gary Moore said there was a tremendous amount of dialog before it got here. Mayor Kant spoke saying his only concern is higher density, more cars, it is saying every single family residence can build one, we will have them in higher density areas. People who buy larger lots with single family homes, every house can build one. Jonathan said some smaller lots could not. The Mayor said we need to change the wording. Gary Moore said if they exceed the allowable building limit on a lot they could not. Mayor Kant said that the building unit must be in character with the house and neighborhood, how are we going to enforce that. He said we need to have a mechanism in place before this goes to City Council. Billie Carlisle spoke saying Bob Clark made the point, more cars on the street,

lose the character and feel of old Fairhope, have low density downtown, think of a more creative way to do it. Bob Clark said this one fell through the cracks, he had complete faith in the committee and never questioned it until now. Fran Slade said she is not against the ordinance, but she thinks we need more discussion before going to City Council. Further discussion led to Lee Turner recommending the ordinance to the City Council, Gary Moore seconded the motion. Vote was for motion: Lee Turner, Gary Moore, Jennifer Fidler, Dick Charles. Against motion: Dan Stankoski, Fran Slade, Bob Clark, Tim Kant.  
Motion did not pass.

**SD09-09 Final Plat approval of resubdivision of replat of Phase 1 of Fairhope Village**, a minor division request of Volkert & Associates. **Lee Turner and Dan Stankoski left the meeting prior to any discussion of this matter and did not return.** Property located on the southeast corner of the intersection of US Highway 98 and Parker Road. Nancy Milford gave the staff report saying the property is approximately 12.42 acres and the property is located in the city with the zoning designation of PUD. She said a pocket park was shown on the approved site plan drawings but does not appear on the submitted plat. Also, the road configuration on the west and east side of Lot 4 has changed from the original and reduces the amount of green space. She said the applicant shall provide the green space for the pocket park as shown in the original site plan or provide equivalent greenspace in another location on the property. Nancy also said there needs to be a note on the plat that the common area is not a lot. Staff recommendation was approval conditional upon:

1. The installation of an aerator in the storm water pond
2. Flow models shall be provided for the undeveloped parcels
3. The applicant's engineer shall provide the required information regarding the water line and easement related to lot 4
4. The applicant shall provide the equivalent amount of green space from the pocket park either in the original location of pocket park or in another location on the site, in close proximity to the original location shown on the site plan.
5. The applicant shall provide an existing tree survey and tree protection plan for lots 2,3,4. All landscaping shall meet the City of Fairhope horticulturist's approval. All city requirements will be met prior to a land disturbance permit being issued. The applicant shall submit as-built plans showing the landscape irrigation system for the city of Fairhope horticulturist approval (hard copies)
6. The submittal of the original engineering certificate with the engineer's seal.

Nancy Milford added three additional staff recommendations. These recommendations are as follows:



A north arrow shall be added to the plat

A scale shall be added to the plat

Easements of not less than 15' shall be added along side and rear lot lines as required for drainage and utilities shall be added to the plat.

Steven Pumphrey of Volkert & Associates spoke saying the pocket park was in site plan review and requirements have been met through landscaping requirements. The subdivision plat as submitted is in compliance with the site plan. He also said a note will be on the plat stating "all future development of these lots shall be in compliance with the approved Fly Creek PUD and protect trees already there".

Paul Ripp addressed the commission saying that all failed on the Publix, no enforcement, no tree survey, no buffers and now planning a fire station on Parker Road. The problem is nothing stated has been done now. Mayor Kant responded to Mr. Ripp's comments saying that the staff has stated over and over that they did comply with all requirements, they did what they were supposed to and he stands behind staff, they followed all the rules. Mayor Kant moved to approve staff recommendations with the change to Item 5 –before any land disturbance permit is issued all City requirements shall be met and all landscaping, tree protection and buffer requirements shall be approved by the City Horticulturist (Jennifer Fidler) and a note shall be placed on the plat that no building shall be allowed in the Common Area. Bob Clark 2<sup>nd</sup> the motion and it carried with one no vote by Gary Moore.

**UR 09-08 Request of John Saracino of the Fairhope Volunteer Fire Department for 11-52-11 review and approval of a proposed fire station.** The property is located on the south side of the intersection of Parker Road and High Ridge Road. Jonathan Smith gave the staff report saying that the property is within the Fly Creek PUD and the PUD masterplan shows townhouse lots. The fire station will result in a decrease in residential density by approximately 11-14 townhouse units. The building is 8,300 square feet with 3 fire truck bays. The exterior architectural elements are composed mainly of brick and a steel frame. It includes a kitchen, two bathrooms, a male sleeping quarters and showers, a female sleeping quarters and showers, a day room, a training room, four offices, one exercise room and facilities support space. The station is designed to be manned 24 hours a day, 365 days a year. Upon building permit review the proposed fire station will be reviewed for compliance with all applicable city regulations. John Saraceno (Fire Chief) said that in a 1996 ISO rating it was stated we shall have a fire station on the north side of town, this will satisfy their edict. Staff recommended approval. Bob Clark said he had gotten calls about the

possible problem that might be created with noise of the vehicles. He was told there were no plans to turn on the sirens until they hit Hwy 98. They were asked will they respond every time and said they usually stand by to see what station actually rolls. Gary Moore asked what type of published notice went out, Jonathan replied there were no legal requirements, they send e-mails to all neighborhood associations. He also said that the subdivision application will come back to the Planning Commission. Tim Kant moved to grant approval of the 11-52-11 review, Jennifer Fidler 2<sup>nd</sup> the motion and it carried with one no vote by Gary Moore.

Jonathan mentioned a letter sent to ALDOT (Vince Calametti) by Mayor Kant supporting Smartcoast in their endeavors to work with ALDOT in getting sidewalks and bike lanes installed upon the expansion of Highway 181. A copy of the letter was in everyone's packet. Dick Charles mentioned an e-mail he plans to send the hospital overlay district committee.

The meeting was duly adjourned at 8:05 PM.

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Dick Charles, Vice Chair

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Betty Rivenbark, Secretary